

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

DECEMBER 1, 1936, TO MAY 31, 1937

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MEMBERS OF THE FEDERAL TRADE COMMISSION
AS OF MAY 31, 1937

WILLIAM A. AYRES, *Chairman.*

Took oath of office August 23, 1934.

GARLAND S. FERGUSON.

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

CHARLES H. MARCH.

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

EWIN L. DAVIS.

Took oath of office May 26, 1933.

ROBERT E. FREER.

Took oath of office August 26, 1935.

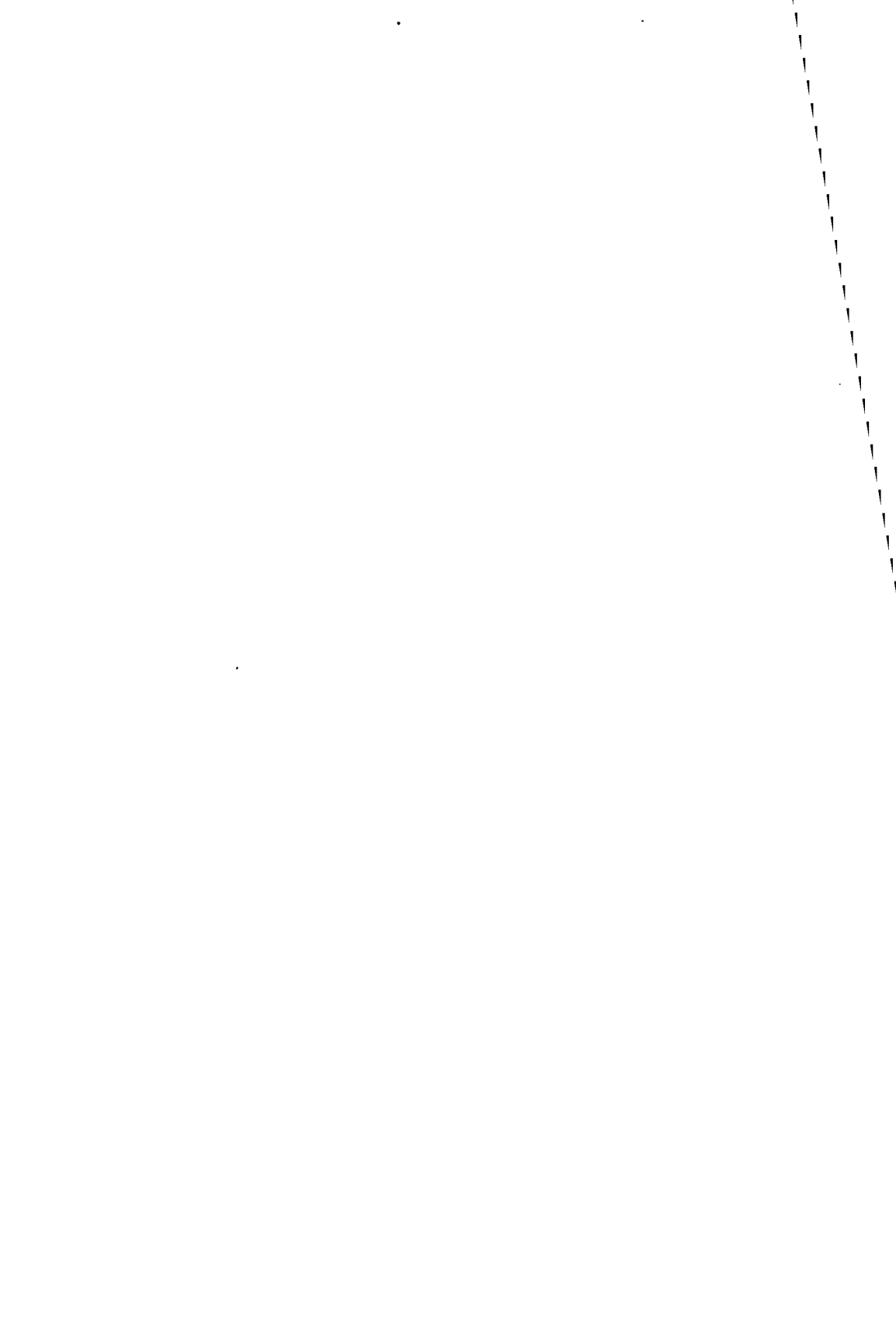
OTIS B. JOHNSON, *Secretary.*

Took oath of office August 7, 1922.

-
- ¹ Second term.
 - ² Recess appointment.
 - ³ Third term.

ACKNOWLEDGMENT

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



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THE
STATE OF
NEW YORK
IN SENATE
January 15, 1914.

REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE
IN ANSWER TO A RESOLUTION PASSED BY THE SENATE
MAY 15, 1913.

ALBANY:
J. B. LIPPINCOTT COMPANY,
PRINTERS,
1914.

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[Abbreviations: S. C.=U. S. Supreme Court; C. C. A.=Circuit Court of Appeals; S. C. of D. C.=Supreme Court of the District of Columbia (changed on June 25, 1936 to District Court of the U. S. for the District of Columbia, and identified by abbreviation D. C. of D. C.); C. A. of (or for) D. C.=U. S. Court of Appeals for the District of Columbia (prior to June 7, 1934 Court of Appeals of the District of Columbia); D. C.=District Court. Hyphenated numbers refer to volume and page of the F. T. C. Reports, the number preceding the hyphen denoting the volume, the numbers following referring to the page]

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Said publication (hereinafter referred to as "S. & D.") also includes Clayton Act cases bearing on those sections of said Act administered by the Commission during the aforesaid period, but in which Commission was not a party.

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

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12 F. (2d) 22.	

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.

Chicago Portrait Co.....	(C. C. A.) 8-597. 4 F. (2d) 759.
Civil Service Training Bureau, Inc.....	(C. C. A.) 21-1197. 79 F. (2d) 113.
Claire Furnace Co., et al. ⁹	(S. C. of D. C.) footnotes, 3- 285 Fed. 936; 274 U. S. 160 (47 S. Ct. 553). 543, 4-539; (C. A. of D. C.) 5-584; (S. C.) 11-655.
Consolidated Book Publishers, Inc.....	(C. C. A.) 15-637. 53 F. (2d) 942.
Counter Freezer Manufacturers, National Associ- ation of, et al.	(S. C. of D. C.) 22-1137.
Cox, S. E. J.....	(C. C. A.), "Memoranda," 20-739.
Crancer, L. A., et al.....	(C. C. A.), footnote, 20-722.
Cream of Wheat Co. ¹⁰	(C. C. A.) 10-724. 14 F. (2d) 40.
Cubberley, U. S. ex. rel.....	(S. C. of D. C.) footnote, 18-663.
Curtis Publishing Co.....	(C. C. A.) 3-579; (S. C.) 5-599. 270 Fed. 881; 260 U. S. 568.
Dodson, J. G.....	(C. C. A.) 20-737.
Dollar Co., The Robert.....	(C. C. A.), footnote, 16-684; "Memoranda," 20-739.
Douglas Fir Exploitation & Export Co.....	(S. C. of D. C.), footnote, 3-539, "Memoranda," 20- 741.
Eastman Kodak Co., et al.....	(C. C. A.) 9-642; (S. C.) 7 F. (2d) 994; 274 U. S. 619 (47 S. Ct. 688). 11-669.
Edwin Cigar Co., Inc.....	(C. C. A.) 20-740.
Electric Bond & Share Co. (Smith, A. E., et al.)..	(D. C.) 13-563, 17-637. 34 F. (2d) 323; 1 F. Supp. 247.
Evans Fur Co., et al.....	(C. C. A.) 24-1600. 88 F. (2d) 1008.
Fairyfoot Products Co.....	(C. C. A.) 21-1224. 80 F. (2d) 684
F. A. Martoccio Co. (Hollywood Candy Co.)....	(C. C. A.) 24-1608. 87 F. (2d) 561.
Fluegelman & Co., Inc., N.....	(C. C. A.) 13-602. 37 F. (2d) 59.
Flynn & Emrich Co.....	(C. C. A.) 15-625. 52 F. (2d) 836.
Fox Film Corp.....	(C. C. A.) 7-589. 296 Fed. 353.
Fruit Growers' Express, Inc.....	(C. C. A.) 3-628; footnote, 274 Fed. 205; 261 U. S. 629 (42 S. Ct. 518). 6-559.
Garment Mfrs. Assn., Inc., et al.....	(S. C. of D. C.); footnote, 18- 663.
George Ziegler Co.....	(C. C. A.) 24-1625. 90 F. (2d) 1007.

⁹ For final decree of Supreme Court of the District of Columbia, see "Memoranda," 3-542 et seq., or S. & D. 190.

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

Good-Grape Co.	(C. C. A.) 14-695. 45 F. (2d) 70.
Grand Rapids Varnish Co. ¹¹	(C. C. A.) 13-580. 41 F. (2d) 996.
Gratz, et al.	(C. C. A.) 1-571, 2-545; (S. C.) 258 Fed. 314; 253 U. S. 421 (40 S. Ct. 572). 2-564.
Guarantee Veterinary Co., et al.	(C. C. A.) 5-567. 285 Fed. 853.
Gulf Refining Co. et al. (Sinclair Refining Co. et al.)	(C. C. A.) 4-552; (S. C.) 6-587. 276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).
Hall, James B., Jr.	(C. C. A.) 20-740. 67 F. (2d) 993.
Hammond Lumber Co.	(C. C. A.); footnote, 16-684; "Memoranda," 20-739.
Hammond, Snyder & Co.	(D. C.) 5-578; (S. C.) 8-632. 284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461).
Harriet Hubbard Ayer, Inc.	(C. C. A.) 10-754. 15 F. (2d) 274.
Heuser, Herman.	(C. C. A.) 8-628. 4 F. (2d) 632.
Hills Bros.	(C. C. A.) 10-653. 9 F. (2d) 481.
Hires Turner Glass Co.	(C. C. A.) 21-1207. 81 F. (2d) 362.
Hoboken White Lead & Color Works, Inc.	(C. C. A.) 14-711, 18-663. 67 F. (2d) 551.
Hoffman Engineering Co.	(C. C. A.) 21-1221.
Holloway & Co., M. J., et al.	(C. C. A.) 22-1149. 84 F. (2d) 910.
Hollywood Candy Co. (F. A. Martoccio Co.) ...	(C. C. A.) 24-1608. 87 F. (2d) 561.
Hughes, Inc., E. Griffiths.	(C. A. of D. C.) 17-660, 20- 63 F. (2d) 362. 734.
Hurst & Son, T. C.	(D. C.) 3-565. 268 Fed. 874.
Ice Cream Manufacturers, International Association of, et al.	(S. C. of D. C.) 22-1137.
Indiana Quartered Oak Co.	(C. C. A.) 12-721, 16-683. 26 F. (2d) 340; 58 F. (2d) 182.
Inecto, Inc.	(C. C. A.) 18-705, 20-722. 70 F. (2d) 370.
International Association of Ice Cream Manufacturers, et al.	(S. C. of D. C.) 22-1137.
International Shoe Co. ¹²	(C. C. A.) 12-732 (S. C.) 13- 29 F. (2d) 518; 280 U. S. 291 (50 S. Ct. 89). 593.
Ironized Yeast Co.	(C. C. A.) 20-737.
Johnson Candy Co., Walter H.	(C. C. A.) 21-1195. 78 F. (2d) 717.

¹¹ For interlocutory order, see "Memoranda," 20-746 or S. & D. 724.

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

Jones Co., Inc., H. C.-----	(D. C.) 5-578; (S. C.) 8-632. 284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461).
Juvenile Shoe Co.-----	(C. C. A.) 6-594. 289 Fed. 57.
Kay, Abbott E.-----	(C. C. A.) 13-575. 35 F. (2d) 160.
Kelley, James-----	(C. C. A.) 24-1617. 87 F. (2d) 1004.
Keppel & Bro., Inc., R. F.-----	(C. C. A.) 17-651; (S. C.) 18- 63 F. (2d) 81; 291 U. S. 304; (54 S. Ct. 423). 684.
Kinney-Rome Co.-----	(C. C. A.) 4-546. 275 Fed. 665.
Kirk & Co., Jas. S., et al. ¹³ -----	(C. C. A.) 16-671. 59 F. (2d) 179.
Kirschmann Hardwood Co.-----	(C. C. A.); footnote, 16-684; "Memoranda," 20-739.
Klesner, Alfred (Shade Shop, etc.)-----	(C. A. of D. C.) 9-650, (S. C.) 6 F. (2d) 701; 274 U. S. 145 (47 S. Ct. 557); 11-661; (C. A. of D. C.) 25 F. (2d) 524; 280 U. S. 19 (50 S. Ct. 1). 12-717; (S. C.) 13-581.
Kobi & Co., J. W. ¹⁴ -----	(C. C. A.) 11-713. 23 F. (2d) 41.
Leavitt, Louis ¹⁵ -----	(C. C. A.) 11-635, 21-1228. 16 F. (2d) 1019.
Lee Co., George H.-----	(C. C. A.) "Memoranda," 20- 722.
Lee, U. S. v. (Sherwin et al. v. U. S.)-----	(D. C.) (C. C. A.); footnote, 290 Fed. 517; 297 Fed. 704 (affirmed 268 6-559. U. S. 369; 45 S. Ct. 517).
Lesinsky Co., H.-----	(C. C. A.) 4-595. 277 Fed. 657.
Lighthouse Rug Co.-----	(C. C. A.) 13-587. 35 F. (2d) 163.
Loose-Wiles Biscuit Co.-----	(C. C. A.) 7-603. 299 Fed. 733.
Lorillard Co., P.-----	(D. C.) 5-558, (S. C.) 7-599. 283 Fed. 999; 264 U. S. 298 (44 S. Ct. 336).
MacFadden Publications, Inc. ¹⁶ -----	(C. A. of D. C.) 13-605. 37 F. (2d) 822.
Maisel Trading Post, Inc.-----	(C. C. A.) 20-725, 21-1212, 77 F. (2d) 246, 79 F. (2d) 127, 84 F. (2d) 768. 23-1381.
Maison Pichel-----	(D. C.) footnote, 18-663.
Maloney Oil & Mfg. Co. (Sinclair Refining Co. et al.).-----	(C. C. A.) 4-552; (S. C.) 6-587. 276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).
Marietta Mfg. Co.-----	(C. C. A.) 15-613. 50 F. (2d) 641.
Martoccio Co., F. A. (Hollywood Candy Co.)---	(C. C. A.) 24-1608. 87 F. (2d) 561.

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

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.

Masland Dural leather Co., et al.....	(C. C. A.) 13-567. 34 F. (2d) 733.
Maynard Coal Co. ¹⁷	(S. C. of D. C.) 3-555, 6-575; 22 F. (2d) 873. (C. A. of D. C.) 11-698.
McLean & Son, A., et al.....	(C. C. A.) 22-1149. 84 F. (2d) 910.
Mennen Co. ¹⁸	(C. C. A.) 6-579. 288 Fed. 774.
Miller, Ward J. (Amber-Ita).....	(C. C. A.) 21-1223.
Millers National Federation, et al.....	(S. C. of D. C.) 10-739 (C. A. 23 F. (2d) 968; 47 F. (2d) 428. of D. C.) 11-705 (S. C. D. C.) 14-675 (footnote); (C. A. of D. C.) 14-712.
Mills Novelty Co. et al., U. S. ex rel.....	(S. C. of D. C.) 22-1137.
Minneapolis, Chamber of Commerce of, et al. ¹⁹ ..	(C. C. A.) 4-604, 10-687. 280 Fed. 45; 13 F. (2d) 673.
Mishawaka Woolen Mfg. Co.....	(C. C. A., S. C.) 5-557. 283 Fed. 1022; 260 U. S. 748 (43 S. Ct. 247).
M. J. Holloway & Co., et al.....	(C. C. A.) 22-1149. 84 F. (2d) 910.
Moir, John, et al. (Chase & Sanborn) ²⁰	(C. C. A.) 10-674. 12 F. (2d) 22.
Morrissey & Co., Chas. T., etc.....	(C. C. A.) 14-716. 47 F. (2d) 101.
National Association of Counter Freezer Manu- facturers et al.	(S. C. of D. C.) 22-1137.
National Biscuit Co. ²¹	(C. C. A.) 7-603; (D. C.) 24- 299 Fed. 733; 18 F. Supp. 667. 1618.
National Harness Mfrs. Assn.....	(C. C. A.) 4-539, 3-570. 261 Fed. 170; 268 Fed. 705.
National Silver Co.....	(C. C. A.) 24-1627. 88 F. (2d) 425.
New Jersey Asbestos Co.....	(C. C. A.) 2-553. 264 Fed. 509.
Non-Plate Engraving Co.....	(C. C. A.) 15-597. 49 F. (2d) 766.
Norden Ship Supply Co., Inc., et al. (Winslow et al.).	(C. C. A.) 4-578. 277 Fed. 206.
Northam Warren Corp.....	(C. C. A.) 16-687. 59 F. (2d) 196.
Nulomoline Co.....	(C. C. A.), footnote, 3-542; 254 Fed. 988. "Memoranda," 20-740.
Ohio Leather Co. ²²	(C. C. A.) 14-699. 45 F. (2d) 39.

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.

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.

Oppenheim, Oberndorf & Co. (Sealpax Co.) ²³ -----	(C. C. A.) 9-629. 5 F. (2d) 574.
Ostermoor & Co., Inc. ²⁴ -----	(C. C. A.) 11-642. 16 F. (2d) 962.
Ozment, C. J., etc-----	(C. C. A.) 22-1135.
Pacific States Paper Trade Assn. et al-----	(C. C. A.) 8-608; (S. C.) 4 F. (2d) 457; 273 U. S. 52 (47 S. Ct. 255); 11-636; (C. C. A.) 24-1631. 88 F. (2d) 1009.
Paramount Famous-Lasky Corp-----	(C. C. A.) 16-660. 57 F. (2d) 152.
Pearsall Butter Co., B. S. ²⁵ -----	(C. C. A.) 6-605. 292 Fed. 720.
Philip Carey Mfg. Co. et al-----	(C. C. A.) 12-726. 29 F. (2d) 49.
Powe Lumber Co., Thos. E-----	(C. C. A.), footnote, 16-684; "Memoranda," 20-739.
Procter & Gamble Co., et al-----	(C. C. A.) 10-661. 11 F. (2d) 47.
Pure Silk Hosiery Mills, Inc-----	(C. C. A.) 8-595. 3 F. (2d) 105.
Q. R. S. Music Co. ²⁶ -----	(C. C. A.) 10-683. 12 F. (2d) 730.
Queen Anne Candy Co., et al-----	(C. C. A.) 22-1149. 84 F. (2d) 910.
Raladam Co.-----	(C. C. A.) 14-683; (S. C.) 42 F. (2d) 430; 51 F. (2d) 587; 283 U. S. 643 15-598. (51 S. Ct. 587).
Raymond Bros.-Clark Co-----	(C. C. A.) 4-625; (S. C.) 7-594. 280 Fed. 529; 263 U. S. 565 (44 S. Ct. 162).
Republic Iron & Steel Co-----	(D. C.) (S. C. of D. C.), foot- note, 3-543.
Ritholz, Benjamin D-----	(C. C. A.) 22-1145.
Royal Baking Powder Co. ²⁷ -----	(C. C. A.) 4-614; (S. C. of D. C.) 11-677; 701; (C. A. of D. C.) 12-740.
Royal Milling Co. et al-----	(C. C. A.) 16-679; (S. C.) 58 F. (2d) 581; 288 U. S. 212 (53 S. Ct. 335). 17-664.
Ryan Candy Co. (Southern Premium Manufac- turing Co., etc.).	(C. C. A.) 22-1143. 83 F. (2d) 1008.
Sea Island Thread Co., Inc-----	(C. C. A.) 11-705. 22 F. (2d) 1019.

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.

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.

For order of Supreme Court of the District of Columbia on May 17, 1929, denying company's petition for writ of mandamus to require certain action of Commission *re* certain affidavits and motions, see "Memoranda," 20-742 or S. & D. 703, 704.

- Sears, Roebuck & Co.----- (C. C. A.) 1-562, 2-536.
258 Fed. 307.
- Sealpax Co. (Oppenheim, Oberndorf & Co.)²⁸--- (C. C. A.) 9-629.
5 F. (2d) 574.
- Shade Shop, etc., Alfred Klesner doing business
under name of, *see* Klesner, Alfred.
- Shakespeare Co.----- (C. C. A.) 15-609.
50 F. (2d) 758.
- Sherwin et al. v. U. S. (Lee, U. S. v.)----- (D. C.); (C. C. A.),^Ffootnote,
290 Fed. 517; 297 Fed. 704 (affirmed, 268 6-559.
U. S. 369); (45 S. Ct. 517).
- Sifers Confection Co. (H. I. Sifers, etc.)----- (C. C. A.) 22-1147.
84 F. (2d) 999.
- Silver Co., L. B.----- (C. C. A.) 6-559, 608.
289 Fed. 985; 292 Fed. 752.
- Sinclair Refining Co.----- (C.¹C.¹A.) 4-552; (S.¹C.)¹6-587.
276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).
- Smith, A. E., et al., and Electric Bond and Share
Co. (D. C.) 13-563, 17-637.
34 F. (2d) 323; 1 F. Supp. 247.
- Southern Hardware Jobbers Assn.----- (C. C. A.) 6-597.
290 Fed. 773.
- Southern Premium Manufacturing Co., etc. (C. C. A.) 22-1143.
(Ryan Candy Co.).
83 F. (2d) 1008.
- Sowles, M. H.----- (D. C.) "Memoranda" 20-740.
- Standard Education Society----- (C. C. A.) 10-751; (C. C. A.)
14 F. (2d) 947; 86 F. (2d) 692. 24-1591.
- Standard Oil Co., of New Jersey, et al.----- (C. C. A.) 5-542, 6-587.
282 Fed. 81; 261 U. S. 463 (43 S. Ct. 450).
- Standard Oil Co., of New York.----- (C. C. A.) 3-622.
273 Fed. 478.
- Swift & Co.----- (C. C. A.) 8-616; (S. C.) 11-
8 F. (2d) 595; 272 U. S. 554 (47 S. Ct. 175). 629.
- Temple Anthracite Coal Co.----- (C. C. A.) 15-616.
51 F. (2d) 656.
- Texas Co. (Standard Oil Co. of N. Y.)----- (C. C. A.) 3-622.
273 Fed. 478.
- Thatcher Mfg. Co.----- (C. C. A.) 9-631; (S. C.) 11-
5 F. (2d) 615; 272 U. S. 554 (47 S. Ct. 175). 629.
- Toledo Pipe-Threading Machine Co.²⁸----- (C. C. A.) 9-652, 10-664.
6 F. (2d) 876; 11 F. (2d) 337.
- U. S. ex rel. Cubberley----- (S. C. of D. C.) footnote 18-
663.
- U. S. ex rel. Mills Novelty Co. et al.----- (S. C. of D. C.) 22-1137.
- Utah-Idaho Sugar Co.----- (C. C. A.) 11-692.
22 F. (2d) 122.
- Vivaudou, Inc., V.----- (C. C. A.) 15-631.
54 F. (2d) 273.
- Walker's New River Mining Co.----- (C. C. A.) 21-1213.
79 F. (2d) 457.

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

Wallace, E. J.-----	(C. C. A.) 20-713.
75 F. (2d) 733.	
Ward Baking Co.-----	(C. C. A.) 2-550.
264 Fed. 330.	
Western Meat Co.-----	(C. C. A.) 8-589, 623; (S. C.)
1 F. (2d) 95; 4 F. (2d) 223; 272 U. S. 554 (47	11-629; (C. C. A.) 13-559.
S. Ct. 175); 33 F. (2d) 824.	
Western Sugar Refinery Co. et al.-----	(C. C. A.) 4-557.
275 Fed. 725.	
Wholesale Grocers' Assn. of El Paso et al.-----	(C. C. A.) 4-595.
277 Fed. 657.	
Winslow et al.-----	(C. C. A.) 4-578.
277 Fed. 206.	
Winsted Hosiery Co. ²⁹ -----	(C. C. A.) 3-618; (S. C.) 4-610.
272 Fed. 957; 258 U. S. 483 (42 S. Ct. 184).	
Winston Co., John C. ³⁰ -----	(C. C. A.) 8-625.
3 F. (2d) 961.	
Woolley, E. R.-----	(C. C. A.) 11-692.
22 F. (2d) 122.	
Ziegler Co., George.-----	(C. C. A.) 24-1625.
90 F. (2d) 1007.	

²⁹ For interlocutory order, *see* "Memoranda," 20-742 or S. & D. 715.

³⁰ For interlocutory order, *see* "Memoranda," 20-743 or S. & D. 716.

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, DECEMBER 1, 1936 TO MAY 31, 1937

IN THE MATTER OF

CONDE NAST PUBLICATIONS, INC.

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

Docket 2399. Complaint, May 20, 1935—Decision, Dec. 2, 1936

Where a corporation long engaged in the publication of a semi-monthly women's style magazine which (1) had an approximate circulation of 150,000, distributed throughout every State of the United States, with editions also published in England and France, (2) was considered a style leader in its field, with its opinions and recommendations in matters of women's styles and dresses carrying great weight with a large portion of the feminine population, who buy style garments, and with manufacturers and retailers thereof, and (3) was at all times in demand on the part of the purchasing public on account of its recommendations as to stylish and "smart garments"—

- (a) Entered into contracts with from four to seven manufacturers, for each issue, out of the two hundred New York City manufacturers, in round numbers, of women's garments of the price range with which it was concerned, under which contracts, and subject to the various provisions thereof as set forth in detail, each manufacturer agreed to pay it a specified percentage of the named price of such garment of said manufacturer as might be selected by it for its featured garments in the issue and department of its said magazine devoted to such matters, and not to manufacture, during the period concerned, a similar garment, or to sell the model selected in cities in which the publisher had selected retailers participating in plan and arrangement herein set forth, and it, the publisher, agreed to supply manufacturer with list of retailers throughout the country with whom it had made agreement to feature garment in question and the names of which it undertook to publish in its said periodical; and
- (b) Entered into agreements with some seventy-three retailers in about seventy-five cities in the different States besides New York, and other than New York City, under which the retailer undertook to purchase, subject to the various detailed provisions of such contracts, at least two articles of such featured selection, and to maintain the resale prices quoted thereon, and it undertook to publish in its said periodical, and in connection with its aforesaid selections, the name of the retailer and price of the particular garment, and not to sell to any other store in such retailer's city except on the same

terms, and entered into some twenty oral contracts of the same kind and effect with New York City retailers, and furnished, as a part of the aforesaid plan, for retailers' use in their local advertising, colored display cards and materials calling attention to and giving publicity to the fact that they had been selected by said periodical to sell its featured garments, and thus gave them the prestige possessed by said periodical and which it was able to confer ;

With effect of securing the maintenance, by said selected retailers, anxious to avoid price competition and obtain lines of dresses to the exclusion of competitors, and who found plan profitable, of the resale prices fixed by it, of depriving the public of normal price competition among retailers of such garments, and of causing manufacturers, by whom selection of their garments as above set forth was featured and capitalized, to limit the number of retailers displaying and selling such selected garments to those retailers thus chosen, and of thereby depriving the public of normal competition among a number of dealers in each locality, and with capacity and tendency so to do, and to do substantial injury to (1) manufacturers of the class of garments featured in department in question of said periodical, but who do not participate in practice in question; (2) retailers in garments of class thus featured and who do not thus participate; and (3) competition in commerce; and (4) the public:

Held, That such acts and practices were against public policy in that they unduly suppressed and hindered competition in sale and resale of women's garments, and had capacity and tendency so to do, to prejudice of public interest; and constituted unfair methods of competition.

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

Mr. Astor Hogg for the Commission.

DeWitt, Van Aken & Moynihan, 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 to believe that Conde Nast Publications, Inc., a corporation, hereinafter called 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. The respondent, Conde Nast Publications, Inc., is and at all times hereinafter mentioned was a corporation organized, created, and existing under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of New York, in said State, and a branch office in the city of Greenwich, State of Connecticut. It is now engaged, and for more

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Complaint

than two years last past has been engaged, in the business of selling and distributing various publications, including "Vogue," between and among the various States of the United States. It now causes, and for more than two years last past has caused, its various publications, including "Vogue," when sold by it to be transported from its place of business in Greenwich, Conn., to newsdealers and subscribers thereof, some located in the State of New York and others in the various States of the United States; and there is now, and has been for more than two years last past, a constant current trade and commerce by said respondent in such publications, including "Vogue," between and among the various States of the United States. In the course and conduct of its business respondent is now and for more than two years last past has been in substantial competition with other corporations and with firms and partnerships engaged in the sale and distribution of like publications between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as aforesaid, respondent publishes a magazine known as "Vogue," in which magazine respondent has featured and does feature a department sometimes entitled "Vogue Smart Economies," and at other times, "Vogue's Finds of the Fortnight." The magazine "Vogue" is a woman's magazine devoted to fashion and has a circulation throughout all the States of the United States, and said magazine is at all times in demand on the part of the purchasing public, on account of the fashions and styles of women's apparel which it features, including the department entitled "Vogue Smart Economies" and "Vogue's Finds of the Fortnight." A substantial number of respondent's said competitors maintain in their respective publications similar departments of information and recommendation concerning women's clothing.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has adopted and still has in effect a plan whereby it enters into written contracts with various dress and garment manufacturers of the United States, wherein it is agreed that the respondent shall choose models of women's wearing apparel from the model lines of such manufacturers, for featuring in "Vogue Smart Economies" and "Vogue's Finds of the Fortnight" department of the "Vogue" magazine. For featuring such models as selected by the respondent the manufacturers agree to pay respondent, for each occasion a model is chosen from such manufacturer's line and published in the above-mentioned department, a service fee of five percent of the amount col-

lected as the price payable for the sale of each and every article which is a reproduction of the model chosen by respondent for the picture of the garment to be featured in said magazine. The manufacturers agree not to manufacture or sell any other garment so similar in design to the models so chosen and pictured in "Vogue" as to simulate the said designs.

The written contract which respondent enters into with such manufacturers of women's apparel also stipulates that respondent has made agreements with certain retailers throughout the various States of the United States who will feature and sell these garments, and that it will publish the names of such retailers in the magazine "Vogue," and respondent agrees to furnish a list of these retailers selected by it in the various States of the United States to the manufacturers with whom it enters into such written contract, and the manufacturers agree that in localities where respondent has made such agreements with retailers they will not sell their garments to any retailers in such localities except to those specified in the list furnished the manufacturers. The said manufacturers so selected by respondent in selling to retail dealers regularly, and as a part of such sales, ship their garments to said dealers from the manufacturer's places of business to such purchasers located in various other States, and in so doing are in substantial competition with other manufacturers of women's clothing.

In further connection with the operation of this department of the magazine, respondent selects retail dealers in women's apparel in various localities of the different States of the United States and enters into both written contracts and oral contracts with such retail dealers, by the terms of which contracts respondent agrees to publish in each issue of "The Vogue" the name of the retailer with whom it enters into such contract as the outlet or place where such garment can be obtained in his locality. Such retailer agrees to purchase a minimum of one of each garment pictured and featured in "Vogue's Finds of a Fortnight" and "Vogue Smart Economies," in every issue of "The Vogue," and further agrees and binds itself to respondent to maintain the retail price thereof quoted in "Vogue" for a period of at least one month from the on-sale date of the issue of "Vogue" in which the garments are shown. Respondent agrees that for at least a period of two months after the delivery of these models in the retail store, such models will not be sold by the manufacturers thereof to any other store in the retailer's city or locality except under the same terms and under the same form of contract as entered into between such retailer and respondent.

PAR. 4. Before selecting any model of any such manufacturer to be featured and shown in the "Vogue Smart Economies" and "Vogue's

Finds of the Fortnight" department of the magazine, respondent's experts, agents, and servants visit the various manufacturing establishments of the different States of the United States and select the designs to be featured, and require, before featuring such designs, that said manufacturers alter and modify such designs of wearing apparel to meet the demand of the respondent.

PAR. 5. By and through the captions of such department of its said magazine, "Vogue Smart Economies" and "Vogue's Finds of the Fortnight," the publication therein of the identity of the manufacturers whose garments are selected and of the retailers where same may be purchased, and by and through the text of the reading matter in said department contained, respondent impliedly represents to its readers that it is disinterestedly acting to inform them of "smart" garments and where they may be purchased at economical prices; when in truth and in fact respondents select the garments of those manufacturers who will agree to pay it a consideration for making such selection and recommending the same to its readers, and causes the manufacturers of such garments to adopt and carry out, and aids and assists them in adopting and carrying out, a resale price maintenance policy whereby all price competition among retail dealers in such garments is prevented.

PAR. 6. The capacity and tendency, and purpose and result, of the combination and agreement between respondent and the manufacturers and retailers of women's garments and of the acts and practices of respondent, as hereinabove alleged, has been and is to mislead and deceive the readers of respondent's said magazine into the belief that respondent's research and recommendations were and are disinterested; to deprive the public of the benefits of normal price competition among retailers of such garments by constraining retailers to sell at a price arbitrarily fixed by respondent and said manufacturers; and to cause manufacturers to limit the retail dealers in each locality to those selected by respondent, thus depriving the public of the benefits of competition among a number of dealers in each locality.

PAR. 7. The said combination and agreement and acts and practices, were and are to the prejudice of the public interest, as aforesaid; to prejudice of respondent's competitors who honestly conduct similar departments in the interest of their readers; and to the prejudice of the competitors of the said manufacturers who enter into no such schemes to deceive the public, and deprive it of the benefits of competition; 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 20, 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 20th day of May 1935, issued and served its complaint in this proceeding upon respondent, Conde Nast Publications, 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 the said complaint were introduced by Astor Hogg, 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 MacDonald DeWitt, 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 other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of the 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Conde Nast Publications, 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 corporate office located in the city and State of New York and its principal place of business located in the town of Greenwich, State of Connecticut. It is now, and has been for more than twenty years last past, engaged in the business of selling and distributing various publications, including the magazine known as "Vogue," to various individuals, firms, and corporations, located in the various States of the United States. It has caused and still causes its said publications, including "Vogue," when so sold by it to be transported, in commerce, from its principal place of business in the town of Greenwich, Conn., to, into, and through said other States to the purchasers thereof.

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PAR. 2. In the course and conduct of its business as aforesaid respondent published the magazine "Vogue" in which it has featured and does feature a department, or continuous feature, which from its incipency in September 1932, to June 1934, was entitled "Vogue's Smart Economics," since said latter date it has been entitled "Vogue's Finds of the Fortnight." "Vogue" is a women's style magazine, published twice a month, and has an approximate circulation of 150,000, distributed throughout every State of the United States. It also has editions published in England and France. It is considered a style leader in its field and its opinions and recommendations in matters of women's styles and dresses have great weight with a large portion of the female population who buy style garments, and with manufacturers and retailers of such garments. It is at all times in demand on the part of the purchasing public on account of its recommendations as to stylish and "smart garments".

PAR. 3. In the course of and in connection with the conduct of said department "Finds of the Fortnight," respondent has adopted and still has in effect a plan whereby it enters into and carries out certain written contracts, first, with women's garment manufacturers, and second, with retailers of such garments. Its contract with manufacturers is in the words and figures following, to wit:

CONDE NAST PUBLICATIONS, INC.

420 Lexington Avenue,

New York, N. Y.

AGREEMENT between The Conde Nast Publications, Inc., publisher of the magazine Vogue, hereinafter called the "Publisher", and _____, wholesale manufacturer, hereinafter called the "Manufacturer."

1. The Publisher conducts a department in Vogue entitled "Vogue's Finds of the Fortnight", wherein it publishes pictures of models of women's wearing apparel, with retail prices given. These models are chosen by the editors of Vogue from the Model lines of wholesale manufacturers. The Manufacturer is desirous of having selections made by Vogue from his line for that purpose.

2. The Manufacturer agrees to pay the Publisher, to offset, in part, the expense to the Publisher of operating such Finds of the Fortnight Department, for each occasion when a model is so chosen from his line and published in the above-mentioned department of Vogue, a service fee of 5% of the amount quoted to Vogue as the price payable to him from the sale of each and every article of wearing apparel (in any and all materials in which the same may be made) which is a reproduction or adaption of the model so chosen and pictured in Vogue (less 8% to cover trade discount), and the Manufacturer agrees not to manufacture or sell any other garment so similar in design to the model so chosen and pictured in Vogue as to constitute an infringement of the design of such model or a substantial imitation thereof. The Manufacturer shall pay such service fee to the Publisher each thirty days after delivery of the merchandise to retailers during the sales life of the garment selected by Vogue.

3. The Publisher has made agreements with certain retailers throughout the country who will feature these garments, to publish the names of such

retailers in Vogue. The list of these retailers will be furnished to the Manufacturer, and the Manufacturer agrees that in cities where Vogue has made such agreements with retailers he will not, without Vogue's written consent, sell these garments to any retailers except those specified in such list. The Manufacturer agrees not to make delivery of any garment reproduced by him from the model so chosen by the editors of Vogue to retailers more than five days before the publication date of the particular issue of Vogue in which such garment is to be pictured, and the Publisher agrees to give the Manufacturer advance notice of such publication date.

Dated: New York, _____ 1933 THE CONDE NAST PUBLICATIONS, INC.
 In presence of: By: _____
 Witness: _____ Firm Name: _____
 Witness: _____

The written contract between the respondent and the retailers is in the words and figures following, to wit:

AGREEMENT, made the _____ day of _____ 193 , between THE CONDE NAST PUBLICATIONS, INC., Publisher of the magazine Vogue, and _____ of _____, Retailer.

1. There appears in the editorial section of each issue of Vogue a special department consisting of several pages of illustrated wearing apparel under the title "Vogue's Finds of the Fortnight".

The purpose of this Editorial feature is to present to the readers of Vogue special garments selected by Vogue from wholesale manufacturers, because of their good style and good values. On the pages where these garments are illustrated, Vogue quotes the retail prices and states further that they may be found in the better shops throughout the country.

2. In order that you may get the full benefit of Vogue's promotion of these garments, Vogue is prepared to publish in each issue the name of your store as a retail outlet for these particular garments in your community, providing you subscribe to the conditions specified herein.

3. You agree to purchase until further notice a minimum of two of each garment (not to exceed seven numbers) shown in "Vogue's Finds of the Fortnight" in every issue of Vogue, and you further agree to maintain the retail price thereof quoted in Vogue for a period of at least one month from the on-sale date of the issue of Vogue in which these garments have been shown.

4. Vogue agrees that for at least a period of two months after the delivery of these models to your store, these same models will not be sold by the manufacturers thereof to any other store in your city, except under the same terms and under the same form of contract as subscribed to by you.

5. This agreement may be terminated by either party giving the other thirty days' written notice, at the expiration of six months.

CONDE NAST PUBLICATIONS, INC.

By _____

ACCEPTED:

 Retailer

PAR. 4. For each issue of Vogue respondent enters into the contract hereinabove first set out with New York City manufacturers of from four to seven models of garments to be featured, and offers sugges-

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tions and requires alterations in the same to meet respondent's ideas and desires. During the year 1932, respondent entered into such contracts with seventy-three manufacturers of dress garments, all of whom were located in New York City. In 1933 it entered into seventy-seven such contracts; in 1934 it entered into seventy-three such contracts and from January 1, 1935, to August 1, 1935, respondent entered into forty such contracts. Approximately 85% of the manufacturers in the United States, of garments of the class featured by Vogue, in "Finds of the Fortnight," are situated in New York City. Manufacturers of such dresses outside of New York City are not permitted to participate in the plan although said manufacturers are engaged in interstate commerce in the sale of their dresses to the same class of retail dealers as those to whom said other manufacturers sell. The wholesale price range of dresses featured by Vogue in its "Finds of the Fortnight" is from \$10.75 to \$39.50. In this price range there are about 200 manufacturers in New York City who manufacture dresses of the class which Vogue features in its department, and it has contacted approximately 160 of that number. Thus, in any one issue of Vogue, from four to seven of the manufacturers in New York are favored against the remainder of about 200, and against all manufacturers outside of New York. The selected manufacturers circularize their trade and stress the fact of their selection by Vogue. The manufacturers with whom respondent enters into such contracts are regularly engaged in selling women's garments to retail dealers located in states other than the state in which such manufacturers are located, and pursuant to such sales, and as a part thereof, shipping the garments into and through the various States of the United States to purchasers thereof.

PAR. 5. The list of Vogue retail dealers, with whom it enters into the written contract hereinabove set out, covers regularly about seventy-five cities in the different States of the United States, besides New York City, and embraces about seventy-three retailers outside the State of New York. Since the plan was adopted written contracts have been made with a total of 137 retail dealers. Approximately twenty oral contracts of the same tenor and effect as the written contracts are operative between respondent and retailers in New York City. Respondent has had, at various times, co-existing contracts covering the same models with two retailers in each of the following cities:

Philadelphia
Los Angeles
San Francisco
Chicago

Brooklyn
Kansas City
Pittsburgh
Toledo

and with from six to eight retailers in New York City. As a part of the plan the selected retail dealers are furnished with colored display cards and materials for use in their local advertising, calling attention to and giving publicity to the fact that they have been selected by Vogue to sell the featured garments, thus giving them the prestige which Vogue possesses and is able to confer. It is understood that failure by the retailers to maintain, according to the contract, the resale price for the garments fixed by respondent and quoted in Vogue, with fractional tolerances, will result in such retailer being denied further participation in the plan. However, the selected retailers have found the plan profitable to them, and they have maintained the fixed prices. Retail dealers in such garments have been and are anxious to avoid price competition and to obtain lines of dresses to the exclusion of competitors.

PAR. 6. The maximum demand for a garment featured in "Finds of the Fortnight" occurs during the first month after the issue of the magazine in which said garment is featured goes on sale. In the year 1934, Vogue circulation increased approximately 15,000 copies per issue and the Department "Finds of the Fortnight" contributed substantially to the increase. The plan under which this department is and has been operated, has resulted in the sale of 32,459 garments in the year 1933, of 32,301 garments in the year 1934, and 9,937 garments from January 1, 1935, to August 1, 1935.

PAR. 7. The capacity, tendency, and effect of respondent's plan and practices as set forth in these findings has been and is to secure the maintenance by the selected retail dealers of the resale prices fixed by respondent and to deprive the public of normal price competition among the retailers of such garments; and to cause manufacturers to limit the number of retail dealers displaying and selling said selected garments to those selected by respondent, thus depriving the public of normal competition among a number of dealers in each locality. The plan has had and has the capacity and tendency to do substantial injury to manufacturers of the class of garments featured in "Finds of the Fortnight" who do not participate in the practice herein set out and to do substantial injury to retailers in garments of the class featured in "Finds of the Fortnight" who do not participate in the practice herein set forth. The plan has had and has the capacity and tendency to do substantial injury to competition in interstate commerce and to do substantial injury to the public.

PAR. 8. The evidence in the record fails to establish by substantial proof that respondent's method of conducting the department "Vogue's Finds of the Fortnight" has the capacity or tendency to mislead and deceive its readers, as alleged in the complaint.

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CONCLUSION

The aforesaid acts and practices of Conde Nast Publications, Inc. are against public policy in that they have the capacity and tendency to, and do, unduly suppress and hinder competition in the sale and resale of women's garments, to the prejudice of the public interest, 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."

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, 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, briefs filed herein and oral arguments by Astor Hogg, counsel for the Commission, and by MacDonald DeWitt, 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 now ordered, That the respondent, Conde Nast Publications, Inc., its officers, representatives, agents and employees, in connection with the publication and sale of its magazines in interstate commerce, or in the District of Columbia, do cease and desist from:

(1) Entering into contracts, agreements, or understandings with retail dealers of women's garments, who regularly purchase such garments in interstate commerce, requiring or providing that the retailers, in the resale of such garments, or any of them, shall observe and maintain the retail prices therefor specified, fixed or quoted by respondent;

(2) Entering into contracts, agreements, or understandings with manufacturers of women's garments, who regularly sell and ship such garments in interstate commerce, requiring or providing that the manufacturers shall limit, in each locality, the number of retail dealers to whom it will sell and ship such garments, or any of them;

(3) Using and carrying out a plan whereby, pursuant to contracts with selected manufacturers of women's garments, who regularly sell and ship such garments in interstate commerce to retailers thereof, respondent selects models of such manufacturers' garments, pic-

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tures the same in its magazine, selects, and publishes the names of, retailers who will have and have such garments for sale, and requires the manufacturers to refrain from selling such garments, in cities where respondent has selected retailers, to any retailers except those selected by respondent; and enters into contracts with and requires the selected retailers to observe and maintain the resale prices fixed and quoted by respondent for such garments;

(4) Aiding, assisting, and abetting any person in carrying out any resale price maintenance policy, the capacity, tendency, or effect of which may be to prevent or to substantially lessen competition among retail dealers;

(5) Utilizing any cooperative means of accomplishing or carrying out the things prohibited in paragraphs 1, 2, 3, and 4, hereof.

It is further ordered, That the said respondent shall, within 30 days from and after the day of the date 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.

Syllabus

IN THE MATTER OF
PAUL F. BEICH COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2237. Complaint, Dec. 30, 1935¹—Decision, Dec. 3, 1936

Where a corporation engaged in manufacture and sale of "straight" goods candy and of so-called "break and take," "draw," or "deal" assortments, one of the principal trade demands 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 selling 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 gambling or lottery feature connected with so-called "break and take," "draw," or "deal" merchandise—

Sold, to wholesalers and jobbers, its said candy, including assortments of (1) two-for-a-penny individually wrapped pieces of uniform size and shape in which chance purchaser of pieces, the enclosed concealed color of which differed from that of the majority, was entitled, free of charge, to one of the larger pieces included, and purchaser of last piece was similarly entitled to small package of candy; in which (2) plan and arrangement were employed, but with uniform pieces priced at penny each instead of two for a penny; and (3) in which purchaser paid nothing and secured nothing other than a free punch, or paid two cents, three cents, or five cents for one of the bars comprising the assortment, in accordance with number pushed by chance from push card included therewith, and with purchaser of last punch on board receiving two bars; 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 or rearrangement to the consuming or purchasing public by lot or chance, in accordance with such arrangement, in violation of public policy and in competition with many manufacturers of "straight" candy exclusively, 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 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 be resold to the public by lot or chance;

With the result that such refusing competitors, who can compete on even terms only by giving the same or similar devices to retailers, were put to a dis-

¹ Amended and supplemental.

advantage in competing 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, for which, thus sold, there is demand, 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 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.

Mr. Walter C. Hughes, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas the Federal Trade Commission did heretofore, to-wit, on October 2, 1934, issue its complaint herein charging and alleging that respondent 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 Paul F. Beich 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 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 in the city of Bloomington, State of Illinois, and with a branch selling office and branch manufacturing establishment in the city of Chicago, State of Illinois. Respondent for several years last past has been engaged in the manufacture of candy and in the distribution thereof to wholesale dealers and jobbers and retail dealers located at points in the various States of the United States, and causes said products when so sold to be transported from its principal place of business in the city of Bloomington, Ill., and from its branch establishment in the city of Chicago, Ill., into and through other States of the United

States and the District of Columbia to said purchasers at their respective points of location in said several States and in the District of Columbia. In the course and conduct of the said business respondent is in competition with other corporations, partnerships, and individuals, engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States and the District of Columbia and within the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 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 several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of the said assortments of candies is composed of a number of pieces of candy of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to said purchasers of said pieces of candy of uniform size and shape, in the following manner:

The said pieces of candy of uniform size and shape in said assortment are contained within wrappers, 2 pieces of said candy being contained within each wrapper. The majority of said pieces of candy are of the same color, but a small number of said pieces of candy are of a different color, the colors of said pieces of candy being effectively concealed from the prospective purchaser by the wrappers in which they are contained until a selection or purchase has been made and the wrapper removed. The pieces of candy of uniform size and shape in said assortment retail at the price of 2 for 1¢, but the purchaser who procures 2 pieces of said candy of a different color than the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy in said assortment is entitled to receive and is to be given free of charge one of the said larger pieces of candy. The aforesaid purchaser of said candies who procures a candy of a different color than the majority, is thus to procure one of the said larger pieces of candy wholly by lot or chance.

(b) Another assortment of candy consists of a number of small pieces of candy of uniform size and shape, together with a number of larger pieces of candy, which larger pieces of candy are to be

given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The said pieces of candy of uniform size and shape are contained within wrappers and the majority of said pieces of candy are of the same color, but a small number of the said pieces of candy are of a different color but the color of the said pieces of candy is effectively concealed from the prospective purchaser by the wrappers in which they are contained, until a selection or purchase has been made and the wrapper removed. The pieces of candy of uniform size and shape in said assortment retail at the price of 1¢ each, but the purchaser who procures one of the said candies of a different color than the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to and the purchaser of the last piece of candy in the said assortment is also entitled to receive and is to be given free of charge one of the said larger pieces of candy. The aforesaid purchaser of said candies who procures a candy of a color different from the majority of said pieces of candy is thus to procure one of the said larger pieces of candy wholly by lot or chance.

(c) Another of said assortments contains a number of bars of candy together with a device commonly called a "push card." The bars of candy contained in said assortment are distributed to purchasers in the following manner:

The push card has a number of partially perforated disks and when a push is made, the disk is separated from the card and a number is disclosed. The numbers are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disk separated from the card. The card bears statements or legends informing purchasers and prospective purchasers as follows:

NUMBERS: 1 2 3 4 5 FREE PUNCH
 NUMBERS: 6 7 8 9 10 Pay 2¢ and receive 5¢ BAR
 NUMBERS: 11 12 13 14 15 Pay 3¢ and receive 5¢ BAR
 ALL OTHER NUMBERS PAY 5¢ AND RECEIVE 5¢ BAR
 LAST PUNCH ON BOARD RECEIVES 2—5¢ BARS

The candy bars in said assortment are distributed by the retail dealers in accordance with the above legends or instructions. The fact as to whether a purchaser pays 2¢ and receives one bar of candy, or pays 3¢ and receives one bar of candy, or pays 5¢ and receives one bar of candy, or pays 5¢ and receives two bars of candy, or receives a free punch and obtains no 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 in the manner above alleged involves a game of chance or the sale of a chance to procure (a) and (b) larger pieces of candy at the price of 1¢; or (c) bars of candy at a price of 2¢ or 3¢, rather than at the price of 5¢.

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 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 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 monop-

oly 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 October 2, 1934, issued and served a complaint in two counts upon the respondent, Paul F. Beich Company, charging in count one of the aforesaid complaint that the respondent had been and was using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, and charging in count two of the aforesaid complaint that the respondent had been and was using unfair methods of competition in commerce in violation of an act of Congress approved June 16, 1933, known as the "National Industrial Recovery Act." The respondent filed no answer to said complaint and thereafter, on November 21, 1934, the matter being presented to the Commission for final hearing, the Commission made findings as to the facts and drew its conclusion therefrom and entered and issued an order to cease and desist from the practices charged in said complaint. Subsequently thereto, on December 30, 1935, the Commission vacated its order to cease and desist previously entered on November 21, 1934, and issued and served an amended and supplemental complaint containing only one count upon the respondent Paul F. Beich Company, a corporation, charging therein 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 amended and supplemental complaint, the respondent having failed to file 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 said testimony and other evidence were duly recorded and filed in the office of the Commission. The respondent was represented by Walter C. Hughes, Esq., but offered no testimony or other evidence in opposition to the allegations of said complaint. Thereafter the proceeding came regularly on for final hearing, before the Commission on said amended and supplemental complaint, the testimony and other evidence, and brief of counsel for the Commission, the respondent having failed to file any brief and 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, Paul F. Beich Company, is a corporation organized under the laws of the State of Illinois, with its executive office and manufacturing plant in the city of Bloomington, Ill., and with a sales office and a manufacturing plant in the city of Chicago, Ill. Respondent is now and for several years last past has been engaged in the manufacture of candy and in the sale and distribution of said candy to wholesale dealers and jobbers located in practically all States of the United States. It causes said candy when sold to be shipped or transported from its manufacturing plant in Bloomington, or from its manufacturing plant in Chicago, to purchasers thereof in the State of Illinois and in the other States of the United States, and in the District of Columbia. 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, and in the District of Columbia.

PAR. 2. Among the candies manufactured and distributed by respondent was an assortment composed of a number of pieces of candy

of uniform size and shape, together with a number of larger pieces of candy and a small package of candy, which larger pieces of candy and small package of candy were given as prizes to said purchasers of said pieces of candy of uniform size and shape in the following manner.

The said pieces of candy were contained within wrappers—two pieces of said candy being contained within each wrapper. The majority of the said pieces of candy were of the same color, but a small number of said pieces of candy were of a different color. The color of the said pieces of candy were effectively concealed from purchasers or prospective purchasers by the wrapper in which they were contained until a selection or purchase had been made and the wrapper removed. The pieces of candy of uniform size and shape in said assortment retailed at the price of 2-for-1¢, but the purchaser who procured two pieces of said candy 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 in said assortment was entitled to receive, and was given free of charge, the small package of candy. The aforesaid purchasers of said candies who procured candies colored differently than the majority thus procured one of the said larger pieces of candy wholly by lot or chance.

Respondent also manufactured and distributed an assortment of candy similar to the above described assortment, but where the retail price of the pieces of candy of uniform size and shape was 1¢ each instead of 2-for-1¢, the sales plan involved was identical with that above described.

The respondent manufactured and distributed the above described assortments until shortly prior to the issuance of the amended and supplemental complaint, but the Commission has no assurance that the respondent will not again begin the manufacture and distribution of said assortment.

PAR. 3. Another assortment manufactured and distributed by respondent contained a number of bars of candy, together with a device commonly called a "push card." The bars of candy contained in said assortment were distributed to purchasers in the following manner.

The push card has a number of partially perforated disks, and when a push is made a disk is separated from the card and a number is disclosed. The numbers are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disk separated from the card. The card bears statements or legends informing purchasers and prospective purchasers as follows:

Findings

NUMBERS: 1 2 3 4 5 FREE PUNCH
 NUMBERS: 6 7 8 9 10 Pay 2¢ and receive 5¢ BAR
 NUMBERS: 11 12 13 14 15 Pay 3¢ and receive 5¢ BAR
 ALL OTHER NUMBERS PAY 5¢ AND RECEIVE 5¢ BAR
 LAST PUNCH ON BOARD RECEIVES 2-5¢ BARS

The candy bars in said assortment are distributed by the retail dealers in accordance with the above legends or instructions. The fact as to whether a purchaser pays 2¢, 3¢ or 5¢ and receives one or two bars of candy or receives a free punch and obtains no candy is thus determined wholly by lot or chance.

PAR. 4. The candy assortments involving the lot or chance feature, as described in paragraphs 2 and 3 above, are generally referred to in the candy trade or industry as "break and take," "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 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, and the candy contained in said assortment is sold and distributed to the consuming public in the manner described.

PAR. 6. All sales made by respondent to wholesale dealers and jobbers are absolute sales, and respondent retains no control in any manner over the goods after they are delivered to the wholesale dealer or jobber. The assortments are assembled and packed in such a manner that they are sold and are designed to be sold by retail dealers to the consuming public in the manner described without alteration or rearrangement.

The respondent has knowledge that the 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 lot or chance and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact, that many competitors regard such 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", "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" 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 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 "break and take," "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," "draw," or "deal" package and the possibility of becoming a winner, children purchase candy from such packages in preference to the "straight" candy, when the two types of assortments are displayed side by side. The sale and distribution of "break and take," "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" candy in interstate commerce in competition with the "break and take," "draw," or "deal" candy, and manufacturers of the "straight" 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" candy is principally due to the gambling or lottery features connected with the "break and take," "draw," or "deal" candy.

PAR. 10. In addition to the assortments described in Paragraphs Two and Three herein the respondent manufactures candy which it sells to wholesale dealers and jobbers without any lottery or chance feature. The total annual volume of respondent's business was not shown, but an officer of the respondent corporation testified, and the Commission finds, that the respondent's business is substantial. The "break and take," "draw," or "deal" assortments, as described by the respondent, are not the major part of its total business.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, the testimony and other evidence in support of the charges of said complaint taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, no answer having been filed by the respondent nor any testimony having been offered in opposition to the allegations of 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, ap-

proved 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, Paul F. Beich 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 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 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 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 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, but having different colors, 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 of a particular color.

(4) 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 is designed to be used in distribution of said candy to the public at retail.

(5) 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, Paul F. Beich Company, within 30 days after the service upon it of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
GOLD SEAL DISTILLERS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2425. Complaint, June 5, 1935—Decision, Dec. 3, 1936*

Where a corporation engaged in purchasing and bottling whiskies, gins, and other spirituous beverages and in the sale thereof to wholesalers and retailers, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in sale thereof, and with those engaged in purchasing, rectifying, blending, and bottling, or in purchasing and bottling, such products, and respectively 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," "distillers," or "distilling" as part of their corporate or trade names and on their stationery 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, or in purchasing, bottling, and selling at wholesale, such various products, do not use aforesaid words as a part of their corporate or trade names, etc., as above set forth—

Represented, through use of word "Distillers" in its corporate name, printed on its stationery and on the labels attached to bottles in which it sold and shipped its said products, and in various other ways, to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that the said whiskies, gins, and other spirituous beverages contained in said bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact they did not distill said whiskies, etc., thus bottled, labeled, sold, and distributing 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 "Distillers" by trade and ultimate purchasing public as meaning places where such liquors are made by aforesaid process, and it was not a distiller, for the 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 and deceiving dealers and purchasing public into belief 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 belief, to buy its said whiskies, etc., bottled and sold by it, and of diverting thereby 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 above set forth, of their products; to the substantial injury of competition and commerce:

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

Complaint

24 F. T. C.

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

Mr. PGad B. Morehouse for the Commission.

Mr. Philip B. Heller, 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 Gold Seal Distillers, 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 Illinois with its office and principal place of business in Chicago, in said State. It is now, and for more than one year last past has been, engaged in the business of 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 other States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Illinois 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 individual 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; 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 and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale 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 such liquors by the process of distillation from mash, wort, or wash, 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 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, 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 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.

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, 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 "distilling," "distillery," "distilleries," 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. There are also among such competitors corporations, firms, partnerships, and individuals

engaged in the business of purchasing, bottling, and selling at wholesale 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 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 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 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 5, 1935, issued and served its complaint in this proceeding upon respondent, Gold Seal Distillers, 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 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 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 Illinois, with its office and principal place of business at 78 West Van Buren Street, in the city of Chicago, in said State. It is now, and for more than one year last past has been, engaged in the business of 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 other States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Illinois 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; 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 and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale 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 such liquors by the process of distillation from mash, wort, or wash, 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 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, 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 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.

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, 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 "distilling," "distillery," "distilleries," or "distillers" as a part of their corporate or trade names, or on their stationery, or on the labels attached to 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 business of purchasing, bottling, and selling at wholesale 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 the labels attached to the bottles in which they sell and ship their said products.

Order

PAR. 5. The 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 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.

CONCLUSION

The aforesaid acts and practices of the respondent, Gold Seal Distillers, 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 22, 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, Gold Seal Distillers, 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 "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

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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.

Syllabus

IN THE MATTER OF
VALLEY SPRINGS DISTILLERY, INC.

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

Docket 2478. Complaint, June 28, 1935—Decision, Dec. 3, 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 producing gin by process of rectification whereby alcohol, purchased but not produced by it, was by it redistilled over juniper berries and other aromatics, and in selling aforesaid various products to wholesalers and retailers in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by true distillation of whiskies, gins, and other spirituous liquors from mash, wort, or wash, and in the sale thereof among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling whiskies and other spirituous liquors and in selling the same as aforesaid, 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 words "distillery," "distilleries," "distillers," or "distilling" as part of their corporate or trade names and on their stationery, catalogues, 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 various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distillery" in its corporate name, printed on its stationery, catalogues, advertising, and labels attached to bottles in which it sold and shipped its said products, and by express representation on its letterheads 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 liquors contained in its bottled products, labeled as above set forth, were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not distill said whiskies, gins, and other spirituous liquors thus bottled, labeled, sold, and transported by it, nor own, operate, or control any place or places where such spirituous liquors are made by process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels, until manufacture is complete, as long definitely understood from word "Distilleries" in the trade and by the ultimate purchasing public, as meaning the place where spirituous liquors are thus made, and it was not a distiller, for the 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 and deceiving dealers and purchasing public into belief that it was a distiller and that the whiskies, gins, and other spirituous liquors sold by it were by it made or distilled from mash, wort, or wash, as above set forth, and of inducing dealers and purchasing public, acting in such belief, to buy its said whiskies, etc., rectified and bottled

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by it, and of thereby diverting trade to it from its competitors, who do not, by their corporate or trade names or in any other manner, misrepresent that they are distillers; 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 L. Hornor*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. Lawrence A. Jacobson, of Chicago, Ill. and *Mr. H. Sternfeld*, of Peoria, 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 Valley Springs Distillery, 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 Illinois, with its office and principal place of business in the city of Chicago, 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 whiskeys, 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 whiskeys, 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.

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 the 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 "Distillery" 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, a place 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 "Distillery" 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 by express representation on its letterheads that it is a distiller, 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, 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 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," "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 served its complaint in this proceeding upon respondent, Valley Springs Distillery, 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 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 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 Illinois, with its office and principal place of business at 3512-26 Carroll Avenue, in the city of Chicago, in said State. It is now, and for more than one year last past has been, engaged in business under a whiskey permit from the United States Government, which permit is designated "R-151", 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 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-

facture 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.

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 the 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 "Distillery," 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: a place 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 "Distillery" 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 by express representation on its letterheads that it is a distiller, 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, 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 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, or on their stationery, catalogs, advertising, or 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. 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

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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 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.

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 call 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 respondent, Valley Springs Distillery, 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,

Memorandum

dated October 24, 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, Valley Springs Distillery, 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 (except gins produced by it through a process of rectification whereby alcohols purchased, but not produced, by respondent are redistilled over juniper berries and other aromatics), do forthwith cease and desist from:

Representing, through the use of the word "Distillery" 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.

MEMORANDUM

UNITED DISTILLERS & WINERS, INC. (D. 2486). Complaint, July 1, 1935. The Commission, as of the same date, made findings and order which, excepting the use of the word "Distillery" in the *Valley Springs* case, supra, and word "Distillers" by instant respondent, with principal place of business in Detroit, were substantially similar to those in the *Valley Springs* case; testimony having been taken before *Mr. John L. Hornor*, trial examiner, and Commission having been represented in the instant matter by *Mr. PGad B. Morehouse*.

IN THE MATTER OF
CAREY SALT COMPANY¹

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

Docket 2516. Complaint, Aug. 14, 1935—Decision, Dec. 3, 1936

Where a corporation engaged in the production 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 produce the honey-brown color associated by the trade and public with products subjected to or impregnated or treated with natural wood smoke—

- (a) Described said product as "Smoke Salt," and featured said designation on the labels of the containers in which the same was offered, distributed, and sold, and repeatedly made use thereof in the printed directions for use on one side of the label, and likewise made use thereof in advertising its said product in a booklet distributed among purchasers and prospective purchasers; and
- (b) Represented, in advertising its said product through radio broadcasting and in periodicals, newspapers, booklets, and pamphlets, that its said so-called "Smoke Salt" cured and smoke-flavored meat in one operation, and that it was "a thousand times better than the old smokehouse," and that meat treated with it acquired therefrom the same taste and other properties or effects as it acquired from treatment with salt and subsequent exposure to the smoke from burning wood during process and course of combustion, through such statements as "* * * perfect improved meat cure that takes all guesswork out of home meat-curing," "Old-timers' in butchering and curing meats at home amazed!", "Cures and Smoke-Flavors Meat in one Operation . . . Quicker . . . Easier . . . With Never-Failing, Uniform Results!", "* * * a great step forward in home-curing methods * * * Reduces the whole curing process * * * into one single operation * * *", "experts, familiar with used meat-curing methods, * * * amazed at the extra fine flavor," "* * * made of pure * * * meat salt * * * combined with well-balanced sugar-cure—and flawless, doubly refined and condensed wood smoke";

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

¹Through 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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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 of 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 purchase 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 competitor's 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. Robert S. Hall*, trial examiner.

Mr. James M. Brinson for the Commission.

Williams, Martindell & Carey, of Hutchinson, Kans., 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 Carey Salt Company has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charge in that respect as follows:

PARAGRAPH 1. Respondent, Carey Salt Company, is now and for several years last past has been a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business at Hutchinson in said State.

It has been and is engaged in the production of salt and its sale in commerce among and between the State of Kansas and the various other States of the United States and the District of Columbia. It causes its product, when sold, to be transported from its said place

of business in the State of Kansas to purchasers located in the various other States of the United States and in the District of Columbia.

In the course and conduct of such business respondent, Carey Salt Company, has been and is engaged in competition with individuals, partnerships, and corporations offering for sale and selling salt of any kind in interstate commerce.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, it has been and is the practice of respondent, Carey Salt Company, to offer for sale and sell a product which it has designated and described, and continues to designate and describe, as "Smoke-Salt."

The label on the container in which such product is sold carries the legend consisting in part of the words "Carey-Ized," beneath which appears the word "Salt" under which are the words "Smoke-Salt," all in large and conspicuous letters. On one side of the label there are printed directions wherein the words "Smoke-Salt" repeatedly appear.

Respondent has advertised its product in the booklet which describes it throughout as "Smoke-Salt." This booklet it has caused to be distributed in the various States of the United States among purchasers and prospective purchasers. Respondent also has advertised its product by means of radio broadcasting and in magazines, newspapers, booklets, pamphlets, and leaflets. In such advertisements it has representations and statements such as the following:

New Carey-Ized smoke-salt great boon to farmers.

Famous Carey laboratories perfect improved meat cure that takes all guess work out of home meat-curing.

A thousand times better than the old smokehouse.

Our hams are never under cured or too smoky.

"Old-timers" in butchering and curing meats at home amazed!

Cures and Smoke-Flavors Meat in One Operation * * * Quicker * * * Easier * * * With Never-Failing, Uniform Results!

Already thousands who thought they were satisfied with older methods are turning to this new and vastly better way! Proving for themselves that "Carey-ized" Smoke-Salt is a great step forward in home-curing methods. For it gives better quality meats that stay good longer. Reduces the whole curing process—salting, sugar-curing and smoke-flavoring—into one single operation * * * and then does the complete job quicker, easier, more thoroughly than ever before.

Yes, the experts, familiar with usual meat-curing methods, were frankly amazed at the extra fine flavor "Carey-ized" Smoke Salt gives hams and bacon. Yet there's a real reason for better flavor—surer results. "Carey-ized" Smoke-Salt is made of pure, Carey meat salt, of just the right grain and strength, combined with a well-balanced sugar-cure—and flawless, doubly refined and condensed wood smoke.

Carey-ized Smoke-Salt ends the drudgery, expense and varying results of the old smoke-house method.

In truth and in fact the word "Smoked" and the word "Smoke" used in connection with salt offered for sale or sold for curing, preserving, smoking or flavoring meats have for many years signified and meant to dealers wholesale and retail and the consuming public, and now signify and mean to them, particularly that portion thereof engaged or interested in the curing of meats, that the salt so described or designated has been subjected to the action and effect of, or to impregnation or treatment with, the smoke of burning wood during its process of combustion sufficiently to acquire from such source alone all of its smoke properties or smoke effects for use in curing, preserving, smoking, or flavoring meats.

The product which respondent sells to the public described and designated as "Carey-ized Smoke-Salt" or as "Smoke-Salt" has not been and is not smoked salt or smoke salt as understood by the consuming public. Such product has not been and is not subjected to the action and effect of, or impregnated or treated with, the smoke of burning wood during its process of combustion sufficiently to acquire from such source alone its smoke effects or smoke properties, or at all. It consists of salt, sugar, saltpeter, pepper red and black, and a so-called condensed smoke, such condensed smoke being pyroligneous acid or a concentrate thereof, produced from or by the destructive distillation of wood.

PAR. 3. There have been for many years last past and now are individuals, partnerships, and corporations offering for sale and selling salt of various kinds in interstate commerce, including smoke salt, truthfully described and designated.

PAR. 4. The practices of respondent, as described in paragraph 2 hereof, have had and have the capacity and tendency to mislead and deceive, and have misled and deceived, and do mislead and deceive dealers, wholesale and retail, and the consuming public into the belief that respondent's said product has been treated or impregnated with, or subjected to the action and effect of the smoke of burning wood during its process of combustion sufficiently to acquire from such source alone all of its smoke effects and properties, and into the purchase of respondent's said product in reliance upon such erroneous belief.

PAR. 5. The above and foregoing practices of respondent have had and have the capacity and tendency to divert, have diverted and do divert trade to respondent from competitors offering for sale or selling in interstate commerce white salt or salt smoked in accordance with the significance and meaning of the words "Smoke" or "Smoked" used in connection with salt for curing, preserving, smoking or flavoring meats as described in paragraph 2 hereof.

PAR. 6. The above and foregoing practices of respondent have been and are all to the prejudice of the public and respondent's competitors and 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 13th day of November 1934, issued and thereafter caused to be served upon respondent, Carey Salt Company, its complaint in this proceeding, 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 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 W. D. P. Carey of Williams, Martindell and Carey, of Hutchinson, Kans., counsel for the respondent, before Robert S. Hall, 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, Myles Salt Company, Docket 2152 and Avery Salt Company, Docket 2248. This stipulation, testimony and evidence were reduced to writing and filed in the office of the Commission. Thereafter the proceeding regularly came on the final hearing before the Commission on the said complaint, the answer thereto, 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 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 report stating its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Carey Salt Company, is now and for several years last past has been a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas,

with its principal office and place of business at Hutchinson in said State.

It has been and is engaged in the production of salt and its sale in commerce among and between the State of Kansas and the various other States of the United States and the District of Columbia. It causes its product, when sold, to be transported from its said place of business in the State of Kansas to purchasers located in the various other States of the United States and in the District of Columbia.

In the course and conduct of such business respondent, Carey Salt Company, has been and is engaged in substantial competition with individuals, partnerships, and corporations offering for sale and selling salt of any kind in interstate commerce.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, it has been and is the practice of respondent, Carey Salt Company, to offer for sale and sell to retail dealers, a product which it has designated and described, and continues to designate and describe, as "Smoke Salt."

The label on the container in which such product is offered for sale, distributed and sold, carries the legend consisting in part of the words "Carey-Ized" beneath which appears the word "Salt" under which are the words "Smoke Salt," all in large and conspicuous letters. On one side of the label there are printed directions wherein the words "Smoke Salt" repeatedly appear.

Respondent has advertised its product in a booklet which describes it throughout as "Smoke Salt." This booklet it has caused to be distributed in the various States of the United States among purchasers and prospective purchasers. Respondent also has advertised its product by means of radio broadcasting and in magazines, newspapers, booklets, pamphlets, and leaflets. In such advertisements it has representations and statements such as the following:

New Carey-Ized smoke-salt great boon to farmers.

Famous Carey laboratories perfect improved meat cure that takes all guess-work out of home meat-curing.

A thousand times better than the old smokehouse.

Our hams are never undercured or too smoky.

Old-timers' in butchering and curing meats at home amazed!

Cures and Smoke-Flavors Meat in one Operation . . . Quicker . . . Easier . . .

With Never-Failing, Uniform Results!

Already thousands who thought they were satisfied with older methods are turning to this new and vastly better way! Proving for themselves that "Carey-ized" Smoke-Salt is a great step forward in home-curing methods. For it gives better quality meats that stay good longer. Reduces the whole curing process—salting, sugar-curing and smoke-flavoring—into one single operation . . . and then does the complete job quicker, easier, more thoroughly than ever before.

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Yes, the experts, familiar with usual meat-curing methods, were frankly amazed at the extra fine flavor "Carey-ized" Smoke Salt gives hams and bacon. Yet there's a real reason for better flavor—surer results. "Carey-ized" Smoke-Salt is made of pure, Carey meat salt, of just the right grain and strength, combined with a well-balanced sugar-cure—and flawless, doubly refined and condensed wood smoke.

Carey-ized Smoke Salt ends the drudgery, expense and varying results of the old smoke-house method.

In truth and in fact, wood smoke, as commonly understood by the public is the product or result of the incomplete or imperfect combustion 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 and 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 and through them to their customers the consuming public, 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 and 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 smoke house, 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 applica-

tion 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 condensible material resulting from decomposition of the wood. The distillate so produced, pyroligneous liquor, contains therefore many substances which would be destroyed in the course of 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 and 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 smokehouse method, or equivalent processes in which natural wood smoke is employed.

A product exposed to the dense natural wood smoke of the smokehouse 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 smokehouse 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 substantial competition with respondent in the sale of salt truthfully represented

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and described, in interstate commerce, for the purpose, among others, of curing and preserving meats.

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 upon 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. As a result of such practices, substantial injury has been and is being done to such competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, Carey 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 power 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 facts and as to the testimony and evidence before Robert S. Hall, Examiner 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, by James M. Brinson, counsel for the Commission, and

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by William D. P. Carey of Williams, Martindell and Carey of Hutchinson, Kans., counsel for respondent, oral arguments having been waived by the said counsel for the Commission and 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."

It is ordered, That the respondent, Carey Salt Company, its officers, representatives, agents, and employees in connections 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 so called smoke salt cures and smoke-flavors meat in one operation or that it cures and smokes meat at all or that treatment of meat with its said product is a thousand times better than the old smoke house or as good 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 from burning wood during the process and course of its combustion.

It is further ordered, That respondent, Carey 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
 GEORGE LANDON AND M. M. WARNER, TRADING AS
 LANDON & WARNER

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

Docket 2701. Complaint, Jan. 31, 1936—Decision, Dec. 4, 1936

Where two partners engaged in the offer, sale, and distribution of the so-called "Director" elastic fabricated belt for use as an abdominal support and in the reduction of surplus fat in that region; in advertising the same in periodicals and newspapers of general circulation among the States, and through published descriptive letters, circulars, booklets, and other printed matter, including testimonial reproductions—

- (a) Falsely represented that said belt, worn, provided a gentle changing pressure or massage-like action which reduced the wearer's waistline, and that wearing thereof brought about results formerly obtained by massage and exercise, with result that excess fatty tissues in said region were caused to disappear, and that, through use thereof, the wearer's waistline would be permanently reduced, and that it provided and constituted a safe and effective remedy and method of treatment of abdominal obesity and the reduction of weight; and
- (b) Falsely represented that the use thereof made the wearer feel fifteen years younger, and eliminated tired bloated feeling after meals and relieved shortness of breath and restored the user's vigor, and that use thereof would cure constipation and increase elimination in a normal way without the use of harsh, irritating cathartics;

With effect of confusing, misleading, and deceiving members of the public, through such false and, generally, inaccurate, unfounded or greatly exaggerated representations, into the erroneous belief that use of their said belt would reduce excess fat around the abdomen and bring about the beneficial results to the wearer stated and implied by their said advertisements and literature, and with tendency and capacity to induce members of the public to buy and use such belt because of the erroneous beliefs thus engendered, and thereby to divert trade to them from competitors engaged in the sale and distribution in commerce of devices and belts designed, sold, and used for the same or similar purposes as their said belt, and who do not, by false and misleading representations or advertising, induce purchasers and consumers to buy or use such competitors' products:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Allen C. Phelps for the Commission.

Brelin, Britton & Landon, of Chicago, Ill., for respondents.

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 George Landon and M. M. Warner, a copartnership trading as Landon and Warner; 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. Respondents, George Landon and M. M. Warner, above named, are the sole partners of a copartnership organized, existing, and operating under the name and style of Landon and Warner, with its principal office and place of business located at 360 North Michigan Avenue, in the city of Chicago, in the State of Illinois. Respondents, trading as said copartnership, are now, and have been for more than five years last past, engaged in the business of offering for sale, selling, and distributing an elastic fabricated belt, known and designated as the "Director" belt, to ultimate consumers located in the several States of the United States and the District of Columbia. Said belt is offered for sale, sold, and distributed for use as an abdominal support, to provide a means of massaging the abdominal area of the wearer, for use in the reduction of surplus fat around the abdomen and for the relief of obesity in that region.

PAR. 2. In the course and conduct of their said business, respondents cause their said "Director" belt, when so sold, to be transported from their place of business in the city of Chicago, State of Illinois, to, into, and through States of the United States other than the State of Illinois, including the District of Columbia, to the various members of the consuming public to whom they are or have been sold, who are located in the different States of the United States. Respondents usually sell and distribute their said product directly to members of the purchasing public by and through the use of the United States mails.

PAR. 3. That during the time above mentioned, other individuals, firms, and corporations in various States of the United States are, and have been, engaged in the sale and distribution in interstate commerce of medicines, preparations, belts, and devices designed, intended, and used for the same general purpose as respondents' said "Director" belt, as above described, and also medicines, preparations,

devices, and belts designed, intended and used for the treatment of the various bodily ailments that accompany or produce the condition of obesity for which respondents' product is advertised as a remedy, as hereinafter shown, and such other individuals, firms, and corporations have caused and do now cause their said medicines, preparations, devices, and belts, when sold by them, to be transported from the various States of the United States in which said products are manufactured or held for distribution to, into, and through States other than the State of the origin of the shipment thereof. That said respondents have been, during the aforesaid time, in competition in interstate commerce in the offering for sale, sale, and distribution of the said "Director" belt with such other individuals, firms, and corporations above described. That said competing products are sold by such other individuals, firms, and corporations, through the medium of the United States mails and otherwise directly to the consumers, and also at wholesale to retail outlets of various kinds for resale to the consumer.

PAR. 4. That respondents in advertising their said elastic fabricated belt designated as the "Director" belt, have and do cause advertisements, descriptive of the product and its purported uses, to be inserted in various magazines, newspapers, and periodicals having general circulation between and among various States of the United States, and further publish and circulate or cause to be published and circulated in aid of the sale of said product certain descriptive letters, circulars, booklets, and other literature which are usually transmitted to purchasers or prospective purchasers through the United States mails. That said advertisements, letters, circulars, booklets, and other literature so circulated in the several States by the respondent to customers and prospective customers represent and imply:

That said elastic fabricated belt, known and designated as the "Director" belt, as a result of being worn and used as directed and without the use of drugs and without dieting, reduces and has the capacity to reduce the measure of the waistline of the wearer thereof from four to six inches or some greater amount up to eleven inches; that by the faithful use of said "Director" belt practically all adipose tissue can surely be eliminated; that the elastic action of said "Director" belt, when worn, causes a gentle changing pressure on the abdomen, bringing results formerly obtained only by regular massage and exercise; that the use of said belt makes the wearer thereof feel 15 years younger and eliminates a tired and bloated feeling after meals; that the use of said belt helps to relieve shortness of breath, restores the vigor of the user, and makes him look years younger the

minute he starts to wear it; that the use of said belt breaks the constipation habit, cures constipation, and increases the elimination and regularity in a normal way without the use of harsh, irritating cathartics; that the use of said belt adds years to the wearer's life; that the use of said belt reduces the weight of the wearer, eliminates excess fat around the abdomen, and corrects or eliminates obesity in said region; that the use of said belt constitutes a remedy for, and a safe, proper, and efficacious method of treatment for abdominal obesity; and other representations of like import.

PAR. 5. That a sample of an advertisement caused by respondents to be inserted in a magazine of general circulation between and among the several States is as follows:

(Pictorial representation of a man with an arrow pointing to the abdomen)

REDUCE 4 to 6 inches without drugs without dieting
or your money Refunded

"I wore the Director Belt and reduced my waistline from 42 to 33 inches. Practically all adipose tissue can surely be eliminated by its faithful use. I have recommended it to many of my patients."

(Signed) R. A. LOWELL,
Physician and Surgeon.

HOW DIRECTOR WORKS

Director is fitted to your individual measure without laces, hooks or buttons. Its elastic action causes a gentle changing pressure on the abdomen bringing results formerly obtained only by regular massage and exercise. Now all you have to do is slip on Director and watch results.

IMPROVE YOUR APPEARANCE

This remarkable belt produces an instant improvement in your appearance the moment you put it on. Note how much better your clothes fit and look without a heavy waistline to pull them out of shape.

RESTORE YOUR VIGOR

"I received my belt last Monday," writes S. L. Brown, Trenton, N. J. "I feel 15 years younger; no more tired and bloated feeling after meals."

Director puts snap in your step, helps to relieve "shortness of breath," restores your vigor. You look and feel years younger the moment you start to wear a Director.

BREAK CONSTIPATION HABIT

"I was 41 inches around the waist—now down to 37½—feel better—constipation gone—and know the belt has added years to my life." D. W. Bilderback, Wichita, Kans.

Loose, fallen abdominal muscles go back where they belong. The gentle changing action of Director increases elimination and regularity in a normal way without the use of harsh, irritating cathartics.

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REDUCE LIKE THIS

Let us prove our claims. We'll send a Director for trial. If you don't get results you owe nothing.

SENT ON TRIAL

MAIL COUPON NOW!

LONDON & WARNER,
360 N. Michigan Ave., Chicago, Ill.

Dept. A-49

GENTLEMEN: Without obligation on my part please send me the complete story of Director Belt and give full particulars of your trial offer.

Name.....
Address.....
City..... State.....

PAR. 6. That in truth and in fact: Respondents' said elastic fabricated belt, known as the "Director" belt, when worn and used as directed, does not, and will not, reduce the measure of the waistline of the wearer from four to six inches, or some greater amount up to eleven inches without the use of drugs and without dieting; the faithful use of said "Director" belt will not eliminate nor has it ever eliminated practically all adipose tissue; the elastic action of said belt does not cause a gentle changing pressure on the abdomen bringing results formerly obtained only by regular massage and exercise; the use of said belt does not make the wearer feel 15 years younger or eliminate a tired and bloated feeling after meals; the use of said belt does not help to relieve shortness of breath nor does it restore the vigor of the user or make him look years younger the minute he starts to wear it; the use of said belt does not break the constipation habit, cure constipation, or increase elimination and regularity in a normal way without the use of harsh, irritating cathartics; the use of said belt does not add years to the wearer's life; the use of said belt does not reduce the weight of the wearer, eliminate excess fat around the abdomen, or cure or alleviate obesity in that region; the use of said belt is not a remedy for, or a safe, proper or efficacious method of treatment for abdominal obesity. All the statements, representations, and implications set forth in paragraph 4 above are either wholly unfounded in fact or greatly exaggerated, or wholly inaccurate.

PAR. 7. That the representations of respondents above set forth and made as aforesaid, have had, and do have the tendency and capacity to and do confuse, mislead, and deceive members of the public into the belief that the use of respondents' said elastic fabricated belt does and will reduce excess weight and does and will bring about the beneficial results to the wearer which said advertisements and litera-

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ture state and imply have been and will be achieved by the use of said belt, all as set forth in paragraph 4 hereof, when in truth and in fact such statements and representations are false, misleading, or true only with qualifications and to a limited extent. Said representations so made by respondents have had, and do have, the tendency and capacity to induce members of the public to buy and use said belt because of the erroneous beliefs engendered as above set forth, and to divert trade to respondents from competitors engaged in the sale and distribution in interstate commerce of devices and belts designed, sold, and used for the same or similar purposes as respondents' belt, and of medicines and preparations designed, adapted, and used for the treatment of obesity and the various ailments and conditions that accompany and induce the same, who do not by false and misleading representations or advertising induce purchasers and consumers to buy or use their products.

PAR. 8. The above 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 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 respondents George Landon and M. M. Warner, a copartnership, trading as Landon & Warner, 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 the respondent's answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by Allen C. Phelps, attorney for the Commission before William C. Reeves, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by George Landon, 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 briefs in support of the complaint and in opposition

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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

PARAGRAPH 1. Respondents, George Landon and M. M. Warner, are the sole partners of a copartnership engaged in business at Chicago, Ill., under the name and style of Landon & Warner. Respondents, trading as said copartnership are engaged in the business of offering for sale, selling, and distributing an elastic, fabricated belt known and designated as the "Director" belt, to ultimate consumers located in the several States of the United States and in the District of Columbia. Said belt is offered for sale, sold, and distributed for use as an abdominal support, to provide a means of massaging the abdominal area of the wearer, for use in the reduction of surplus fat around the abdomen and for the relief of obesity in that region.

PAR. 2. In the course and conduct of the said business respondents sell and distribute their said "Director" belt directly to members of the purchasing public, by and through the use of the United States mails. Said respondents cause their said "Director" belt when sold to be transported from their place of business in the city of Chicago, State of Illinois, into and through the several States of the United States other than the State of Illinois, including the District of Columbia, to the various members of the consuming public to whom they have been sold, said purchasers being located in all of the different States of the United States and the District of Columbia.

PAR. 3. There are and have been other individuals, firms, and corporations in various States of the United States engaged in the sale and distribution in interstate commerce, of belts and devices designed, intended and used for the same general purpose as respondents' said "Director" belt, and such other individuals, firms, and corporations have caused and do cause their said devices and belts when sold by them to be transported from the various States of the United States in which said products are manufactured or held for distribution, to, into and through States other than the State of origin or shipment thereof. Said respondents have been and are in competition in interstate commerce in the offering for sale, sale, and distribution of the said "Director" belt with such other individuals, firms, and corporations above mentioned. Said products so sold in competition with respondents' said "Director" belt are sold by such other individuals,

firms, and corporations, through the medium of the United States mails and otherwise directly to the consumers, and also at wholesale to retail outlets of various kinds for resale to the consumer.

PAR. 4. Respondents in advertising their said elastic, fabricated belt designated as the "Director" belt have and do cause advertisements descriptive of the product and its purported uses to be inserted in various magazines, newspapers, and periodicals having general circulation between and among the various States of the United States, and further publish and circulate in aid of the sale of said product, certain descriptive letters, circulars, booklets, and other printed matter which are usually transmitted to purchasers or prospective purchasers through the United States mails. Through said advertisements, letters, circulars, booklets, and other literature so circulated in the several States by the respondents to purchasers and prospective purchasers respondents represent and imply that said elastic, fabricated belt known and designated as the "Director" belt, as the result of being worn and used as directed and without the use of drugs and without dieting, reduces and has the capacity to reduce the measure of the waist line of the wearer thereof from four to six inches, or some other greater amount up to eleven inches; that by the use of said "Director" belt practically all adipose tissue can surely be eliminated; that the elastic action of said "Director" belt when worn causes a gentle changing pressure on the abdomen bringing results formerly obtained only by regular massage and exercise; that the use of said belt makes the wearer thereof feel fifteen years younger and eliminates a tired and bloated feeling after meals; that the use of said belt helps to relieve shortness of breath, restores the vigor of the user, makes him look years younger the minute he starts to wear it; that the use of said belt breaks the constipation habit, cures constipation and increases elimination and regularity in a normal way without the use of harsh and irritating cathartics; that the use of said belt adds years to the wearer's life; that the use of said belt reduces the fat of the wearer, eliminates excess fat around the abdomen and corrects or eliminates obesity in said region; that the use of said belt constitutes a remedy for and is a safe and efficacious medium of treatment for abdominal obesity; and makes other representations of similar import.

PAR. 5. Typical statements by respondents in their said advertisements, letters, circulars, booklets, and other literature so circulated in offering for sale and selling the said "Director" belt are the following:

Eight inches off waistline. Director Belt reduced my waistline from 42 to 34 inches. I feel 10 years younger. Constipation gone—no tired, bloated feeling after meals. G. Newton, Troy, N. Y. Director belt instantly improves your appearance, puts snap in your step, relieves "shortness of breath" restores your

vigor as fat vanishes, loose, fallen abdominal muscles go back where they belong. Gentle, massage-like action increases elimination and regularity in a normal way without the use of harsh, irritating cathartics. You look and feel years younger. Sent on trial. Let us prove our claims. No obligation. Write today for trial offer. New, easy way—no drugs, no diet.

Must reduce waistline three inches or no cost. Massage reduces—so does "Director." Its elastic action with every movement of your body causes a gentle, changing, vibrating pressure that easily and comfortably works away abdomen fat, restores vigor. You look and feel years younger as soon as you wear Director Belt. Sent on Trial—Let us prove our claims. If you don't get results you owe nothing.

Reduce 4 to 6 inches without drugs, without dieting, or your money refunded * * * How Director works. Director is fitted to your individual measure without laces, hooks or buttons. Its elastic action causes a gentle changing pressure on the abdomen bringing results formerly, obtained only by regular massage and exercise. Now all you have to do is to slip on a Director and watch results. Reduce Like This. Let us prove our claims. We'll send a Director for trial. If you don't get results you owe nothing.

A sure, simple easy way to reduce your girth two to four inches instantly and then acquire a permanent reduction. Results assured—or not a penny's cost to you. We want an opportunity to prove to you that Director will accomplish wonders in reducing your weight and waist measure. So we ask permission to send you a Director for one week's trial.

Trial Offer. We have tried to give you some idea of what Director is and how it is warranted to reduce excess fat. But nothing we can say will be half so convincing as an actual test. So we invite a test on this basis. Use the Order Form enclosed with this letter—send today for a Director. Wear it for one week. Then, if you don't agree with each and every statement we have made herein, simply return the belt and we will refund your money promptly and the trial won't cost you a penny. We can think of no more fair or liberal offer than this. In fairness to yourself please make this test. Fill in and mail the Order Form today. We warrant every Director Belt to be fitted to your measure and woven from the finest fabrics for the purpose, and we warrant that it will perfectly fit the wearer. Director Belt is to satisfy you in every way. You are to have the privilege of examining it and wearing it for two weeks. If for any reason it does not meet your approval you may return it and we will refund the money sent with the order, which will be held as a deposit, pending your decision to keep or return the belt. You, the wearer, are to be the judge.

Your waistline is too large. It needs attention. By letting it go it will continue to grow—bigger and bigger. Your stomach has no stopping point. Once it starts to sag and bulge health suffers—appearance too. Why not follow my suggestion. Director will reduce your growing paunch to a size consistent with good health and rebuild your body. Here's my offer. If Director doesn't reduce your stomach within two weeks, the trial will cost you nothing. If for any reason you are not entirely satisfied, I'll refund your money—every penny of it—without delay or conversation. That's fair—Isn't it? Every day I receive letters from enthusiastic Director users. They have found that the easy comfort of Director reducing belt is just what they need; that it does them a world of good. Here is a letter that came in this morning. After 2 weeks the sum of \$6.50 is to be refunded to me by Landon & Warner if I am not satisfied with the Director Belt.

Findings

Wear Director on trial. Reduce your waistline this natural and easy way. Director will reduce waistline 4 and 6 inches; improve appearance; eliminate constipation; promote digestion; renew vitality. * * * Fat disappears. The improvement that Director makes in your appearance will please you. You will enjoy a feeling of restored vitality and new life but the knowledge that excess fat is surely disappearing during every moment of the day is the most comforting feeling of all. Director does more than just relieve—it effects a permanent reduction of waist measurement and fat as well. Director actually promotes the absorption and elimination of all excess fat. We warrant every Director Belt to be fitted to your measure and woven from the finest fabrics for the purpose, and we warrant that it will perfectly fit the wearer. Director Belt is to satisfy you in every way. You are to have the privilege of examining it and wearing it for two weeks. If for any reason it does not meet your approval you may return it and we will refund the money sent with the order, which will be held as a deposit pending your decision to keep or return the belt. You, the wearer, are to be the judge.

PAR. 6. In truth and in fact: Respondents' said "Director" belt when worn and used as directed does not and will not reduce the measure of the waistline of the wearer from four to six inches or some greater amount up to eleven inches without the use of drugs or without dieting. The faithful use of said "Director" belt will not eliminate, nor has it ever eliminated, practically all adipose tissue. The elastic action of said belt does not cause a gentle changing pressure on the abdomen bringing results formerly obtained only by regular massage and exercise. The use of said belt does not make the wearer feel fifteen years younger, or any certain number of years younger, or eliminate a tired, bloated feeling after meals. The use of said belt does not help to relieve shortness of breath nor does it restore the vigor of the user or make him look years younger the minute he starts to wear it. The use of said belt does not break the constipation habit, cure constipation, or increase elimination and regularity in a normal way without the use of harsh irritating cathartics. The use of said belt does not add years to the wearer's life. The use of said belt does not reduce the fat of the wearer, eliminate excess fat around the abdomen or cure obesity in that region. Said belt is not a remedy for, or a safe, proper or efficacious medium of treatment for abdominal obesity. In general, the statements, representations and implications referred to or set forth in paragraphs 4 and 5 above are inaccurate, unfounded in fact, or greatly exaggerated.

PAR. 7. The representations of respondents above set forth and made as aforesaid have had and do have the tendency and capacity to and do confuse, mislead and deceive members of the public into the false belief that the use of respondents' "Director" belt does and will reduce excess fat around the abdomen and does and will bring about the beneficial results to the wearer which said advertisements

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and literature state and imply have been and will be achieved by the use of said belt. Said representations so made by respondents have had and do have the tendency and capacity to induce members of the public to buy and use said belt because of the erroneous beliefs so engendered and to thus divert trade to respondents from competitors engaged in the sale and distribution in interstate commerce of devices and belts designed, sold and used for the same or similar purposes as respondents' belt who do not by false and misleading representations or advertising induce purchasers and consumers to buy or use their products.

CONCLUSION

The aforesaid acts and practices of the respondents, George Landon and M. M. Warner, a copartnership trading as Landon & Warner, 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 William C. Reeves, 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 by Allen C. Phelps, counsel for the Commission, and by George Landon, counsel for the respondents (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 the respondents, George Landon and M. M. Warner, individually, and as partners in the copartnership of Landon and Warner, and their representatives, agents, and employees, in connection with the offering for sale, sale and distribution of that certain elastic fabricated abdominal belt, known as the "Director" belt or any other belt of substantially similar construction, in interstate commerce or in the District of Columbia, by the use, publication or circulation of advertisements, letters, circulars, booklets, or other printed matter, or by the inclusion of testimonials in such ad-

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vertising literature or by any other means whatsoever, do forthwith cease and desist from representing:

1. That as a result of wearing said belt the waistline of the wearer will be permanently reduced in circumference.
2. That the said belt, when worn, provides a gentle, changing pressure or massage-like action which will reduce the waistline of the wearer.
3. That the wearing of said belt will bring about results formerly obtained by massage and exercise.
4. That by the use of said belt excess fat or fatty tissue at the waistline or around the abdomen will be absorbed, eliminated, rubbed off or caused to disappear.
5. That the wearing of said belt in and of itself makes the wearer feel 15 years younger, or any certain number of years younger, or eliminates a tired, bloated feeling after meals, relieves shortness of breath or restores the vigor of the user.
6. That the wearing of said belt will break the constipation habit, cure constipation or increase elimination and regularity in a normal way without the use of harsh irritating cathartics.
7. That the wearing of said belt will reduce body weight or cure or relieve obesity.
8. That the wearing of said belt provides a remedy for or constitutes a safe, proper or efficacious method of treatment for abdominal obesity.

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

MARION VAULT 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 2712. Complaint, Feb. 4, 1936—Decision, Dec. 4, 1936

Where a corporation engaged in the manufacture of two types of metal burial vaults, i. e., its "New Imperial Burial Vault" and "Gold Seal Burial Vault," and in the sale thereof to jobbers, funeral directors, and undertakers—

- (a) Represented, in circulars advertising its said products, distributed among undertakers, funeral directors, and morticians, that its said Imperial Vaults would "protect through the years" and that they were "inherently qualified to provide enduring protection," and, as to said "Patented Double Seal," that it was "permanently secure" and that it "improves as time goes on"; and represented that the former were watertight both at time of interment and after, and were waterproof and endured as such under all conditions for fifty years, and would give permanent protection; and
- (b) Made use of certificates of warranty or guarantee, in connection with sale and offer of latter, that said vaults were guaranteed "to be vermin, moisture, water, and air-proof, and to give positive protection for an indefinite number of years," and authorized "the undersigned funeral directors" "to countersign this guarantee to the purchaser";

The facts being that, while its said vaults were equal to the standard metal vaults made by the industry and were not inferior products or made of an inferior grade of metal or by methods of construction which differed from those used by reputable and responsible members of the industry in question, 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; 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, and in some of which a 12-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 vaults in order to provide protection from entering water; its vaults and the materials from which made have 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 the same 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 com-

Complaint

petitors 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. M. Turin for the Commission.

Waite, Schindel & Bayless, 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 Marion Vault Manufacturing 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 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, Marion Vault Manufacturing Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office and place of business in the city of Marion in said State.

PAR. 2. Respondent is now, and has been for a number of years last past, engaged in the manufacture and sale of two types of metal burial vaults for use in the burial of the dead, one being designated "The New Imperial Burial Vault," and the other "Gold Seal Burial Vault," and has caused said products, when sold, to be shipped and transported from its place of business in the city of Marion, State of Ohio, to purchasers thereof located in many other States of the United States.

PAR. 3. In the course and conduct of its business, as aforesaid described and alleged, respondent, in soliciting the sale of and selling its said products in interstate commerce, caused circulars pertaining to its New Imperial Burial Vault to be distributed among undertakers, funeral directors, and morticians located in various States of the United States for their use and which were used by them in aid of soliciting the sale of and selling its said products to the purchasing public. In said circulars appeared statements and representations to the effect that said products "will protect through the years," and are "inherently qualified to provide enduring protection." Other circulars also were distributed as aforesaid by said corporation in interstate commerce as a means to advertise its Gold Seal Burial Vault,

equipped with a patented double seal represented to be "permanently secure" and as "improving as time goes on." A so-called guarantee accompanied each Gold Seal Burial Vault sold and shipped by the respondent in interstate commerce, said guarantee reading in part:

The Marlon Vault Manufacturing Company, through its duly authorized officers whose signatures are attached hereto, hereby guarantee their Gold Seal Burial Vaults, to be vermin, moisture, water, and air proof, and to give positive protection for an indefinite number of years.

And which products, so advertised and represented, the respondent sold in interstate commerce; when, in truth and in fact, the aforesaid statements and representations to the effect that said vaults, or either of them, will "protect through the years," or "provide enduring protection," or are guaranteed to be verminproof, moisture, or water-proof, and air-proof, are vague, misleading, and deceptive and are not justified. The terms "Protect through the years," "Provide enduring protection," "waterproof," "verminproof," "moistureproof" and "airproof" as used by respondent as aforesaid, mean to the consuming public water tight vaults, vaults which will not permit water, vermin, moisture, or air to enter the same under actual burial conditions. Neither of said vaults is waterproof as the term is understood by the consuming public; and either water, vermin, moisture, and air may enter the same through the joints thereof, because of defects in mechanical construction and through holes due to corrosion.

PAR. 4. With reference to the Gold Seal Burial Vault guarantee, above mentioned, it contains no statement, promise, or agreement of any kind by the respondent as to what it will do or agree to do, in the event that any purchaser should claim, or make claim, that said Gold Seal Burial Vault has not proven to be "vermin, moisture, water, and air-proof, and to give positive protection for an indefinite number of years," as stated in respondent's said guarantee. Aside from this, the exhumation of bodies after burial is so rare as to make this certificate of guarantee utterly worthless for all purposes to a vast majority of the ultimate purchasers of this Gold Seal Burial Vault, for the reason that ordinarily and usually no such opportunity is afforded them in which to ascertain and establish, under any circumstances, whether said Gold Seal Burial Vault gives "positive protection" and is "vermin, water, and air-proof." The fact that exhumation of bodies after burial is so rare, also, in like manner, make the statements and representations of respondent in connection with the sale of the New Imperial Burial Vault practically worthless to a vast majority of ultimate purchasers of this type of burial vault for the like reason that ordinarily and usually no opportunity is afforded them in which to ascertain and establish, under any circumstances,

whether said New Imperial Burial Vault "provides enduring protection" or "will protect through the years."

PAR. 5. The said methods and practices of respondent in soliciting the sale of and in selling its said burial vault products, as hereinabove alleged and set forth, have the tendency and capacity, and are calculated, to mislead and deceive, and in fact do mislead and deceive, a substantial portion of the purchasing public, including the ultimate purchaser, into buying such said burial vault products, or either of them, in the erroneous and mistaken belief that they will "protect through the years" or "provide enduring protection," or are guaranteed to be verminproof, moisture, or water-proof, and airproof.

PAR. 6. In the course and conduct of its business as aforesaid, respondent is in competition with corporations, partnerships, firms, and individuals likewise engaged in the manufacture, sale and transportation in interstate commerce of like and similar products, such as steel, stone, cement, and other vaults used in the burial of the dead, which said competitors in no wise make or indulge in the same or similar false and misleading representations, methods and practices as are made or indulged in by the respondent as hereinbefore set forth. The aforesaid representations made by respondent about its said burial vault products and the use of its guarantee as hereinabove set forth and alleged, have the capacity and tendency to deceive and mislead the purchasing public, and to induce purchasers, including ultimate purchasers, to buy the product of respondent in and on account of the belief that said statements, representations and warranties are true, and thus unfairly divert trade to the respondent from its said competitors engaged in the sale in interstate commerce of like or similar burial vault products.

PAR. 7. The acts, things and practices of the respondent, as hereinabove alleged, are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of 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 February 1936, issued and served its complaint in this proceeding upon respondent, Marion

Vault 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, a stipulation as to the facts was agreed upon by and between W. T. Kelley, Chief Counsel for the Commission, and the 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 make its report stating its findings as to the facts and its conclusions 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 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 conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Marion Vault Manufacturing Company, is, and has been for a number of years last past, 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 Marion, in the State of Ohio.

It is now, and for a number of years last past has been, engaged in the business of manufacturing and selling two types of metal burial vaults, "The New Imperial Burial Vault" and the "Gold Seal Burial Vault"; said vaults are intended to be, and actually are, used to encase or enclose coffins 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.

It does now, 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 they are filled by causing the said vaults to be shipped from the city of Marion in

the State of Ohio, into and through other States of the United States, to the respective places of business or the residences of the purchasers.

PAR. 2. Respondent, in the course and conduct of its said business, and in soliciting the sale of and selling its said product in interstate commerce, has caused circulars advertising said vaults to be distributed among undertakers, funeral directors, and morticians located in the various States of the United States. Said circulars are used by them in connection with the solicitation of the sale of said vaults to the purchasing public. In said circulars, the respondent causes the following general statements and representations as to its vaults to be made without limitation or qualification:

As to its New Imperial burial vaults:

They "will protect through the years."

They are "inherently qualified to provide enduring protection."

As to its Gold Seal burial vaults:

The Patented Double Seal "is permanently secure."

The Patented Double Seal "Improves as times goes on."

Respondent issues with each Gold Seal burial vault, the following written guarantee which is intended to be, and usually is, delivered to the ultimate purchaser:

GUARANTEE

MARION VAULT MANUFACTURING COMPANY

MARION, OHIO.

The Marion Vault Manufacturing Company, through its duly authorized officers, whose signatures are attached hereto, hereby guarantee their Gold Seal Burial Vaults to be vermin, moisture, water and air proof, and to give positive protection for an indefinite number of years.

The undersigned funeral director is hereby authorized by the Marion Vault Manufacturing Company of Marion, Ohio, to countersign this guarantee to the purchaser.

All genuine Gold Seal Vaults are labeled with the Gold Seal shown below.

Secretary

President

PAR. 3. The ferrous metals used by respondent in the manufacture of its said burial vaults are: Armco Ingot Iron and Armco Steel manufactured by the American Rolling Mill Company of Middletown, Ohio, and Keystone Copper Bearing Steel manufactured by the American Sheet and Tinplate Company of Pittsburgh, Pa.

These metals, 12 U. S. Standard Gauge and heavier, are purchased by the respondent in sheets of extra dimensions specially processed and rolled for use in the manufacture of burial vaults. The cost of said metals is considerably higher than the cost of ordinary commercial steel for the same gauges.

These metals are the highest grade and quality of metals for use in the manufacture of burial vaults that can be obtained on the market in the United States. Said metals used by the respondent in its burial vaults are highly refined grades of steel which are made under the best modern scientifically controlled steel manufacture processes wherein the impurities are removed and furnacing operations are accurately controlled. This process results in the best grade of steel which resists, but does not prevent corrosion, thus tending to increase its life and durability in use underground over steel not similarly or equally refined.

Both of the companies from whom respondent purchases these metals, represent in their 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 metal before it is shipped to the respondent.

These metals are, by their very nature, impervious to, and impenetrable by, air, moisture, vermin, and water during the life of said metals, which said life terminates when a hole has been punctured or has been penetrated through the metal by any instrument, rust, or corrosion.

The metals are not rustproof or corrosionproof, but will rust or 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.

PAR. 4. Respondent's said vaults are manufactured with great care by skilled workmen.

PAR. 5. 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).

PAR. 6. The outside measurements of the said New Imperial vault are: length, 90 inches; width, 34 inches; and height 29 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 inches; center height 25 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 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. 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, making 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 2 inches wide to form this flange, which extends entirely around the bottom of the vault. This flange itself has approximately a total of 3 square feet and 46 square inches. The entire base resembles an inverted pan. At each of the four corners of the pan is a hole, pierced through near its top edge. Circulation of air through its hollow space 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 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 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.

PAR. 7. The dimensions of the said Gold Seal vault vary slightly from the dimensions of the vault described above, but the principle upon which it operates is the same. In the Gold Seal vault the bottom edge or rim of the dome is turned inward to form a flange. At the line of contact between the dome and the base is a rubber gasket, fitted by hand to a metal retainer, which is welded to the base of the vault. As the weight of the dome, earth and water presses down, the pressure causes the rubber gasket to seal this vault, so that it has a double seal, the air seal and the gasket seal. This is the principal difference between the New Imperial vault and the Gold Seal vault. Like the New Imperial, it has a hole at each of the four corners of the pan. The said gasket is especially prepared by incorporating therein certain chemicals to retard ordinary oxidation. Respondent purchases said gasket from reputable rubber manufacturers, to wit, Goodrich Rubber Company of Akron, Ohio, and the Corduroy Rubber Company of Grand Rapids, Mich. After water completely surrounds either the Imperial or Gold Seal 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 in the inside of the dome resists the pressure of the water head so as to prevent the surface of the water level rising within the dome above the lower edge. 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.

PAR. 8. When, for any reason, the air seal principle of the above-described vaults 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. 9-A. According to the recognized principles of mechanical engineering applied in the construction of the respondent's New Imperial and Gold Seal 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 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 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 order for either of said 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 in 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 either of said vaults are used.

Condition No. 1 is essential for the successful operation of the air seal principle of either of said vaults. Conditions Nos. 2 or 3 affect these air seal vaults 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 within 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 either of said vaults, and to touch the casket therein, then such changes tend to damage the casket and the body contained therein.

PAR. 9-B. Neither the New Imperial or the Gold Seal vault is shipped by respondent until the domes thereof have been tested and approved to have no defect 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. 10. 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 respond-

ent's vaults will depend upon the actual burial conditions of the locality in which they are buried.

PAR. 11. 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, 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 New Imperial and Gold Seal vaults through the bottom 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 9. Neither of said vaults is vermin proof or air tight until the same is sealed with water.

Disinterment after burial is rare and respondent has rarely been called upon to replace said vaults.

PAR. 12. The metals of which 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. 13. 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 ever 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. 14. 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. 15. 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 of methods of construction different from those used by reputable and responsible members of the metal vault industry.

PAR. 16. Respondent is and has been financially able, ready and willing to comply fully with and to perform the full terms of its written certificate of warranty, or to replace, 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 and respondent has made and issued said certificates of warranty in good faith.

PAR. 17. The 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 ferrous

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metal burial vaults manufactured by it, the respondent has represented:

1. That its New Imperial Air Seal vaults are water-tight, both at the time of interment and after burial under ground;
2. That its New Imperial Air Seal vaults are water-proof;
3. That its New Imperial Air Seal vaults will endure as water-proof under all burial conditions for a period of fifty (50) years, or any fixed or stated period of time;
4. That its New Imperial Air Seal vaults will give permanent protection after under ground;
5. That the double seal of its Gold Seal burial vaults is permanently secure;
6. That the double seal of said Gold Seal burial vaults gives permanent protection.

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 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 the respondent, and 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, Marion Vault Manufacturing 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:

1. Representing in purported certificates of warranty or guarantees, in advertising or in any other manner, that:

(a) Its new Imperial Air Seal Vaults are water-tight either at the time of interment or after burial under ground;

(b) Its new Imperial Air Seal Vaults are water-proof;

(c) Its new Imperial Air Seal Vaults will endure, as water-proof, under all burial conditions, for a period of fifty years, or for any fixed or stated period of time;

(d) Its new Imperial Air Seal Vaults will give permanent protection after burial under ground;

(e) The double seal of its Gold Seal Burial vaults is permanently secure;

(f) The double seal of said Gold Seal burial vaults gives permanent protection, and that such vaults will endure vermin, moisture, water, and are air-proof when buried in the ground.

2. Making other representations of like import.

3. 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.

IN THE MATTER OF
JAMES VAN DISSEN 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 2426. Complaint, June 5, 1935—Decision, Dec. 7, 1936

Where a corporation engaged as rectifier and wholesaler of spirituous liquors, in purchasing and bottling whiskies, gins, and other spirituous beverages, and in making gin with a still which it used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products to wholesalers and retailers, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages, and in selling the same in trade and commerce among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and in similarly selling the same, and including among said 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 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 various products, do not use, with competitive advantage attaching thereto, aforesaid words as above set forth—

Represented, through use of word "Distilling" in its corporate name, printed on its stationery and labels, together with words "Distilled by" in case of its aforesaid gin, "Manufactured by" in case of its sloe gin and cordials, and "Bottled by" in case of its brandy, 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 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 said various beverages thus bottled, labeled, sold and transported by it, as definitely understood and implied to the trade and ultimate purchasing public from word "Distilling" as meaning such original distillation from grain, fruit or vegetable mash, and did not own, operate, or control any place or places where such beverages are thus made, and was not a distiller, investment and expenses of which are greater, in general, than those of the rectifier, and for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public, and to which an advantageous prestige in overcoming sales resistance attaches in the mind of the wholesale trade, and associated with the products of which there is an advantage to the seller by virtue of the distiller's control, as believed, of the making of its product and the ingredients entering therein from start to finish in its own establishment; With effect of misleading and deceiving dealers and purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash, and of inducing

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dealers and purchasing public, acting in such belief, to buy its said whiskies, etc., bottled and sold by it, and of thereby diverting trade to it from its competitors who do not, by their corporate 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; 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. PGad. B. Morehouse and *Mr. Edw. W. Thomerson* for the Commission.

Mr. Donald H. McDonald, 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 James Van Dissen 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 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 California, with its office and principal place of business in the city of Los Angeles, 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 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 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. In the course and conduct of its business as aforesaid respondent has, upon its 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 "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 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 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 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, 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.

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 5, 1935, issued and served its

complaint in this proceeding upon respondent, James Van Dissen Distilling 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 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 P. B. Morehouse, attorney for the Commission, before John W. Addison, an examiner of the Commission theretofore by the Commission duly substituted to take testimony and other evidence in the place and stead of said W. W. Sheppard; and in opposition to the allegations of the complaint of D. H. McDonald, 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, 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. James Van Dissen Distilling Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, as a rectifier and wholesaler of spirituous liquors, with its principal office and place of business at 1401 Boyd St., Los Angeles, 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. It estimates its average sales at \$6,000 or \$7,000 per month. 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 States of the United States other than the State of California. 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. 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 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 rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-443" designates this respondent. A distiller who also operates a rectifying

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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. In the course and conduct of its business as aforesaid, respondent uses its name printed on its stationery, invoices, and labels. The name on the labels is preceded by the words "Distilled . . . by" in the case of redistilled gins; by the words "Manufactured . . . by" in the case of its sloe gins and cordials; and by the words "Bottled by" in the case of its brandies. The name on its invoices is followed by the word "rectifiers." The Commission finds that by the use which respondent makes 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 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.

Respondent 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 "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 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 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 "distill-

ers" 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 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 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's 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 respondent, through use of the word "Distilling" 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 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. 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 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 respondent, James Van Dissen Distilling 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. 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 respondent having been waived; and the Commission having made its findings as to the facts and its conclusions 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 James Van Dissen Distilling Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution by it of whiskies, gins, or other spirituous beverages in interstate commerce or in the District of Columbia (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 "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, (a) that it is a distiller of whiskies, gins, or other spirituous beverages; or (b) that the

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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.

Syllabus

IN THE MATTER OF

PREMIER PEAT MOSS CORPORATION

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

Docket 2793. Complaint, Apr. 29, 1936—Decision, Dec. 7, 1936

Where a corporation, engaged as principal importer and distributor of Swedish peat moss, in importing said product and selling same to wholesalers and retailers in substantial competition with those engaged in the importation, sale, and distribution of such product from Germany and other foreign countries, for use as soil conditioner, stable litter, and stable bedding, and in competition with many who import and sell in interstate commerce peat moss for the same general purpose as the Swedish product sold by it, but rightfully and truthfully represent the qualities and virtues possessed by their product and in no manner misrepresent the qualities or virtues thereof—

- (a) Featured on a circular published and widely distributed by it, in connection with the offer and sale of its said product, the quoted caption "United States Department of Agriculture," together with quoted matter ascribed to said Department's official circular, setting forth certain characteristics of said product, of good quality, and followed by schedule which purported to give results of comparative tests of Swedish and German peat moss, to the advantage of the former and disadvantage of the latter in numerous respects, and including results, or purported results, of various State experiment stations and of the Bureau of Weights and Measures of New York City, notwithstanding fact said circular was not an official report or bulletin of such Department, did not contain any comparisons or analyses made or authenticated by it or by any branch of the United States Government, and was never promulgated by said Government and did not have its approval or sanction, and no such comparisons or analyses respecting and affecting such Swedish and German peat moss, as represented or shown in such circular, had ever been made by Department in question, and said purported tests and measurements afforded no bases in fact for the representations made relative to the comparative absorbent capacity, moisture content, and weight and bulk advantage, and comparisons shown to the advantage of such Swedish moss did not have the approval or endorsement of any Department of the United States Government, Bureau or Branch of the United States, or of any municipal or State Government;

With intent and effect of creating erroneous impression upon purchasing public generally that said circular presented an analysis and comparison of Swedish and German peat moss, as made and promulgated by the United States Department of Agriculture in a Government report, and that said circular had the approval and sanction of such Department; and with capacity and tendency to mislead and deceive its customers and prospective customers and the public generally into the purchase of said Swedish moss in preference to German peat moss, in aforesaid erroneous beliefs, and that analyses of said State experiment stations and of said

municipal bureau proved and demonstrated conclusively advantages of former over latter in respect of absorbent capacity, moisture content, and weight saving and bulk per unit, as set forth in circular in question;

- (b) Inserted in a published and widely distributed copy of a letter received by it from a State experiment station, and over the signature of said station's chief in research chemistry, and in which letter were given results of analyses of four samples of peat moss, words "Swedish" and "German"; with intent of disclosing to public the identity of the two brands of peat moss covered by such analyses, notwithstanding fact that analysis set forth in such letter was not complete, exhaustive and independent, and did not demonstrate relative absorbent capacity of the two peat mosses, as therein, in effect, misleadingly represented and implied; With capacity and tendency to mislead and deceive its customers and prospective customers and the purchasing public generally into the erroneous belief that figures shown therein were result of complete, exhaustive and independent analysis, and demonstrated the relative absorbent capacity of said respective products; and

- (c) Published and issued a circular distributed to dealers throughout the United States, wherein was set forth under caption "Results," that "Figures from the Custom House records of the Bureau of Foreign and Domestic Commerce" showed the volume of its import of Swedish peat moss for the period therein set forth, "had reached over 93% of the total peat moss imports from Central Europe"; facts being representations therein contained were inaccurate, false, and misleading in that a greater volume of peat moss was not imported from Sweden than from Central Europe during months in question;

With capacity and tendency to mislead and deceive purchasing public into buying the Swedish peat moss in the erroneous belief that a greater volume of article in question was imported from Sweden than from the remainder of Central Europe during months in question; and with results of placing in the hands of Swedish peat moss retailers, wholesalers and distributors an instrument and means whereby they might be and were encouraged and caused to, and did, misrepresent to a substantial portion of the consuming public the evidence as to the relative merits of such and German and other peat moss, and with capacity and tendency to, and with effect of, unfairly diverting trade to it from competitors engaged in the sale in commerce of German and other imported peat moss; 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. Astor Hogg for the Commission.

Mr. Emerich Kohn and *Mr. Mitchell Salem Fisher*, 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 Premier Peat Moss 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, Premier Peat Moss Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 150 Nassau Street, New York, N. Y., and is now, and has been for a period of more than three years, engaged in the business of importing and selling to wholesalers and retailers for resale, in commerce as herein set out, Swedish Peat Moss.

PAR. 2. The respondent, being engaged in business as aforesaid, causes said Swedish Peat Moss, when sold by it, to be transported from its office and principal place of business in the State of New York to purchasers thereof located in the various States of the United States other than the State of New York, and in the District of Columbia. There is now, and has been at all times since the organization of respondent corporation, a constant current of trade in commerce in said Swedish Peat Moss 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. The 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 individuals and partnerships engaged in commerce among the various States of the United States and in the District of Columbia in the importation, sale, and distribution of peat moss imported from Germany and other foreign countries.

PAR. 4. Peat Moss consists of a vegetable matter partially decomposed in water, which, in the earlier stages of decomposition, is extensively used as a soil conditioner due to the fact that it has great water-absorbing and moisture-retaining capacities. It is also extensively used as a stable litter and for stable bedding. Germany and Sweden are the principal countries from which peat moss is imported. The respondent is the principal importer and distributor of Swedish Peat Moss in the United States.

PAR. 5. In such competition between the sellers of Swedish Peat Moss and sellers of German Peat Moss and peat moss from other countries, one of the controlling influences upon the purchasing public

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is the public opinion as to the comparative weight, quality, absorbing capacity, ash content, and moisture content of peat moss obtained from various sources.

PAR. 6. In the course and conduct of its business, as hereinbefore set out, in offering for sale and selling Swedish Peat Moss, respondent has published and distributed widely among its customers and prospective customers and among the purchasing public generally, a circular bearing the following caption:

UNITED STATES DEPARTMENT OF AGRICULTURE, WASHINGTON, D. C.

states in its official circular No. 167

(Typed in red ink.)

Moss Peat of good quality is light in weight, porous, spongy, fairly elastic, of yellow brown color, must have a high water absorbing capacity, a relatively low amount of woody material and ash.

The above quotation was and is followed by a schedule purporting to give results of tests wherein Swedish Peat Moss and German Peat Moss were compared, and a summary of the alleged advantages of Swedish Peat Moss over the German Peat Moss, as follows:

	Swedish Peat Moss	German Peat Moss	Advantages of Swedish Peat Moss
Raw Material.....	Sphagnum Peat...	Sphagnum Peat...	
Quality.....	Porous spongy....	Felted spongy....	More spongy and loose.
Absorbing Capacity: Analyses of New York State Experiment Station, Geneva, N. Y.	13.5 times.....	10.8 times.....	25% higher.
Ash Contents.....	1.03%.....	1.68%.....	40% less.
Moisture: Analysis of State Experiment Stations, New Haven, Conn., and Amherst, Mass. ¹	10%.....	16%.....	33% less moisture savings in weight.
Measurements.....	40 x 20 x 26", 12 cu. ft.	38 x 23¼ x 22", 12 cu. ft.	
Contents: Official Measurement of Mayor's Bureau of Weights & Measures, City of New York.	23/23 bushels.....	20 bushels.....	2 to 3 bushels more.
Packing.....	New burlap, 8 slats, 4 wires.	New burlap, 8 slats 4 wires.	
Average Weight of Bales:			
Horticultural.....	Approx. 150 lb....	160 lb.....	
Poultry Litter.....	Approx. 115 lb....	150 lb.....	Same size bales with lighter weight but larger contents.
Stable Bedding.....	Approx. 110 lb....	140 lb.....	
Freight per Bale on Basis of 30¢ per cwt.	37½¢.....	45¢.....	18% saving.
Wharfage and Loading on Basis of 4¢ per cwt.	4½¢.....	6¢.....	20% saving.
Time in Loosening Contents of One Bale.	10 minutes.....	15 minutes.....	33% labor-saving.

¹ Moisture tests:

New Haven, Conn., 8.78% Swedish.
 New Haven, Conn., 9.03% Swedish.
 Cornell University (N. Y.), 11.57% Swedish.
 Amherst, Mass., 11.83% Swedish.
 Amherst, Mass., 13.13% German.
 Amherst, Mass., 16.98% German.

PREMIER PEAT MOSS CORPORATION,
 150 Nassau Street, New York. "The Better Peat Moss."

Complaint

The respondent further caused the circulation in various States of the United States, among customers, prospective customers, and the public generally a purported copy of a letter from Arthur W. Clark, Chief in Research Chemistry of the New York State Experiment Station at Geneva, N. Y., which copy of letter so circulated and distributed reads as follows:

March 17, 1933.

PREMIER PEAT MOSS CORPORATION,
 150 Nassau Street, New York, New York.

GENTLEMEN: Analyses of the four samples of peat moss are as follows:

No. 1—Horticultural Grade

Swedish:

Ash -----	1.02%
Nitrogen-----	0.88%
Organic matter -----	95.06%

No. 1—Poultry Litter

Ash -----	1.03%
Nitrogen-----	0.83%
Organic matter -----	91.12%

No. 2—Horticultural Grade

German:

Ash -----	1.84%
Nitrogen-----	0.94%
Organic matter -----	94.95%

No. 2—Poultry Litter

Ash -----	1.52%
Nitrogen-----	0.91%
Organic matter -----	91.36%

Sample No. 1—Horticultural Grade and Poultry Litter show an absorption of 13.5 parts of water to one part of peat moss, while sample No. 2 both Horticultural Grade and Poultry Litter show an absorption of 10.8 parts of water to one part of peat moss.

Very truly yours,

(Signed) ARTHUR W. CLARK,
 Chief in Research Chemistry.

The two words "Swedish" above, and "German" below, which appeared in the copy of the letter hereinabove set out, were not in the original letter but were written in by said respondent and the presence of those two words discloses to the public the identity of the two brands of peat moss covered by the analysis.

The circular published and distributed as first hereinabove set out was, and is, for the purpose and effect of creating, and it does

create, the impression with the respondent's customers and prospective customers and the purchasing public generally that it presented a fair compilation, analysis and comparison of Swedish peat moss and German peat moss, and that, as such, it was, and had been, duly promulgated by the United States Department of Agriculture as a Government report, and that such circular had the approval and sanction of the United States Department of Agriculture.

In truth and in fact, the circular widely distributed, as aforesaid, is not an official report or bulletin of the United States Department of Agriculture. It does not contain any comparisons, analyses, or compilations that have been made or authenticated by the United States Department of Agriculture or by any branch of the Government and was never promulgated by the United States Government and it does not have the approval or sanction of the United States Government. In fact, the United States Department of Agriculture has never made any such comparisons or analyses between Swedish peat moss and German peat moss as is represented or shown on said circular.

In the course and conduct of its business, as aforesaid, respondent published and issued a circular which it distributed to its dealers throughout the United States which circular stated and represented, among other things,

"RESULTS. Figures from the Custom House Records of the Bureau of Foreign and Domestic Commerce show that the volume of our import of Swedish peat moss for the months of October, November, and December 1933, had reached over 93% of the total volume of all peat moss imports from central Europe."

In truth and in fact, the representation of the respondent that during the months of October, November, and December 1933, 93% of the total volume of all peat moss imported from central Europe came from Sweden is inaccurate, false and misleading.

PAR. 7. In and by the use of the circular, first hereinabove set out, which is entitled "United States Department of Agriculture, Washington, D. C.", respondent represents that Swedish peat moss is more spongy and loose than German peat moss; that the absorbing capacity of Swedish peat moss is 25% higher than German peat moss and that the analysis of the New York State Experiment Station, Geneva, N. Y., proves that the absorbing capacity of Swedish peat moss is 25% higher than German peat moss; that the ash content of Swedish peat moss is 40% less than German peat moss; that Swedish peat moss has 33% less moisture than German peat moss as shown by the analysis of State Experiment Stations, New Haven, Conn., and Amherst, Mass., and therefore, Swedish peat moss affords savings in

weight; that a bale of Swedish peat moss contains from two to three more bushels of peat moss than is contained in a bale of German peat moss and the measurement of Mayor's Bureau of Weights and Measurements, city of New York, demonstrates such to be a fact.

In truth and in fact, Swedish peat moss is not more spongy and loose than German peat moss; the absorbing capacity of Swedish peat moss is not 25% higher than German peat moss or higher to any degree, and the New York State Experiment Station, Geneva, N. Y., made no such analysis as to the absorbing capacity of Swedish peat moss and German peat moss as is represented in said circular. The ash content of Swedish peat moss is not 40% less than German peat moss or less at all. Swedish peat moss does not contain 33% less moisture than German peat moss, or less at all, and affords no savings in weight, and the representations on the circular to the effect that analyses of State Experiment Stations located at New Haven, Conn., and Amherst, Mass., demonstrated that Swedish peat moss contained less moisture are false and misleading. A bale of Swedish peat moss does not contain from two to three bushels more of peat moss than is contained in a bale of German peat moss and Mayor's Bureau of Weights and Measurements, city of New York, did not make and has never made any such a comparison. In fact, no analyses or tests made by any Department of the United States Government or Municipal or State Government afford any basis in fact for the comparisons made on said circular; nor do such comparisons have the approval or endorsement of any Department of the United States or Bureau or branch thereof, or any Department of any Municipal or State Government or bureau or branch thereof.

PAR. 8. The circular entitled "United States Department of Agriculture" circulated and distributed, as hereinabove set out, has the capacity and tendency to mislead and deceive the respondent's customers and prospective customers and the public generally into purchasing Swedish peat moss in preference to German peat moss under the erroneous belief (a) that the circular referred to and the comparisons thereon stated have been issued and promulgated by the United States Government and that it has the sanction and approval of the United States Department of Agriculture and that by reason of the comparisons made on said circular, the United States Department of Agriculture recommends Swedish peat moss in preference to German peat moss; (b) that the analyses of New York State Experiment Station, Geneva, New York, prove and demonstrate the fact that the absorbing capacity of Swedish peat moss is 25% higher than German peat moss; (c) that the ash contents of Swedish peat moss is 40% less than the ash contents of German peat moss; (d) that the

State Experiment Stations of New Haven, Conn., and Amherst, Mass., have made comparisons and tests of Swedish peat moss and German peat moss and find that Swedish peat moss contains 33% less moisture than German peat moss and affords savings in weight; (e) that a bale of Swedish peat moss contains from two to three bushels more as contained in a bale of German peat moss and that the analyses and tests of the Mayor's Bureau of Weights and Measurements, city of New York, show such to be a fact.

The use and circulation of the copy of letter dated March 17, 1933, as hereinabove set out, has the capacity and tendency to mislead and deceive the respondent's customers and prospective customers, and the purchasing public generally, into the erroneous belief that the analysis shown in said letter is a true analysis of Swedish peat moss and German peat moss.

The use and circulation of the circular containing the expression that the records of the Custom House of the Bureau of Foreign and Domestic Commerce reveal that the volume of imports into the United States of Swedish peat moss for the months of October, November, and December 1933, had reached over 93% of the total volume of all peat moss imports from central Europe has had the capacity and tendency to mislead and deceive the public into purchasing said Swedish peat moss under the erroneous belief that Swedish peat moss is more in demand in the United States than German peat moss.

PAR. 9. The false and misleading misrepresentations hereinabove set out made by the respondent place in the hands of said retail dealers, wholesale dealers, and distributors an instrument and 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 Swedish peat moss as much to be preferred over German peat moss on account of the alleged fact that Swedish peat moss is more spongy and loose, has 25% higher absorbent capacity, 40% less ash content, 33% less moisture, and a bale contains two to three bushels more peat moss and that Swedish peat moss is more in demand in the United States than German peat moss and is recommended by various Departments of National, State, or municipal Governments.

PAR. 10. There are among the competitors of the respondent many who import and sell in interstate commerce German peat moss which is for the same use and purpose as Swedish peat moss, but which competitors rightfully and truthfully represent the qualities and virtues possessed by said German peat moss and in no manner misrepresent the qualities or virtues thereof, and in no manner unfairly or

untruthfully make comparisons of Swedish peat moss with German peat moss.

The above false and misleading representations and comparisons have the capacity and tendency to, and do, unfairly divert trade to respondent from said competitors engaged in the sale in interstate commerce of peat moss used for the same general purpose.

PAR. 11. The acts and practices of the respondent above set forth 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 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 29, 1936, issued and served its complaint in this proceeding upon respondent, Premier Peat Moss 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 Astor Hogg, 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 Mitchell Salem Fisher, 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, Premier Peat Moss Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office

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and place of business located at 150 Nassau Street, New York, N. Y. It is now, and has been for a period of more than three years, engaged in the business of importing and selling Swedish Peat Moss to wholesalers and retailers, for resale in commerce as herein set out.

PAR. 2. The respondent, being engaged in business as aforesaid, causes said Swedish Peat Moss, when sold by it, to be transported from its office and principal place of business in the State of New York to purchasers thereof located in the various States of the United States other than the State of New York, and in the District of Columbia. There is now, and has been at all times since the organization of respondent corporation, a constant current of trade and commerce in said Swedish Peat Moss 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. The 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 individuals and partnerships engaged in commerce among the various States of the United States and in the District of Columbia in the importation, sale, and distribution of peat moss imported from Germany and other foreign countries.

PAR. 4. Peat Moss consists of a vegetable matter partially decomposed in water, which, in the earlier stages of decomposition, is extensively used as soil conditioner, due to the fact that it has great water-absorbing and moisture-retaining capacities. It is also extensively used as a stable litter and for stable bedding. Germany and Sweden are the principal countries from which peat moss is imported. The respondent is the principal importer and distributor of Swedish Peat Moss in the United States.

PAR. 5. In such competition between the sellers of Swedish Peat Moss and sellers of German Peat Moss and peat moss from other countries, one of the controlling influences upon the purchasing public is the public opinion as to the comparative weight, absorbing capacity, ash content and moisture content of peat moss obtained from various sources.

PAR. 6. In the course and conduct of its business, as hereinbefore set out, in offering for sale and selling Swedish Peat Moss, respondent has published and distributed widely among its customers and prospective customers, and among the purchasing public generally, in the various States of the United States, a circular bearing the following caption:

(Typed in red ink.)

UNITED STATES DEPARTMENT OF AGRICULTURE, WASHINGTON, D. C.

states in its official circular No. 167

Moss Peat of good quality is light in weight, porous, spongy, fairly elastic, of yellow brown color, must have a high water absorbing capacity, a relatively low amount of woody material and ash.

The above quotation was, and is followed by a schedule, purporting to give results of tests wherein Swedish Peat Moss and German Peat Moss were compared, and a summary of the alleged advantages of Swedish Peat Moss over the German Peat Moss, as follows:

	Swedish Peat Moss	German Peat Moss	Advantages of Swedish Peat Moss
Raw Material.....	Sphagnum Peat...	Sphagnum Peat...	
Quality.....	Porous spongy.....	Felted spongy.....	More spongy and loose.
Absorbing Capacity: Analyses of New York State Experiment Station, Geneva, N. Y.	13.5 times.....	10.8 times.....	25% higher.
Ash Contents.....	1.03%.....	1.68%.....	40% less.
Molsture: Analysis of State Experiment Stations, New Haven, Conn., and Amherst, Mass. ¹	10%.....	15%.....	33% less moisture saving in weight.
Measurements.....	40 x 20 x 20", 12 cu. ft.	38 x 23½ x 22", 12 cu. ft.	
Contents: Official Measurement of Mayor's Bureau of Weights & Measures, City of New York.	22/23 bushels.....	20 bushels.....	2 to 3 bushels more.
Packing.....	New burlap, 8 slats 4 wires.	New burlap, 8 slats 4 wires.	
Average Weight of Bales:			
Horticultural.....	Approx. 150 lb.....	160 lb.....	Same size bales with lighter weight but larger contents.
Poultry Litter.....	Approx. 115 lb.....	150 lb.....	
Stable Bedding.....	Approx. 110 lb.....	140 lb.....	
Freight per Bale on basis of 30¢ per cwt.	37½¢.....	45¢.....	18% saving.
Wharfage and Loading on basis of 4¢ per cwt.	4½¢.....	6¢.....	20% saving.
Time in Loosening Contents of One Bale.	10 minutes.....	15 minutes.....	33% Labor saving.

¹ Moisture Tests:
 New Haven, Conn., 8.76% Swedish.
 New Haven, Conn., 9.03% Swedish.
 Cornell University (N. Y.), 11.57% Swedish.
 Amherst, Mass., 11.83% Swedish.
 Amherst, Mass., 13.15% German.
 Amherst, Mass., 16.98% German.

PREMIER PEAT MOSS CORPORATION,
 125 Nassau Street, New York. "The Better Peat Moss."

The respondent further caused the wide circulation in various states of the United States among customers, prospective customers, and the public generally, of a copy of a letter from Arthur W. Clark, Chief in Research Chemistry of the New York State Experiment Station at Geneva, New York, which copy of letter so circulated and distributed reads as follows:

MARCH 17, 1933.

PREMIER PEAT MOSS CORPORATION,
 125 Nassau Street, New York, New York.

GENTLEMEN: Analyses of the four samples of peat moss are as follows:

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No. 1—Horticultural Grade

Swedish:

Ash.....	1.02%
Nitrogen.....	0.88%
Organic matter.....	95.06%

No. 1—Poultry Litter

Ash.....	1.03%
Nitrogen.....	0.83%
Organic matter.....	91.12%

No. 2—Horticultural Grade

German:

Ash.....	1.84%
Nitrogen.....	0.94%
Organic matter.....	94.95%

No. 2—Poultry Litter

Ash.....	1.52%
Nitrogen.....	0.91%
Organic matter.....	91.36%

Sample No. 1—Horticultural Grade and Poultry Litter show an absorption of 13.5 parts of water to one part of peat moss, while sample No. 2 both Horticultural Grade and Poultry Litter show an absorption of 10.8 parts of water to one part of peat moss.

Very truly yours,

(Sgd) ARTHUR W. CLARK,
Chief in Research Chemistry.

The two words, "Swedish" and "German," which appeared in the copy of the letter hereinabove set out, were not in the original letter, but were written in by said respondent, and the presence of those two words is intended to disclose to the public the identity of the two brands of peat moss covered by the analyses. The respondent further published and issued a circular, which was distributed to dealers throughout the United States, which circular stated and represented, among other things:

RESULTS: Figures from the Custom House records of the Bureau of Foreign and Domestic Commerce show the volume of our import of Swedish peat moss for the months of October, November, and December, 1933, had reached over 93% of the total peat moss imports from Central Europe.

PAR. 7. The publication and distribution of the circular first herein set out was, and is for the purpose of creating, and it does create the impression upon the purchasing public generally that said circular presented an analysis and comparison of Swedish peat moss and German peat moss as made and promulgated by the United States Department of Agriculture in a government report, and that such

circular had the approval and sanction of the United States Department of Agriculture.

In truth and in fact, the circular first set out in paragraph 6 hereof is not an official report or bulletin of the United States Department of Agriculture. It does not contain any comparisons or analyses that have been made or authenticated by the United States Department of Agriculture, or by any branch of the Government, and was never promulgated by the United States Government, and it does not have the approval or sanction of the United States Government. As a matter of fact, the United States Department of Agriculture has never made any such comparisons or analyses between Swedish peat moss and German peat moss as is represented or shown in said circular.

The representations of the circular letter dated March 17, 1933, set out in paragraph 6 hereof, are misleading, in that, under all the circumstances, the publication and circulation of copies of the letter, making comparisons between an analysis of Swedish peat moss and an analysis of German peat moss, amount to representations, and imply that the figures therein given are the result of a complete, exhaustive, and independent analysis, and demonstrate the comparative absorbent capacity of Swedish and German peat moss, when, as a matter of fact, the analysis therein referred to and reported was not complete, exhaustive, and independent, and does not demonstrate the relative absorbent capacity of the two peat mosses.

The representations in the other circular in paragraph 6 hereof set out, that during the months of October, November, and December, 1933, 93% of the total volume of all peat moss imported from Central Europe came from Sweden, is inaccurate, false, and misleading, in that a greater volume of peat moss was not imported from Sweden than from Central Europe during said months.

PAR. 8. In and by the use of the circular first set out in paragraph 6 hereof, respondent represents that the analyses of New York Experiment Stations, Geneva, N. Y., prove that the absorbent capacity of Swedish peat moss is 25% higher than German peat moss; that the analyses of the State Experiment Stations of Connecticut and Massachusetts prove that Swedish peat moss has 33% less moisture than German peat moss, thereby effecting a saving in weight; and that the measurements of the Mayor's Bureau of Weights and Measurements of New York City demonstrate that a bale of Swedish peat moss contains from two to three more bushels of peat moss than is contained in a bale of German peat moss.

As a matter of fact, the analysis of New York Experiment Stations, Geneva, N. Y., does not prove that the absorbent capacity of

Swedish peat moss is 25% higher than German peat moss; the analyses of the Experiment Stations of Connecticut and Massachusetts do not prove that Swedish peat moss contains less moisture than German peat moss or affords a saving in weight; the measurements of the Mayor's Bureau of Weights and Measurements do not prove that a bale of Swedish peat moss contains from two to three bushels more peat moss than is contained in a bale of German peat moss. Said purported tests and measurements afford no bases in fact for the representations made, and such comparisons therein shown do not have the approval or indorsement of any department of the United States Government, Bureau, or Branch thereof, or of any department of any municipal or State Government, or bureau or branch thereof.

PAR. 9. The circulation of the circular first set out in paragraph 6 hereof has the capacity and tendency to mislead and deceive the respondent's customers and prospective customers, and the public generally, into purchasing Swedish peat moss in preference to German peat moss under the erroneous beliefs that:

(a) The circular referred to and the comparisons therein stated were issued, made and promulgated by the United States Government, and had the sanction and approval of the United States Department of Agriculture, and that the United States Department of Agriculture recommended Swedish peat moss in preference to German peat moss;

(b) The analysis of New York Experiment Stations, Geneva, N. Y., proved and demonstrated conclusively that the absorbing capacity of Swedish peat moss is 25% higher than German peat moss;

(c) The analysis of the said Experiment Stations at New Haven, Conn., and Amherst, Mass., proved and demonstrated conclusively that Swedish peat moss contains 33% less moisture than German peat moss, and thereby afforded a saving in weight.

(d) The measurements and tests of the Mayor's Bureau of Weights and Measurements of the city of New York proved and demonstrated conclusively that a bale of Swedish peat moss contains from two to three bushels more of peat moss than is contained in a bale of German peat moss.

The aforesaid circulation of copies of the letter set out in paragraph 6 hereof, dated March 17, 1933, has the capacity and tendency to mislead and deceive the respondent's customers and prospective customers, and the purchasing public generally, into the erroneous belief that the figures shown in said letter are the result of a complete, exhaustive, and independent analysis, and demonstrate the relative absorbent capacity of the two peat mosses.

The aforesaid use and circulation of the circular, containing the statement that the records of the Custom House of the Bureau of Foreign and Domestic Commerce revealed that the volume of imports into the United States of Swedish peat moss for the months of October, November, and December, 1933, had reached over 93% of the total volume of all peat moss from Central Europe, has the capacity and tendency to mislead and deceive the purchasing public into purchasing Swedish peat moss under the erroneous belief that a greater volume of peat moss was imported from Sweden than from the remainder of Central Europe during said months.

PAR. 10. The false and misleading representations hereinabove set out, made by the respondent, placed in the hands of Swedish peat moss retail dealers, wholesale dealers, and distributors an instrument and means whereby said dealers and distributors may be, and are encouraged and caused to, and do misrepresent, to a substantial portion of the consuming public, the evidence as to the relative merits of Swedish peat moss and German and other peat moss.

PAR. 11. There are, among the competitors of the respondent, many who import into the United States, and sell in interstate commerce, peat moss which is for the same general purpose as Swedish peat moss sold by respondent, but which competitors rightfully and truthfully represent the qualities and virtues possessed by such peat moss, and in no manner misrepresent the qualities or virtues thereof.

The above false and misleading representations and comparisons have the capacity and tendency to, and do, unfairly divert trade to the respondent from competitors engaged in the sale, in interstate commerce, of German and other imported peat moss, and thereby substantial injury is done to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, Premier Peat Moss 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 Edward M.

Order

24 F. T. C.

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 herein, and oral arguments by Astor Hogg, counsel for the Commission, and by Mitchell Salem Fisher, 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, Premier Peat Moss Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of peat moss in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) The use, in its advertising, of analyses or tests, of the merits of its own and competing peat moss, with the representation, express or implied, that said analyses or tests were made by, or under the supervision of, or have the sanction or approval of the United States Government, or any Bureau, or Branch thereof, when such is not the fact;

(2) Using the results of comparative analyses and other tests of its own and competing peat moss under such circumstances and with such representations as to induce the belief that said analyses and tests were complete and exhaustive, and that they demonstrate the comparative qualities and merits of respondent's and competing peat moss, when such are not the facts;

(3) Misrepresenting statistics of the United States Government, or statistics contained in reports of the United States Government, with respect to the supply of, or demand for, or the comparative quality or merits of respondent's peat moss as compared with competing peat moss;

It is further ordered, That the respondent shall, within 30 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 this order.

Syllabus

IN THE MATTER OF
LUMBER MILLS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2796. Complaint, May 4, 1936—Decision, Dec. 7, 1936*

Where a corporation engaged in the distribution and sale of sash, windows, doors, molding, and mill work, in substantial competition with others likewise thus engaged, and also with those engaged in manufacturing, distributing and selling such products, and including among its said competitors many who do not manufacture the products dealt in by them or in any way represent themselves as manufacturers of such products, and many who manufacture, distribute, and sell such products made from the botanical "Pinus ponderosa," and who do not in any way represent said products as actually made from the botanical "Pinus strobus," or white pine, but truthfully represent the same as made from the wood of and from which they are in fact made—

- (a) Represented, through use of word "Mills" in its corporate name, displayed and featured in its catalogs and price lists and on its letterheads, order blanks, invoices, and other literature, and through a design displaying and featuring said word, and statement that it was "offering these remarkable values at this time to keep our factory busy during the winter months," etc., that it owned, operated, or controlled a mill wherein lumber products were converted or made into sash, windows, doors, molding, and similar mill work, notwithstanding fact it was not, as understood by trade and purchasing public generally, such a manufacturer, with which a substantial portion of wholesale and retail purchasers of such products prefer to deal direct, as thereby securing them, in their belief, closer prices, superior quality and other advantages, as compared with dealing through a selling agency or middleman; and
- (b) Made use of words "white pine" in catalogs and price lists to designate wood from which many of the products sold by it were made, notwithstanding fact wood in question was the botanical "Pinus ponderosa," obtained from the species native to the mountainous region of the Pacific Coast, and was not the substantially more costly and generally preferred commercial white pine, or botanical "Pinus strobus," to which, in softness, ease of working, ability to stay in place, relative freedom from resinous substances, durability under exposure, and uniformity, it was inferior;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said various representations were true, and with the result that, induced by such false and misleading statements and representations, and as a consequence of the mistaken and erroneous beliefs thus induced, the consuming public purchased a substantial volume of its said products and trade was unfairly diverted to it from its competitors likewise engaged in distributing and selling similar products made from wood, and who truthfully advertise and represent the nature and character of their business and of the wood from which their said products are actually made; to the substantial injury of competition in commerce:

Complaint

24 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 J. Keenan*, trial examiner.

Mr. J. T. Welch 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 Lumber Mills Co., 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, Lumber Mills 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 located at 11 So. La Salle Street in the city of Chicago, State of Illinois. Respondent is now, and has been for some years, engaged in the business of distributing and selling, in commerce as herein set out, sash, windows, doors, molding, and mill work made from wood.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said sash, windows, doors, molding, and mill work, when sold, to be transported from its office and principal place of business in the State of Illinois or from the place of origin of said shipment to the purchasers thereof located at various points in States of the United States other than the State of Illinois or the State of the origin of said shipment and there is now, and has been at all times since the organization of respondent corporation, a constant current of trade and commerce in said sash, windows, doors, molding, and mill work so distributed and sold by the respondent, 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, respondent is now, and has been, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling or of manufacturing, distributing and selling sash, windows, doors, molding, and mill work 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 individuals, firms, and corporations to purchase

its sash, windows, doors, molding, and mill work, respondent has caused catalogs and price lists to be printed and circulated throughout the various States of the United States to customers and prospective customers. In all of said catalogs and price lists the respondent has caused its corporate name "Lumber Mills Co." to be prominently and conspicuously displayed. Said corporate name containing the word "Mills," is also prominently displayed on respondent's letterheads, order blanks, invoices, and other business literature. Respondent has also adopted a design, the same consisting of the word "Lumber" in cut-out letters with a black background and the letters "MILLS CO." in considerably larger type directly thereunder, the entire design being shaped somewhat like a shield and having the general appearance of a trademark. In some of its advertising literature the respondent has also made use of the following statement: "Prices are going higher. In the face of a rising market we are offering these remarkable values at this time to keep our factory busy during the winter months, to help employment and to help our dealer customers in combatting mail order competition."

The use of the word "Mills" in its corporate name and in the design above referred to, together with the use of statements identical with or similar to the hereinabove quoted statement serve as representations to the respondent's customers, prospective customers and the general buying public that the respondent owns, operates, or controls a mill wherein lumber products are converted or manufactured into sash, windows, doors, molding, and similar mill work.

PAR. 5. Respondent does not, in fact, own, operate, or control any mill or mills for the manufacture from lumber of mill work such as windows, sash, doors, and moldings. Respondent is not engaged in the business of manufacturing and is not itself a manufacturer as those terms are understood by the trade and the purchasing public generally, but is engaged solely in a business of distributing and selling sash, windows, doors, molding, and mill work manufactured from lumber by others.

PAR. 6. A substantial portion of the wholesale and retail purchasers of sash, windows, doors, molding, and mill work have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased. Such purchasers believe that they secure closer prices, superior quality and other advantages in dealing direct with the manufacturer rather than a selling agency or middleman.

PAR. 7. In the course of the operation of said business, and for the purpose of inducing individuals, firms, and corporations to purchase its sash, windows, doors, molding, and mill work, the respondent, in its aforementioned catalogs and price lists, has made extensive use of

the words "white pine" to designate the wood from which many of the wood products sold by it are made. The designation of said products by use of the words "white pine" in describing them serves as a representation to customers, prospective customers and the purchasing public generally that said products, to wit, sash, windows, doors and moldings are actually made of and from white pine.

The wood from which said sash, windows, doors, and moldings, designated by the respondent as "white pine," are actually produced, is obtained from that certain species of tree native to the mountainous regions of the Pacific slope, botanically designated as "*Pinus ponderosa*." Said *Pinus ponderosa* does not, either botanically or by common name or in the character of lumber made therefrom, belong to that group of pine species known as white pine as set forth in Paragraph Eight.

PAR. 8. There is a certain group of pine species known both popularly and botanically as "white pines." They are a species of the genus *Pinus*, having certain botanical marks of distinction from other pines, and are further characterized by light, close-grained, soft wood in which the early- and late-formed portions of the annual rings or layers are not sharply defined and have thin and nearly white sap wood. Among the species of pine belonging to said described white pine groups is that botanically known as "*Pinus strobus*." For many years *Pinus strobus* has been known as a building wood, has proved its remarkable value and has gained universal esteem among the trade and the purchasing public generally under its common designation of "white pine."

The wood of *Pinus strobus* is commonly characterized by its softness, ease of working, its ability to stay in place after being fitted, its comparative freedom from resinous substances, its durability in uses where exposed to influences of decay and by its exceptionally high degree of uniformity of quality both locally and throughout its range and in individual specimens of the species. In each of these respects, and especially as regards uniformity of quality, the said *Pinus strobus* excels *Pinus ponderosa*. By reason of the above described characteristics and excellence products made from the *Pinus strobus* have a general tendency in lumber markets to command, and in general have commanded, a substantially higher price than products made from *Pinus ponderosa*. A substantial portion of the purchasing public have expressed, and have, a preference for products made from genuine white pine over products made from *Pinus ponderosa* or any other species of wood.

PAR. 9. Many of the respondent's competitors who manufacture, distribute and sell sash, windows, doors, and molding and other wood

products, including lumber, made from *Pinus ponderosa* do not in any way represent that said products are actually made from *Pinus strobus* or white pine but truthfully represent said products to be made from the wood of and from which they are actually made.

Many of respondent's competitors who distribute and sell sash, windows, doors, moldings and similar mill work do not manufacture the products sold by them and do not in any way represent that they are the manufacturer of said products.

PAR. 10. Each and all of the false and misleading statements and representations made by the respondent in designating itself as a manufacturer by use of the word "Mills" in its corporate name and otherwise and in designating or describing the wood from which its sash, windows, doors, and moldings are made as being white pine or *Pinus strobus*, as hereinabove set out, in its catalogs, price lists and other advertising literature, in offering for sale and in selling its products 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 the mistaken and erroneous beliefs, induced by the acts, advertisements and misrepresentations of the respondent, as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's products such as sash, windows, doors and molding with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of distributing and selling similar products made from wood who truthfully advertise and represent the nature and character of their business and the nature and character of the wood from which said products are actually 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. 11. 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 Commis-

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, on May 4, 1936, issued and served its complaint in this proceeding upon respondent, Lumber Mills Co., 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 James T. Welch, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Edward M. Meany, 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 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, Lumber Mills Co., was organized on January 4, 1904 under and by virtue of the laws of the State of Illinois. Its principal office and place of business is located at 11 South La Salle Street, in the city of Chicago, State of Illinois. It is now, and has been, since its incorporation, engaged in the business of distributing and selling sash, windows, doors, molding, and mill work made from wood.

When orders are received for any of the products made from wood which it sells, it causes said products to be shipped and transported from its principal place of business in the State of Illinois, or from some other point where said products are manufactured or stored, to the purchasers thereof located at various points, in States of the United States other than the State of Illinois, or the State from which said shipments originate. The respondent has, at all times, maintained a constant current of trade in said products made from wood, in commerce among and between the various States of the United States and in the District of Columbia.

At all times since its incorporation, respondent has been in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling, or of manufacturing, distributing and selling sash, windows, doors, molding, and mill work made from wood, in commerce among and

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

PAR. 2. In order to induce the purchase of the products made from wood which it sells, respondent has caused to be printed and circulated throughout the various States of the United States to customers and prospective customers, various catalogues and price-lists. In all of said catalogues and price-lists, its corporate name, "Lumber Mills Co.," has been prominently and conspicuously displayed. The corporate name containing the word "Mills" is also prominently displayed on respondent's letterheads, order blanks, invoices and other business literature. The respondent has also adopted a design consisting of the word "Lumber" in cut-out letters with a black background and the letters "Mills Co." in considerably larger type directly thereunder. The entire design is shaped like a shield and has a general appearance of a trade-mark. In some of its advertising literature, respondent has also made use of the following statement:

Prices are going higher. In the face of a rising market we are offering these remarkable values at this time to keep our factory busy during the winter months, to help employment and to help our dealer customers in combatting mail order competition.

The use of the word "Mills" in its corporate name and in the design above referred to, together with the use of statements identical with or similar to the statement, hereinabove quoted, serve as representations to the respondent's customers and the general buying public that the respondent owns, operates, or controls a mill wherein lumber products are converted or manufactured into sash, windows, doors, molding, and similar mill work.

PAR. 3. Respondent does not, in fact, own, operate or control any mill or mills for the manufacture from lumber of mill work such as windows, sash, doors, and molding. Respondent is not engaged in the business of manufacturing and is not itself a manufacturer as those terms are understood by the trade and the purchasing public generally, but is engaged solely in a business of distributing and selling sash, windows, doors, molding, and mill work manufactured from lumber by others.

PAR. 4. A substantial portion of the wholesale and retail purchasers of sash, windows, doors, molding and mill work have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased. Such purchasers believe that they secure closer prices, superior quality and other advantages in dealing direct with the manufacturer rather than a selling agency or middleman.

PAR. 5. In its catalogues and price-lists, the respondent has also used the words "white pine" to designate the wood from which many of the wood products sold by it are made. This designation serves as a representation to customers, prospective customers and the purchasing public generally that said products are actually made of, and from, white pine.

The wood used in making said sash, windows, doors, and molding, designated by the respondent as being "white pine," is obtained from that certain species of tree native to the mountainous regions of the Pacific slope which is botanically designated as "*Pinus ponderosa*." Said *Pinus ponderosa* does not, either botanically or by common name, or in the character of lumber made therefrom, belong to that group of pine species known as white pine.

PAR. 6. There is a certain group of pine species known both popularly and botanically as "white pines." They are a species of the genus *Pinus*, having certain botanical marks of distinction from other pines, and are further characterized by light, close-grained, soft wood in which the early and late formed portions of the annual rings or layers are not sharply defined and have thin and nearly white sap wood. Among the species of pine belonging to said described white pine groups is that botanically known as "*Pinus strobus*." For many years *Pinus strobus* has been known as a building wood, has proved its remarkable value and has gained universal esteem among the trade and the purchasing public generally under its common designation of "white pine."

The wood of *Pinus strobus* is commonly characterized by its softness, ease of working, its ability to stay in place after being fitted, its comparative freedom from resinous substances, its durability in uses where exposed to influences of decay and by its exceptionally high degree of uniformity of quality both locally and throughout its range and in individual specimens of the species. In each of these respects, and especially as regards uniformity of quality, the said *Pinus strobus* excels *Pinus ponderosa*. By reason of the above described characteristics and excellence, products made from the *Pinus strobus* have a general tendency in lumber markets to command, and in general have commanded, a substantially higher price than products made from *Pinus ponderosa*. A substantial portion of the purchasing public have expressed, and have, a preference for products made from genuine white pine over products made from *Pinus ponderosa* or any other species of wood.

PAR. 7. Many of the respondent's competitors who manufacture, distribute and sell sash, windows, doors, and molding and other wood products, including lumber, made from *Pinus ponderosa* do not in

any way represent that said products are actually made from *Pinus strobus* or white pine but truthfully represent said products to be made from the wood of and from which they are actually made.

Many of respondent's competitors who distribute and sell sash, windows, doors, moldings and similar mill work do not manufacture the products sold by them and do not in any way represent that they are the manufacturers of said products.

PAR. 8. The false and misleading statements and representations made by the respondent in designating itself as a manufacturer by use of the word "Mills" in its corporate name and in its advertising literature, and in designating or describing the wood from which its wood products are made as being white pine, in its catalogues, price-lists and other advertising literature, in offering for sale and selling its products, were, and are, calculate to, and had, and now have, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct consequence of the mistaken and erroneous beliefs, induced by the false and misleading statements and representations above referred to, the consuming public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of distributing and selling similar products made from wood, who truthfully advertise and represent the nature and character of their business and the nature and character of the wood from which said products are actually 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.

CONCLUSION

The aforesaid acts and practices of the respondent, Lumber Mills 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 DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent

¹ Order published as modified on Feb. 24, 1937.

ent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said 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 the respondent, Lumber Mills Co., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of sash, windows, doors, molding, and mill work made from wood in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the words "white pine," or the letters "w. p." alone or in conjunction with any other word or words of similar meaning to designate any lumber product made from the trees of the species *Pinus Ponderosa*;

2. Representing, directly or indirectly, through the use of the words "white pine" or the letters "w. p.," alone or in conjunction with any other word or letters, that sash, windows, doors, molding and mill work made from wood of the tree species *Pinus Ponderosa* are made from white pine;

3. Representing, directly or indirectly, through the use of the word "Mills" or any word or words of similar import and meaning in its business or advertising literature that it is the manufacturer of the products which it sells or that it owns, operates or controls any mills wherein said products are manufactured;

4. Using the word "Mills," alone or in conjunction with other words of similar import and meaning in its corporate or trade name, unless there appear in close proximity thereto and in letters of equal prominence other words clearly indicating that it is not the manufacturer of the products which it sells and does not own, operate or control the mills wherein said products are actually made.

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
PLOUGH, INCORPORATED

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

Docket 2817. Complaint, May 21, 1936—Decision, Dec. 7, 1936

Where a corporation engaged in the distribution and sale of a certain acetyl salicylic acid product under the designation "St. Joseph Aspirin," in substantial competition with those likewise engaged in the distribution and sale of such products, and including many who manufacture, distribute, and sell aspirin without misrepresenting the quality or character of their respective products or the effectiveness thereof in use for the treatment of various conditions of the body, and who do not falsely disparage such products of their respective competitors; in advertising the same in newspapers and periodicals of general circulation throughout the United States, together with featured display of the aforesaid name of its said product—

(a) Represented that same gave quicker relief than, and was superior to, other aspirin and was fully effective for pains and colds and always brought prompt relief to those suffering therefrom, and that it exceeded in purity and accuracy of ingredients the rigid standards set by the United States Government, through such statements, in substance, as thus indicated, and "Brings quicker relief", etc.;

Facts being that it does not give quicker relief than other aspirin of standard quality that meets requirements of United States Pharmacopoeia, is not fully effective for treatment of pains and colds and has no effect on the causative factors thereof, its use does not always bring prompt relief to those suffering from conditions named, Government has no stipulated standards for aspirin, and specifications of the said Pharmacopoeia are minimum, with no upper limit, and its aforesaid representations and statements, with respect to nature and effect of its said product, were exaggerated, misleading and untrue, and unfairly disparaged such products of its competitors; and

(b) Represented that the cellophane wrappings of the containers of its said aspirin protected the purity of said product and were materially beneficial thereto, and that such a product required such wrapping under usual and normal conditions of sale to protect it from deterioration caused by moisture, and that failure so to wrap such products decreased their value or potency, through such statements as "Purity further protected by moisture-proof cellophane wrapping," and "to guard this purity further, each package is wrapped and sealed in moisture-proof cellophane;"

Facts being aspirin does not dissolve or deteriorate under usual and customary methods of merchandising, and wrapping of the containers of such product in moisture proof cellophane wrapping does not add to or protect the purity thereof and is not materially beneficial thereto, and failure of manufacturer or distributor of such products thus to wrap same does not decrease their value or potency;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous belief that its said "St. Joseph Aspirin"

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gave quicker relief than other aspirin and had the properties thus claimed and implied therefor as above set forth, and that aspirin requires such cellophane wrapping as above indicated, and further to mislead and deceive a substantial portion of such public into erroneous and mistaken beliefs that aspirin products of competitors were inferior to and less effective than its said products for the reason they were not thus enclosed and for other reasons, and with result that a substantial number of the consuming public bought a substantial volume of its said product, and trade was unfairly diverted to it from competitors likewise engaged in distribution and sale of aspirin and who truthfully advertise and represent their products and the effectiveness thereof in use; to the 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. J. T. Welch for the Commission.

Lake-Spiro-Cohn and *Goodman & Galella*, of Memphis, Tenn., 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 Plough, 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, Plough, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located in the city of Memphis, State of Tennessee. Respondent is now, and has been for some years, engaged in the business of distributing and selling, in commerce as herein set out, a certain acetyl salicylic acid product known as "St. Joseph Aspirin."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said aspirin, when sold, to be transported from its principal place of business in the State of Tennessee to purchasers thereof located at various points in other States of the United States and in the District of Columbia. Respondent now maintains, and has maintained at all times, a constant current of trade and commerce in said aspirin so distributed and sold by it, among and between 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, firms, and individuals likewise engaged in the business of distributing and selling acetyl salicylic acid products such as aspirin, in commerce among and between 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 individuals, firms, and corporations to purchase said St. Joseph aspirin, respondent has caused advertisements to be inserted in newspapers and periodicals of general circulation throughout the United States. In all of said advertisements, respondent has caused the name of said product to wit: St. Joseph aspirin, to be prominently and conspicuously displayed, together with the following statements:

- (1) Brings quicker relief.
Fully effective for pains and colds.
Challenges the world in prompt pain relief.
Stops pain promptly.
It always brings prompt relief from pain and colds.
- (2) Even exceeds in purity the rigid standards of the United States Government.
So pure and accurate that it exceeds the rigid standards of the United States Government.
- (3) Purity further protected by moisture proof cellophane wrapping.
And to guard this purity further, each package is wrapped and sealed in moisture proof cellophane.

All of said statements, together with many similar statements, appearing in respondent's advertisements purport to be descriptive of its product. In all of its advertising literature, the respondent represents, through the statements and representations herein set out and other statements of similar import and effect, that (1) St. Joseph aspirin gives quicker relief than, and is superior to, other aspirin; (2) that St. Joseph aspirin is fully effective for pains and colds and its use always brings prompt relief to those suffering from pain and colds; (3) that St. Joseph aspirin exceeds in purity and accuracy of ingredients rigid standards set by the United States Government; (4) that wrapping of containers for St. Joseph aspirin in cellophane wrappings protects the purity of, and is materially beneficial to, said aspirin; and (5) that aspirin requires wrapping in cellophane, under usual and normal conditions of sale, to protect it from deterioration caused by moisture and failure to so wrap aspirin products decreases their value or potency.

PAR. 5. The representations made by respondents with respect to the nature and effect of its aspirin when used are grossly exaggerated,

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false, misleading, and untrue. In addition, said representations and statements serve to, directly and by inference, disparage aspirin products of respondent's competitors. In truth and in fact, St. Joseph aspirin does not give quicker relief than other aspirin of standard quality and is not superior to other aspirin of standard quality. It is not fully effective for the treatment of pains and colds and has no effect on the causative factors of such conditions of the human body and its use does not always bring prompt relief to those suffering from the conditions named. The United States Government has not established standards for aspirin and such specifications for aspirin as are set out in the United States Pharmacopoeia are minimum specifications and there is no upper limit thereof. In truth and in fact, aspirin does not dissolve or deteriorate under the usual and customary methods of merchandising and the wrapping of the container of said product in a cellophane wrapping does not add to or protect the purity of said product and is not materially beneficial to said product. Failure to wrap aspirin in cellophane wrapping does not decrease the value or potency thereof.

PAR. 6. There are among respondent's competitors many who manufacture, distribute and sell aspirin who in no way misrepresent the quality or character of their respective aspirin or its effectiveness in use for the treatment of various conditions of the human body and who do not falsely disparage the aspirin products of their respective competitors.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating and describing its product and the effectiveness of its product, as hereinabove set out, in offering for sale and selling St. Joseph aspirin was, and is, calculated to, and had, and now has, the 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 to the further erroneous belief that aspirin products of its competitors are inferior to and less effective than St. Joseph aspirin for the reason that said products are not enclosed in cellophane wrappings and for other reasons. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and misrepresentations of the respondent, as hereinabove detailed, a substantial number of the consuming public has purchased a substantial volume of respondent's St. Joseph aspirin with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling aspirin who truthfully advertise and represent their products and the effectiveness of said products in use. As a result thereof, 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. 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 21, 1936, issued and served its complaint in this proceeding upon respondent Plough, 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 James T. Welch, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Leo Goodman, 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 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 Plough, Inc., is a corporation, organized and doing business under and by virtue of the laws of Delaware. Its principal office and place of business is located in the city of Memphis, State of Tennessee. It has been, and is now, engaged in the business of distributing and selling, in commerce among and between the various States of the United States, a certain acetyl salicylic acid product designated by it as "St. Joseph Aspirin."

PAR. 2. When orders are received for said aspirin, the respondent causes said product to be shipped from its place of business in the

State of Tennessee to the purchasers thereof located at various points in other States of the United States and in the District of Columbia. Respondent has at all times maintained a constant current of trade in the aspirin distributed and sold by it, in commerce among and between the various States of the United States.

PAR. 3. In the sale of said St. Joseph aspirin, Plough, Inc., is now, and has been, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling acetyl salicylic acid products, such as aspirin, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. For the purpose of inducing the purchase of St. Joseph aspirin, respondent has caused various advertisements to be inserted in newspapers and periodicals of general circulation throughout the United States. In all of said advertisements, it has caused the name of said product, to wit: St. Joseph Aspirin, to be prominently and conspicuously displayed, together with the following and many similar statements:

- (1) Brings quicker relief.
Fully effective for pains and colds.
Challenges the world in prompt pain relief.
Stops pain promptly.
It always brings prompt relief from pain and colds.
- (2) Even exceeds in purity the rigid standards of the United States Government.
So pure and accurate that it exceeds the rigid standards of the United States Government.
- (3) Purity further protected by moisture proof cellophane wrapping.
And to guard this purity further, each package is wrapped and sealed in moisture proof cellophane.

All of said statements, together with many similar statements, appearing in respondent's advertisements, purport to be descriptive of its product. In all of its advertising literature, the respondent represents, through the statements and representations herein set out and other statements of similar import and effect, that (1) St. Joseph aspirin gives quicker relief than, and is superior to, other aspirin; (2) that St. Joseph aspirin is fully effective for pains and colds and its use always brings prompt relief to those suffering from pain and colds; (3) that St. Joseph aspirin exceeds in purity and accuracy of ingredients rigid standards set by the United States Government; (4) that wrapping of containers for St. Joseph aspirin in cellophane wrappings protects the purity of, and is materially beneficial to, said aspirin; and (5) that aspirin requires wrapping in cellophane, under usual and normal conditions of sale, to protect it

from deterioration caused by moisture and that failure to so wrap aspirin products decreases their value or potency.

PAR. 5. The aforesaid representations made by respondent with respect to the nature and effect of its aspirin product are exaggerated, misleading and untrue. In addition, said representations and statements serve to, directly or by inference, unfairly disparage aspirin products of respondent's competitors. St. Joseph aspirin does not give quicker relief than other aspirin of standard quality that meets the requirements of the United States Pharmacopoeia. It is not fully effective for the treatment of pains and colds and has no effect on the causative factors of either pains or colds, but does possess analgesic properties. Its use does not always bring prompt relief to those suffering from the conditions named. The United States Government has no stipulated standards for aspirin. Such specifications for aspirin as are set out in the United States Pharmacopoeia are minimum specifications and there is no upper limit thereof. The requirements of the United States Pharmacopoeia are as follows:

Acetyl salicylic acid when dried to constant weight over sulphuric acid contains not less than 99.5 per cent of acetyl salicylic acid. (Page 14, Pharmacopoeia of the United States, 11 Decennial Revision.)

St. Joseph aspirin does exceed the requirements of the United States Pharmacopoeia in that it contains more than 99.5% of acetyl salicylic acid. Aspirin does not dissolve or deteriorate under usual and customary methods of merchandising the product and the wrapping of the container of said product in a moisture proof cellophane wrapping does not add to or protect the purity of the product and is not materially beneficial to said product. The failure of the manufacturer or distributor of aspirin products to wrap said products in cellophane wrapping does not decrease the value or potency of said products.

PAR. 6. There are among respondent's competitors many who manufacture, distribute and sell aspirin who in no way misrepresent the quality or character of their respective aspirin or its effectiveness in use for the treatment of various conditions of the human body and who do not falsely disparage the aspirin products of their respective competitors.

PAR. 7. The various statements and representations made by the respondent in describing its product, St. Joseph aspirin, and the effectiveness of said product in use, have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken beliefs (1) that St. Joseph aspirin gives quicker relief than other aspirin; (2) that St. Joseph aspirin

is fully effective for pains and colds and its use always brings prompt relief to those suffering from pains and colds; (3) that St. Joseph aspirin exceeds in purity and accuracy of ingredients the rigid standards set by the United States Government; (4) that the wrapping of containers of St. Joseph aspirin in cellophane wrappers protects the purity of and is materially beneficial to said aspirin; and (5) that aspirin requires wrapping in cellophane under usual and normal conditions of sale to protect it from deterioration caused by moisture and that failure to so wrap aspirin products decreases their value or potency. Said representations and statements have also had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken beliefs that aspirin products of its competitors are inferior to and less effective than St. Joseph aspirin for the reason that said products are not enclosed in cellophane wrappings and for other reasons.

As a direct consequence of these mistakes and erroneous beliefs, a substantial number of the consuming public have purchased a substantial volume of St. Joseph aspirin with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling aspirin who truthfully advertise and represent their products and the effectiveness of said products in use. As a result of the acts and practices, herein set out, 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, Plough, 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 respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said 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 provi-

sions of an Act of 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, Plough, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a certain acetyl salicylic acid product known as "St. Joseph Aspirin," in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing either directly or by inference, through advertisements inserted in newspapers, magazines, and periodicals of general circulation, radio announcements, booklets, pamphlets, or other advertising literature, or through any other means:

1. that St. Joseph aspirin gives quicker relief than other aspirin;
2. that St. Joseph aspirin is fully effective for pains and colds, and is the best thing in the world to stop pain, and its use always brings prompt relief to those suffering from pains and colds;
3. that St. Joseph aspirin exceeds in purity and accuracy of ingredients, rigid standards set by the United States Government;
4. that wrapping of containers for St. Joseph aspirin in transparent cellulose film, commonly designated as cellophane, preserves or adds to the purity or the freshness of aspirin, or is materially beneficial to said aspirin;
5. that aspirin requires wrapping in transparent cellulose film, commonly designated as cellophane, under usual and normal conditions of sale, to protect it from deterioration caused by moisture;
6. that failure to wrap aspirin products in moisture-proof transparent cellulose film, commonly designated as cellophane, decreases the value or potency of said aspirin.

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
JEAN VIVADOU AND HENRY G. LUBIN, DOING BUSINESS
AS JEAN VIVADOU COMPANY

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

Docket 2820. Complaint, May 26, 1936—Decision, Dec. 8, 1936.

Where two partners engaged in the manufacture and sale of toilet sundries, and with principal and only office or place of business in New York City—

- (a) Represented, through use of the word "Paris" in their letterheads, circulars, containers, and advertising matter, that they maintained offices in said city, notwithstanding fact they had no office, factory, or branch in said city, or in any other city or town so named, with result that a substantial portion of purchasing public was led to believe that their said products were made in or imported from France, for the toilet articles of which there is a well-known and marked preference on the part of many members of said public;
- (b) Described a certain toilet article, in invoices, literature, advertising and correspondence, as "Lagoona" and "Sea Sponge," and in circulars accompanying the same and in its advertising describing the same as therapeutic, ultra-violet ray treated, and a great health discovery, etc., referred thereto as a "sponge," "Sea Sponge," "Wonder Sponge," "natural sea growth," "spawned in the romantic far away depths of the South Pacific waters, plucked by adventurous men," and subjected to the "alchemy of the waters of the Pacific Ocean," facts being said article was a vegetable which resembled an elongated gourd, grown on bushes or shrubs on land and known and described as a "loofa," and aforesaid various statements were false; and
- (c) Described a certain toilet article, in its invoices, correspondence, circulars and advertising, as a "Swansdown Puff," facts being said article was not made from that especially grown and treated goose down or swansdown, as known to trade and consuming public and as long thus designated and known, but was made from loose feathers or Marabou and was a decidedly cheap and inferior imitation of the article known and designated by trade as "Swansdown;"

With effect of misleading and deceiving a substantial portion of purchasing and consuming public into erroneous belief that all said representations were true, and into purchase of their said products in reliance thereon, and of unfairly diverting trade to them from competitors engaged in the sale in commerce of similar toilet sundries, who truthfully represent the nature and facts of their respective businesses, and character and quality of their respective products, to the substantial injury of the purchasing public and of other dealers and manufacturers of such sundries in competition with them, and with effect of placing in the hands of wholesalers, jobbers, and retailers the means of making such false and misleading representations to the purchasing public, and of thereby increasing their own sales of such dishonestly advertised or represented articles, and lessening market

for similar goods sold by other merchants, true nature of which is honestly stated:

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. James M. Hammond for the Commission.

Mr. Stephen M. Bell, of New York City, for respondents.

COMPLAINT

Pursuant to a provision of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Jean Vivadou and Henry G. Lubin, copartners doing business under the firm name and style of Jean Vivadou 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 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, Jean Vivadou and Henry G. Lubin, are copartners, doing business under the firm name and style of Jean Vivadou Company, with their office and principal place of business located at 135 West 20th Street, New York City, in the State of New York. They are now, and have been, for a long time last past, engaged in the business of manufacturing toilet sundries in the State of New York, and shipping said 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 respondents in the aforesaid toilet sundries. In the course and conduct of their business the respondents are now, 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 sale of toilet sundries between and among the various States of the United States and the District of Columbia.

PAR. 2. Respondents market their products under the trade name "De Marsay," which name is printed on the containers in which their products are sold, in circulars accompanying the same, and on its letterheads and other advertising matter.

PAR. 3. In the course and conduct of their business as described in paragraphs 1 and 2 hereof, and for a long time last past, respondents

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herein, in soliciting the sale of and selling their merchandise in commerce, as defined in said act, make use on their letterheads, circulars, trade literature, and advertising matter, in making and promoting the sales of their products as defined in paragraphs 1 and 2 hereof, of the word "Paris" in a manner calculated, or tending to show, and to represent, either directly or by implication, that they maintain offices at Paris, France, it being well known to respondents that many members of the purchasing public have a marked preference for toilet articles made in and imported from France. By means of which statements or representations a substantial portion of the purchasing public are led to believe that respondents' products are made in or imported from France.

In truth and in fact respondents have or maintain no office, factory, or plant, in Paris, France, or any other city or town by the name of Paris, and their principal and only office or place of business is located in New York City, State of New York.

PAR. 4. In the course and conduct of their business, and for a long time last past, respondents herein are and have been soliciting the sale of and selling in commerce, as defined in paragraph 1 hereof, a toilet article described in their invoices, literature, advertising and correspondence, as:

LAGOONA

SEA SPONGE

In the circulars accompanying said article and in its advertising, statements are made in reference to the same, such as:

THERAPEUTIC

Ultra-Violet Ray Treated.

Sea Sponge for Young and Old.

A great health discovery—LAGOONA, Spawned in the romantic far away depths of the South Pacific waters, plucked by adventurous men—LAGOONA is then taken to the laboratories of a nationally known chemist. The alchemy of the waters of the Pacific Ocean is within this Natural sea growth. LAGOONA by itself is a Wonder Sponge, but, with its further treatment and additional life-giving forces of Ultra-Violet Rays, it becomes an aid to good health.

In truth and in fact, the article described above is not a "Sea Sponge," is not "Therapeutic," is not "Ultra-Violet Ray Treated," is not "Spawned in the far away depths of the South Pacific waters," is not "plucked by adventurous men," has never been subjected to the "alchemy of the waters of the Pacific Ocean," and is not "taken to the laboratories of a nationally known chemist," is not a "Natural

sea growth," is not a "Wonder sponge," or a "sponge," but is a vegetable, resembling an elongated gourd, which grows on bushes or shrubs on land, and is a vegetable known and described as a loofah.

PAR. 5. In the course and conduct of their business, and for a long time last past, respondents have been and are now soliciting the sale of and selling in commerce, as defined in paragraph 1 hereof, a toilet article described in its invoices, correspondence, circulars, and advertising as a "Swansdown Puff."

In truth and in fact, the toilet article designated by respondent as a "Swansdown Puff" is not Swansdown as that article is known to the trade and to the consuming public, but consists of a puff made and manufactured from the feathers of the Marabou, a species of stork.

PAR. 6. The acts and practices of respondent in falsely representing, advertising, marking and branding their products, or containers thereof, in such a manner as to indicate, or to import or imply, that they have an office or branch in the city of Paris, and the practice of falsely marking, branding or representing in their circulars, advertising, or invoices, a toilet article known as a "loofah" as being a "sponge," "Sea Sponge," a "Wonder sponge" which is "Therapeutic," "Ultra-Violet Ray Treated," "A great health discovery," "Spawned in South Pacific waters," and in the other ways described in paragraph 4 hereof, and the further practice of the respondents in falsely marking, branding, advertising, and selling puffs manufactured from stock feathers as "Swansdown," are all, or any of such representations are, 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 to purchase respondents' products in reliance on said representations. Because of such erroneous beliefs, trade is diverted to respondents from competitors engaged in the sale in interstate commerce of similar toilet sundries. As a result thereof, substantial injury has been and is now being done by respondents to the purchasing public, and other dealers and manufacturers of toilet sundries who truthfully represent their respective products, in competition with respondents, in commerce among and between the various States of the United States and the District of Columbia.

Respondents have also placed in the hands of wholesalers, jobbers, and retailers, the means of making such false and misleading representations as above described, to the purchasing public, by which means, or any of them, they have increased their own sales of said toilet articles so dishonestly advertised or represented, thereby

lessening the market for similar goods sold by other merchants, the true nature of which is honestly stated.

PAR. 7. There are among the competitors of respondents, engaged in the sale of toilet sundries, as set forth in paragraph 1 hereof, individuals, corporations, firms, and partnerships, who do have offices or branches in Paris, and who do sell "sponges" or "sea sponges," and who do sell "swansdown" puffs in interstate commerce and so represent their products; and there are likewise other firms, corporations, partnerships, and individuals likewise engaged in interstate commerce, who do not have offices or branches in Paris, who do sell the article known and described as a loofah, and who do sell puffs made from marabou or stork feathers, which competitors do not in any manner misrepresent the location, nature, or extent of their business, or the nature, source or composition of their products.

PAR. 8. 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 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 26, 1936, issued and served its complaint in this proceeding upon the respondents Jean Vivadou and Henry G. Lubin, copartners doing business under the firm name and style of Jean Vivadou 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by James M. Hammond, 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 Stephen M. Bell, 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 hereto, testimony and other evidence and brief in support of the complaint; 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

PARAGRAPHS 1. Respondents, Jean Vivadou and Henry G. Lubin, are copartners doing business under the firm name and style of Jean Vivadou Company, with their office and principal place of business located at 135 West 20th Street, New York, in the State of New York. They are now, and have been, for a long time last past, engaged in the business of manufacturing toilet sundries in the State of New York and shipping said 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. There is now, and has been for more than one year last past, a constant current of trade and commerce by respondents in the aforesaid toilet sundries. In the course and conduct of their business the respondents are now, and for more than one year last past have been in substantial competition with other individuals, and with corporations, firms, and partnerships, likewise engaged in the sale of toilet sundries, 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, respondents herein, in soliciting the sale of and selling their merchandise in commerce, as herein set out, make use in their letterheads, circulars, containers, and advertising matter of the word "Paris" in a manner calculated to, and having the effect of serving as a representation that they maintain offices at Paris, France. It is well known to respondents and to the trade generally, that many members of the purchasing public have a marked preference for toilet articles made in and imported from France. By means of said statements or representations, a substantial portion of the purchasing public is led to believe that respondents' products are made in, or imported from, France.

In truth and in fact, respondents have or maintain no office, factory, or branch, in Paris, France, or any other city or town by the name of Paris. Their principal and only office or place of business is located in New York, State of New York.

PAR. 3. In the course and conduct of their business, respondents herein are now, and have been, soliciting the sale of and selling in commerce as defined in paragraph 1 hereof, a toilet article described in their invoices, literature, advertising and correspondence, as:

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LAGOONA

SEA SPONGE

In the circulars accompanying said article and in its advertising, statements are made in reference to the same, such as:

THERAPEUTIC

Ultra-Violet Ray Treated

Sea Sponge for Young and Old

A great health discovery—LAGOONA, Spawned in the romantic far away depths of the South Pacific waters, plucked by adventurous men—LAGOONA is then taken to the laboratories of a nationally known chemist. The alchemy of the waters of the Pacific Ocean is within this Natural sea growth. LAGOONA by itself is a Wonder Sponge, but, with its further treatment and additional life-giving forces of Ultra-Violet Rays, it becomes an aid to good health.

The article described above is not a "Sponge," a "Sea Sponge," or "Wonder Sponge," or a "Natural sea growth," was not "Spawned in the romantic far away depths of the South Pacific waters," was not "plucked by adventurous men," and has never been subjected to the "Alchemy of the waters of the Pacific Ocean," but is a vegetable resembling an elongated gourd which grows on bushes or shrubs on land, and is known and described as a "loofah."

PAR. 4. In the course and conduct of their business, respondents have been, and are now, soliciting the sale of and selling in commerce as defined in paragraph 1 hereof, a toilet article described in its invoices, correspondence, circulars and advertising as a "Swansdown Puff."

This toilet sundry designated by respondents as a "Swansdown Puff" is not made from Swansdown as that article is known to the trade and to the consuming public but consists of a puff made and manufactured from Marabou, a trade name for loose feathers of various types, usually used for trimming women's clothing.

Swansdown is now, and for many years past has been, a trade name used to designate especially grown and treated goose down, and by such name it is known to the trade and the purchasing public. It is procured principally from France and is obtained by plucking the large feathers from geese while growing so that when mature the birds' skin is covered only with down. The geese are then killed and skinned, the skin being tanned with the down attached in the same manner as a fur. It is from this skin, with the down attached, that Swansdown Puffs are manufactured, by cutting out circular disks of the size desired and sewing them together with the down on the outside. The respondents' alleged Swansdown puffs were not made from

this material, but from loose feathers stitched together, and are a decidedly cheap and inferior imitation of the article known and designated by the trade name "Swansdown".

PAR. 5. The acts and practices of respondents in falsely representing, advertising, marking and branding their products, or containers thereof, in such a manner as to indicate, or to import or imply, that they have an office or branch in the city of Paris, and the practice of falsely marking, branding, or representing in their circulars, advertising, or invoices, a toilet article known as a "Loofah" as being a "Sponge," "Sea Sponge," or a "Wonder Sponge," or a "Natural Sea Growth," and the further practice of the respondents in falsely marking, branding, advertising, and selling puffs manufactured from Marabou feathers as "Swansdown," are calculated to mislead and deceive, and have 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 respondents' products in reliance on said representations. Because of such erroneous beliefs, trade is unfairly diverted to respondents from competitors engaged in the sale in interstate commerce of similar toilet sundries, who truthfully represent the nature and size of their respective businesses and the character and quality of their respective products. As a result thereof, substantial injury has been, and is now being, done by respondents to the purchasing public, and to other dealers and manufacturers of toilet sundries in competition with respondents, in commerce among and between the various States of the United States and the District of Columbia.

Respondents have also placed in the hands of wholesalers, jobbers and retailers, the means of making such false and misleading representations as above described, to the purchasing public, by which means, or any of them, they have increased their own sales of said toilet articles so dishonestly advertised or represented, thereby lessening the market for similar goods sold by other merchants, the true nature of which is honestly stated.

CONCLUSION

The aforesaid acts and practices of the respondents, Jean Vivadou and Henry G. Lubin, copartners doing business under the firm name and style of Jean Vivadou 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

Order

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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 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 brief filed in support of the complaint, and the Commission having made its findings as to the facts, and its conclusion that the respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled, “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes.”

It is ordered, That the respondents Jean Vivadou and Henry G. Lubin and each of them, as individuals and as copartners doing business under the firm name and style of Jean Vivadou Company, or under any other trade name, their representatives, agents, and employees, in connection with the offering for sale, sale and distribution of their products, including toilet sundries, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Representing through the use of the word “Paris”, alone or in conjunction with any other word or words, or through any means whatsoever, that they own, operate, or maintain offices, branches or factories at Paris, France, or at any place other than in the city of New York, State of New York, or where such offices, branches, or factories are actually maintained;

(2) Designating or representing in any manner that the vegetable growth known as a “Loofah” is a Sponge, a Sea Sponge, a Wonder Sponge, or a Natural Sea Growth, or making any similar representations;

(3) Using the term “Swansdown” in connection with the word “Puff”, or any other word to designate or describe an article unless said article is manufactured from the down of a swan or from the specially prepared skin of a goose with its original down attached;

(4) Representing an article made from Marabou feathers as being Swansdown.

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

FALL RIVER WHOLESALE GROCERS' ASSOCIATION
ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2677. Complaint, Jan. 4, 1936—Decision, Dec. 9, 1936.

Where a wholesale grocers association, and the members thereof, serving a trade area in certain States contiguous to a Massachusetts city; in pursuance of a policy, agreed upon and adopted by such members, of refusing to deal with manufacturers of grocery products who had sold, or sold, their products to retailers in the region in question—

- (a) Informed manufacturers of policy of such association and its members, and threatened to refuse, and refused, to purchase from such manufacturers as failed or refused to comply with their wishes that they do not distribute their products to retailers thereof;
- (b) Placed on the unfair list of the association, for selling to large retailers in region in question, name of a large milk product manufacturer, and warned its members to cease handling products thereof under penalty of forfeiting their association deposits, and advised manufacturer of such action and that association members would no longer be allowed to do business with it;
- (c) Issued and distributed a letter announcing that its members had "decided definitely to cooperate only with those producers, packers, or manufacturers who will confine themselves to selling their merchandise to wholesale grocers," and requested that the recipients thereof advise as to whether or not they would cooperate in the matter;
- (d) Reached an agreement between their said wholesalers' association and that of the retail grocers in the region in question, working to the prevention and restraint of purchases by retailers direct from manufacturers, and threatened to suspend any wholesaler member who refused to sign and subscribe thereto; and
- (e) Took, at different times, course of action similar to that hereinabove indicated against large sugar and coffee manufacturers;

With result that manufacturers were coerced into refusing to sell their products direct to retailers, including large retailer competitors of association members, sales and distribution by manufacturers to retailers in region in question were restrained and prevented, and interstate commerce in groceries was unduly restrained and hindered, and there was an undue tendency to substantially lessen, restrict, and suppress competition in interstate sale of such products therein:

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. Daniel J. Murphy for the Commission.

Mr. Isador S. Levin, of Fall River, Mass., for respondents.

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 each and all of the parties named in the caption hereof 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Fall River Wholesale Grocers' Association is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, for the asserted purpose of furthering harmonious relations between the wholesale and the retail grocery dealers of Fall River in said State, and has its principal place of business at said Fall River. Said respondent had and has as its particular avowed purpose to cooperate with the independent retail grocery stores in said Fall River and contiguous region in offering special sales and inducements to customers in an effort to meet the competition of the chain grocery stores. For brevity and convenience this respondent will be hereinafter designated as the "Wholesalers' Association."

Each of the respondents American Wholesale Grocery Company, Allen Slade & Company, Chabot Brothers, and Portuguese Wholesale Grocery Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts.

Respondents Abraham I. Yamins and Samuel Levin are copartners doing business in the name of New England Wholesale Grocery Company; and respondents Murray S. Olinick and George Feinberg are copartners doing business in the name of Economy Wholesale Grocery Company.

Respondent Morris Horovitz is an individual trading as Fall River Paper & Supply Company; respondent Joseph Horovitz is an individual trading as Joseph Horovitz & Company; and respondent Philip J. Roy is an individual trading as Roy Paper Company.

Each of said respondents has its, their and his principal place of business in said city of Fall River, State of Massachusetts, and each of them except the Wholesalers' Association is engaged in the business of selling and distributing food and grocery products at wholesale in the region of said Fall River. Said Fall River region comprises not only said city of Fall River but also the trade area contiguous to it in the State of Massachusetts and also in the State of Rhode Island.

Each of said corporations, partnerships, and individuals was at all the times hereinafter mentioned and is a member of said Fall River Wholesale Grocers' Association for the purpose of promoting and protecting its, their and his common interests and business affairs, and said respondents will for brevity and convenience be hereinafter designated as "member respondents" when differentiation of them from respondent Wholesalers' Association is necessary. Said member respondents purchased and purchase in interstate commerce the food and grocery products sold and distributed by them in the said Fall River region from manufacturers and producers in other States than the State of Massachusetts and which products so purchased were and are shipped from such other States into the State of Massachusetts to said member respondents and were and are there sold and distributed by each of said member respondents to retailers in the States of Massachusetts and Rhode Island.

Respondent Wholesalers' Association is an organization which has provided and does provide a means or channel for its members acting in concert and in the name of said association to further their common interests in their businesses mentioned above, and each of the member respondents utilizes it for its, their or his private purposes. The acts of said association, therefore, have represented and do represent and have been and now are the acts of such members resulting from agreements, express or implied, between and among, and concerted action and conspiracy of all of, said respondents in their said common interests and in the furtherance of their said private purposes.

PAR. 2. In the course and conduct of the business and activities of respondent Wholesalers' Association and of the concerted action and conspiracy above stated of all the respondents, and at various times during the past three years, respondent Wholesalers' Association in behalf of itself and of each and all of said member respondents, and in pursuance of a policy agreed upon and adopted by said member respondents of refusing to deal with manufacturers of food and grocery products who have sold or sell such products to retailers thereof in the said Fall River region, or to wholesalers of such products in said region who are not members of respondent Wholesalers' Association, by the use of unlawful threats, intimidations, and boycotts has restrained and prevented and does restrain and prevent various manufacturers of such products selling and distributing the same in interstate commerce from making sales and distributions thereof in said Fall River region to any individual, partnership, or corporation in said region engaged in the sale and distribution of such products other than the member respondents above named, and specifically has by such unlawful means restrained and pre-

vented and does restrain and prevent and has sought and does seek to restrain and prevent all such sales and distributions in said Fall River region by such manufacturers to retailers of such products and to wholesalers thereof who are not members of respondent Wholesalers' Association; and solely as a result of such unlawful threats, intimidations, and boycotts, various manufacturers of such products selling and distributing same in interstate commerce who have been ready, willing, and able to make sales and distributions thereof in said Fall River region to retailers of such products and to wholesalers thereof who are not members of respondent Wholesalers' Association, have been and are restrained and prevented from making any sales and distributions in interstate commerce of such products to certain of said retailers and to certain of said wholesalers who are not members of respondent Wholesalers' Association, and in some instances where some restricted sales and distributions in interstate commerce have been made to certain other of said retailers and of said wholesalers who are not members of respondent Wholesalers' Association by certain manufacturers, the member respondents have by agreement and concerted action among themselves and with respondent Wholesalers' Association discontinued making purchases in interstate commerce from such manufacturers of such products theretofore purchased in interstate commerce by them from such manufacturers and have thereupon and thereafter declined and refused to make any purchases whatever of such products from such manufacturers while and so long as such manufacturers continued to make sales and distributions in said Fall River region of such products to such retailers or to such wholesalers who are not members of respondent Wholesalers' Association.

In the course and conduct of the business and activities of respondent Wholesalers' Association and of the concerted action and conspiracy above stated of all the respondents, certain manufacturers of food and grocery products sold and distributed in interstate commerce have been compelled by respondents to accept pooled orders for such products for shipment in carload lots in order that the member respondents might obtain the advantage of the lower freight rate and incidental expenses applicable to carload shipments when the total of such pooled orders has been less than a carload lot, have been compelled in connection with such shipments to carry for their own account the unsold residuum of such carload shipments, but have been restrained and prevented in such instances from selling any part of such residuum in said Fall River region to retailers of such products or to wholesalers thereof who are not members of respondent Wholesalers' Association and instead have been required and com-

pelled by boycotts and threats of boycott and other unlawful means to store said residuum in the custody of some one of the member respondents until such residuum has been purchased and absorbed by the member respondents in the due course of their businesses. In consequence of such action on the part of respondent Wholesalers' Association and of the member respondents, such manufacturers were obliged to and did actually discontinue selling their said products to such wholesalers who were not members of respondent Wholesalers' Association when and although said non-member wholesalers were ready, willing, and able to purchase said products.

In the course and conduct of the business and activities of the respondent American Wholesale Grocery Company and in furtherance of the concerted action and conspiracy above stated of all the respondents, said respondent threatened to boycott a certain manufacturer by refusal to continue handling its product if said manufacturer delivered to a public warehouse in Fall River the unsold residuum of its shipment in pooled cars.

In the course and conduct of the business and activities of respondent Wholesalers' Association and of the concerted action and conspiracy above stated of all the respondents, the member respondents in their status as members of the Wholesalers' Association frequently held and hold general and special meetings for the interchange of information concerning the furtherance of their efforts to prevent and restrain sales by manufacturers to retailers and to wholesalers who are not members of the respondent Wholesalers' Association, concerning any sales of such character that are made by manufacturers, and concerning the action necessary to be taken to prevent and restrain further sales of such character and to effectuate their policy of preventing and restraining such transactions; and thereupon all of said respondents have concerted and agreed and do concert and agree upon a course of common action to that end, consisting of bringing pressure to bear upon any such manufacturer to cease making such sales and of attempting by personal intimidation, threats of boycott and actual boycott to coerce such manufacturer to refrain thereafter from making any such sales and from supplying retail dealers with such products direct and from supplying wholesale dealers who are not members of the Wholesalers' Association with such products out of pooled car shipments. Respondents used and use other concerted and coercive means to effectuate their said conspiracy to restrain and prevent such sales.

In the course and conduct of the business and activities of the respondent Wholesalers' Association and of the concerted action and conspiracy above stated of all the respondents, an agreement was

reached between respondent Wholesalers' Association and the association of retail grocers in the Fall River region looking to the prevention and restraint of purchases by retailers direct from manufacturers, and the respondent Wholesalers' Association threatened to suspend or expel any member refusing to sign and subscribe to such agreement.

In the course and conduct of the business and activities of respondent Wholesalers' Association and of the concerted action and conspiracy above stated of all the respondents, respondent Wholesalers' Association actually placed upon its "unfair list" for boycott a particular manufacturer who had not conformed to the demands and requirements of the respondent Wholesalers' Association above alleged and obliged all of its members to cease handling the products of said manufacturer on penalty of forfeiture of deposits of said members held by respondent Wholesalers' Association as a guaranty of their conformity to its requirements, and said manufacturer was notified by said respondent Wholesalers' Association that it had been placed on said respondent's "unfair list" and that Association members would discontinue handling the merchandise of said manufacturer "because of unfair and unethical business methods" and respondent Wholesalers' Association also at the same time voted that similar action would be taken in respect of certain other manufacturers if said manufacturers did not cease selling their products direct to retailers. Solely in consequence of such action of respondent Wholesalers' Association, the manufacturer first above referred to discontinued selling its products direct to large retailers in the Fall River region and continued under such restraint for a considerable period of time. Solely in consequence of such action by respondent Wholesalers' Association all of the member respondents except the New England Wholesale Grocery Company ceased making purchases from one of the other manufacturers above referred to.

PAR. 3. The above alleged acts and things done by respondents, including specifically among them the blacklisting and boycotting of manufacturers, the threatening of boycott and the conspiracy to do those acts and things, have tended and do tend and will continue to tend unduly and unreasonably to restrain trade and commerce between and among the several States of the United States, in that they have tended and do tend to close certain of the outlets within the States of Massachusetts and Rhode Island for the direct and immediate sale by manufacturers and producers in other States of products shipped by them into said State of Massachusetts, to deprive manufacturers and producers in other States of the right and opportunity freely to trade with and make sales to all wholesalers and

retailers and prospective purchasers in said State of Massachusetts and to deprive certain wholesalers and retailers and prospective purchasers in said State of Massachusetts of the right and opportunity freely to trade with and make purchases and obtain shipments from manufacturers and producers in other States, and to deprive such last mentioned wholesalers and retailers and prospective purchasers in said State of Massachusetts of the right and opportunity and advantage secured and exercised and enjoyed by respondents in respect of the lower freight rates and incidental expenses on shipments from manufacturers in other States in carload lots or pooled cars and thereby depriving such last mentioned wholesalers and retailers in the State of Massachusetts from passing on to the purchasing and consuming public in said Fall River region the advantages and savings of such lower freight rates and incidental expenses and other competitive benefits flowing from such lower freight rates; and have also tended and do tend by such limitation and restriction of the total number of wholesalers and retailers in the Fall River region securing and exercising and enjoying such advantage of lower freight rates to limit and restrict the benefits to said purchasing and consuming public flowing therefrom. Such acts and things substantially and unduly and unreasonably lessen, restrain, and suppress free and open competition in the sale and distribution in interstate commerce of said food and grocery products in the said Fall River region, obstruct the free and natural flow of interstate commerce in said region and deny to consumers of said products in said Fall River region the advantages in price and otherwise which they would obtain from the free and natural flow of commerce in said products under conditions of free and unobstructed competition. Consequently said acts have been and are and will continue to be to the prejudice and injury of the public and of the competitors of respondents and of the manufacturers and producers both those who do and particularly those who do not, comply with and adhere to the limitations of trade and commerce imposed by the respondents above mentioned.

PAR. 4. There were and are among the competitors of respondent in the said Fall River region other wholesalers who are not members of respondent Wholesalers' Association who would freely purchase from manufacturers in other states similar and substantially identical products to the products hereinabove mentioned as being purchased by respondents, as well as retailers who would also freely make such purchases, and to which said other wholesalers and said retailers said manufacturers would freely sell such similar and substantially identical products and to whom said manufacturers would freely make shipments in pooled cars as had been and are made to the member

Findings

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respondents, were it not for the aforesaid acts and restraints of respondents above mentioned. Such acts and things done by respondents substantially and unduly and unreasonably lessen, restrain and suppress free and open competition in the sale and distribution in interstate commerce of said food and grocery products in said Fall River region, obstruct the free and natural flow of interstate commerce in said region and deny to said other wholesalers, to said retailers and to the public in said Fall River region the advantages in price and otherwise which they would obtain from the free and natural flow of commerce in said products under conditions of free and unobstructed competition and have diverted and do divert and have tended and do tend to divert business from said other wholesalers. Consequently said acts have been and are and will continue to be to the prejudice and injury of said competitors of respondents. The member respondents would also, except for the acts and things done by them in pursuance of their concerted action and agreements and conspiracy as hereinabove stated, be naturally and normally in competition with each other in price and otherwise; and consequently said acts have been and are and will continue to be to the prejudice and injury of said member respondents as competitors each with the others.

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

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 4, 1936, issued and served its complaint in this proceeding upon the respondents, Fall River Wholesale Grocers' Assn. et al., 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, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true with certain reservation stated therein, to wit: the respondents would not admit that they interfered with the

sources of supply of wholesale grocers as alleged in the complaint, 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, Fall River Wholesale Grocers' Association, is a voluntary association with its principal place of business located at Fall River, Mass. Said respondent association membership consists of the following respondent corporations, copartnerships, and individuals:

Allen Slade and Company, a corporation organized under the laws of the Commonwealth of Massachusetts;

American Wholesale Grocery Company, a corporation organized under the laws of the Commonwealth of Massachusetts;

Chabot Brothers, a corporation organized under the laws of the Commonwealth of Massachusetts;

Fall River Economy Wholesale Grocery Company, a corporation organized under the laws of the Commonwealth of Massachusetts;

Fall River Paper and Supply Company, a corporation organized under the laws of the Commonwealth of Massachusetts;

Joseph Horvitz, an individual trading under the name and style of Joseph Horvitz and Company;

Abraham I. Yamins and Samuel Levin, copartners trading under the firm name and style of New England Wholesale Grocery Company;

Portuguez Wholesale Grocery Company, a corporation organized under the laws of the Commonwealth of Massachusetts;

Philip J. Roy, an individual trading under the name and style of Roy Paper Company.

Each of the above named corporations, copartnerships, and individuals have been engaged for some time past, as wholesalers in groceries and in the sale and distribution of said products in the region of the city of Fall River, State of Massachusetts. Said Fall River region comprises not only said city of Fall River, but also the trade area contiguous to it in the State of Massachusetts, and also in

the State of Rhode Island. Said member respondents purchase said groceries sold and distributed by them in the said Fall River region from manufacturers and producers in other States than the State of Massachusetts, and which products so purchased are shipped from such other States into the State of Massachusetts to said member respondents, and are then sold and distributed by each of said member respondents to retailers in the States of Massachusetts and Rhode Island.

In the course and conduct of their respective businesses, said corporations, copartnerships, and individuals were and are in competition with other corporations, copartnerships, and individuals, who are not members of respondent Wholesalers Associations, but who were likewise engaged in the sale and distribution in interstate commerce of similar products in competition with such members.

The respondent Wholesalers Association and its members as a result of agreements, express or implied, have acted in concert and conspiracy between and among themselves for the advancement of their common interests and private purposes.

PAR. 2. In the course and conduct of the business and activities of respondent Wholesalers Association and of the concerted action and conspiracy above stated of all the respondents, and at various times during the past three years, respondent Wholesalers Association in behalf of itself and of each and all of said member respondents, and in pursuance of a policy agreed upon and adopted by said member respondents of refusing to deal with manufacturers of grocery products who have sold or sell such products to retailers thereof in the said Fall River region, informed various such manufacturers of the policy of the respondent association and its members that they should not distribute said grocery products to retailers of such products and threatened that such members would and they did refuse to purchase from manufacturers who failed or refused to comply with their wishes in that respect. Respondent association and its members by the use of such unlawful threats and boycotts have restrained and prevented sales and distributions in the said Fall River region by such manufacturers to retailers of such products. Carrying out such policy, said association wrote to a large manufacturer of milk products that surplus evaporated milk shipped in pool cars must not be delivered by it to a public warehouse and that, if this were done, its members would refuse to deal further in its products. The company addressed, in order to save itself from loss of business, was obliged to and did discontinue selling its products to two competitors of said members of said respondent Wholesalers Association, and to warehouse surplus milk with a member thereof.

On February 27, 1935, at a meeting of said respondent Wholesalers Association, the manufacturer referred to was placed on the association's unfair list on account of its selling to large retailers in the Fall River region and all members of the association were warned to cease handling said company's products on penalty of forfeiting their deposits made with said association for the purpose of securing their compliance with its rules. The association also informed the manufacturer of this action, and that its members would no longer be allowed to do any business with it. Said manufacturer was thereupon obliged to discontinue selling its products to several large retailers, who were competitors of the association's members, and said manufacturer requested that its name be removed from the association's unfair list. On May 26, 1936, the association issued and distributed a letter announcing that its members had "decided definitely to cooperate only with those producers, packers, or manufacturers who will confine themselves to selling their merchandise to wholesale grocers," and asked for replies showing whether the concerns so addressed would or would not cooperate in the matter.

In the course of the activities of the respondents as above stated, an agreement was reached between respondent Wholesalers Association and the Association of Retail Grocers in the Fall River region working to the prevention and restraint of purchases by retailers direct from manufacturers, and the respondent Wholesalers Association threatened to suspend any member refusing to sign and subscribe to such agreement.

At different times, similar course of action was taken against large manufacturers of sugar and of coffee with the result that manufacturers were coerced into refusing to sell their products direct to retailers, whereby interstate commerce in groceries was unduly restrained and hindered.

PAR. 3. The results of the acts of the said respondents, as herein before set out in paragraph 2, have been to unduly tend to substantially lessen, restrict, and suppress competition in the interstate sale of grocery products particularly in the above described Fall River region.

CONCLUSION

The aforesaid acts and practices of the respondents, Fall River Wholesale Grocers' Assn. et al., 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

24 F. T. C.

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 10, 1936, by respondents admitting all the material allegations of the complaint to be true with a certain reservation stated therein, to wit: the respondents would not admit that they interfered with the sources of supply of wholesale grocers as alleged in the complaint, 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 respondents, Fall River Wholesale Grocers' Assn. and Allen Slade & Company, American Wholesale Grocery Co., Chabot Brothers, Fall River Economy Wholesale Grocery Co., Fall River Paper & Supply Co., Joseph Horvitz and Company, New England Wholesale Grocery Company, Portuguez Wholesale Grocery Company, and Roy Paper Company, their officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of grocery products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Adopting, enforcing or attempting to put into effect any understanding, agreement, combination, or conspiracy among and between themselves to restrict, restrain, suppress, and eliminate competition in the sale and distribution of grocery products in interstate commerce, by interfering with the source of supply of retailers;

(2) Persuading, threatening or coercing manufacturers to distribute their products only through wholesalers, and to cease and refrain from dealing with retailers;

(3) Any other similar means or methods of coercing manufacturers into distributing their products through wholesalers exclusively.

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
GALION METALLIC 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 2317. Complaint, Mar. 6, 1935—Decision, Dec. 11, 1936.

Where a corporation engaged in the manufacture of air seal and of mechanically sealed and closing burial vaults, made of one of the highest grade and quality of non-ferrous metals obtainable for such purpose and also of a non-ferrous metal which would corrode in some soils of the United States, and in the sale of said products to jobbers, funeral directors, and undertakers, in substantial competition with those engaged in the sale and distribution of metal, stone, concrete, and other burial vaults in and between the various States—

- (a) Represented, in certificates of warranty and in advertising the same in periodicals of wide interstate circulation and in booklets, circulars, pamphlets, letters, and through photographs and testimonials, and in other advertising media, circulated among its customers and prospective customers in the several States, that its said air seal vaults were waterproof and airtight at time of interment and after, and that its said vaults, generally were made of rust resisting metal and would endure as waterproof under all conditions for fifty years, and afforded absolute protection against water and other external elements, buried, for twenty-five or fifty years or more, and that its said vaults gave insurance that the processes of change would be undefiled by the action of water, earth, or other foreign elements, gave permanent burial protection and greater resistance than the bronze of the ancients, and were practically indestructible and would not crush in; and
- (b) Made use of certificates of warranty, in connection with the sale and offer of its said vaults, which guaranteed against damage to the contents thereof through water or other elements admitted because of the failure of the same due to rust or corrosion, and undertook, in such event, to replace such vaults without cost;

The facts being that, while its said vaults were made with great care by skilled workmen, and the ferrous metal of which made was one of the highest grades and quality obtainable for such purpose, impervious and impenetrable by air, moisture, and living organisms within the earth during the life of the metal, it was not rust or corrosion-proof 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, it would, like all other material, crumble and disintegrate; non-ferrous metal, corrosive in some soils as aforesaid, was impervious to water only until penetration through corrosion or other causes; 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,

¹ Count Two of the complaint alleging violation of the National Industrial Recovery Act dismissed November 9, 1935.

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would resist penetration thereby for more than one hundred years, in other soils its said ferrous metal 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 case of said air seal vaults in order to provide protection from entering water, its said vaults and materials from which made had not been tested under ground for full period of fifty years, or been manufactured or advertised for such length of time, and its said ferrous metal vaults would not, in some of the more corrosive soils, remain waterproof for such a period, and its vaults, buried, would and often do permit entrance of air, vermin, and water; disinterment is rare and it had rarely been called upon to replace the same;

With capacity and tendency, as a result of such misleading acts and practices, to induce the public to purchase and use said products in the belief that such statements and representations, which were each and all to the prejudice of the public, were true, and to divert unfairly trade to it from competitors engaged in sale and distribution of metal burial vaults:

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 Galion Metallic 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 Galion Metallic 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 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, 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 function of these said vaults is to insure that the process of change be undefiled by the action of water, earth, or other foreign elements; that the metal of which said vaults are made is impervious to water and to chemical elements and living organisms usually present in the ground; that the weight of covering earth cannot crush its unyielding dome; that the body which is entrusted to the keeping and protection of respondent's said vaults is protected from uncleanness, contamination, and violation; that the respondent's said vaults are the ultimate in burial protection; that casket and contents are placed beyond the reach of external agency of change in the protection found in respondent's said vaults; that human affection can provide no worthier tribute with which to safeguard and to honor the mortal part of the beloved dead; that only within comparative recent years has science been successful in making permanent burial protection of those with moderate means; that prior thereto, the materials used were porous and quickly perishable and that rain and melting snow went through the ground and often stood for months in the graves and that this water necessarily seeping through envelops the casket and contents in a mass of or-

ganic and inorganic conglomerate; that the metals used in the manufacture of respondent's said vaults are not only impervious to water but they possess enormous strength; that such appearances of corrosion as may develop on the surfaces of such vaults are superficial and act as a protective coating to retard pitting and rusts; that metallurgical chemists estimate that respondent's vaults will retain their protective agency, unimpaired for at least fifty years; that respondent's vaults are practically indestructible under all normal conditions of earth burial; that the resistance of respondent's vaults to the elements is presumably greater than that of the bronze used by the ancients for the production of weapons, vessels, and works of art which have been recently brought to light by archeologists dating back thousands of years before the beginning of the Christian Era. Respondent has also advertised its said vaults as absolute protection against water and other external elements even though buried underground for a period of twenty-five to fifty years or more.

(B) Respondent issues with each vault for delivery to ultimate purchasers thereof and they are so delivered, a written purported warranty which provides in substance, that each of its said vaults has been tested by being submerged in water, inspected, found to be free from defects in material or workmanship and to be airtight and waterproof and that when properly closed it will protect its contents from water and other elements from external sources and if the contents of any vault are damaged by water or other elements, admitted because of the failure of the same, due to rust, corrosion, defective materials, or workmanship, respondent will replace said vault without cost, except in cases of damage to the casket or contents caused by dehydration of the elements.

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 remain waterproof and airtight indefinitely when buried in the ground; that respondent's said vaults when buried in the ground do not insure that process of change be undefiled by the action of water, earth or other foreign elements; that respondent's said vaults are not impervious to water and to chemical elements or living organisms usually present in the ground; that a coffin when buried in respondent's vault is not protected at all times from uncleanness, contamination, and violation; that science has not in comparatively recent years or at all been successful in making permanent protection through the use of metal vaults to the bodies or coffins encased therein when buried underground; the metals used in the construction of respondent's vaults are not impervious to water or corrosion or rust and the surface

rust coating which at times appears upon the respondent's vault does not act as a protective coating to retard pitting and rust; respondent's vaults will not retain their protective agencies unimpaired for at least fifty years; respondent's vaults are made of metals which will corrode; there is a vast difference in the corrosive properties of soils throughout the United States; 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 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 are not airtight or waterproof and will, and often do, permit air and water 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 their said vaults will not at all times prevent the entrance of water into said vaults.

The statements and representations described in the 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 purchasers thereof a watertight airtight vault, a vault which will not permit water or air to enter the same. 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 of flange thereof or through pit holes due to rust or corrosion.

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.

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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 effecting 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 constituted 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 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,"

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the Federal Trade Commission, on the 6th day of March 1935, issued and thereafter served its complaint in this proceeding upon respondent, the Galion Metallic 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 Federal Trade Commission, and respondent, by which it was stipulated and 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; and that the Commission may proceed upon said 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 offices of the Commission and approved by it. Thereafter this proceeding came on for final hearing before the Commission on said complaint, answer thereto, and statement of facts as agreed upon in lieu of testimony, briefs and 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. The respondent, the Galion Metallic Vault Company, is and has been for the past thirty years, 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 State of Ohio.

Respondent is now and for the past thirty years has been engaged in the business of manufacturing and selling metal burial vaults, called Cryptorium; said vaults are intended to be and are actually used to 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 does now 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 respondent,

either causing said vaults to be shipped from the city of Galion in the State of Ohio, into and through other States of the United States to the respective places of business or the residence of such purchasers, or by shipping said vaults to branch warehouses in other States of the United States from which deliveries are made to such purchasers.

PAR. 2. In magazines having 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 prior to and in 1932, but not since said year, the following claims, statements, and representations as to its said vaults, to wit:

The metal of which said vaults are made is impervious to water and to chemical elements and living organisms usually present in the ground.

The metals used in the manufacture of respondent's vaults are not only impervious to water, but they possess enormous strength.

They will remain waterproof and airtight when placed under ground.

The body which is entrusted to the keeping and protection of respondent's said vaults is protected from uncleanness, contamination and violation.

The function of these said vaults is to insure that the process of change be undefiled by the action of water, earth or other foreign elements.

Only within comparatively recent years has science been successful in making *permanent* burial protection for those with moderate means.

Prior thereto, the materials used were porous and quickly perishable and rain and melting snow went through the ground and often stood for months in the graves and this water necessarily seeping through envelops the casket and its contents in a mass of organic and inorganic conglomerate.

The resistance of respondent's vaults to the elements is presumably greater than that of the bronze used by the ancients for the production of vessels, weapons and works of art which have been recently brought to light by archeologists dating back thousands of years before the beginning of the Christian Era.

Respondent's vaults are practically indestructible under all normal conditions of earth burial.

Such appearances of corrosion as may develop on the surfaces of such vaults are superficial, and act as a protective coating to retard pitting and rusts.

The casket and contents are placed beyond the reach of external agency of change in the protection found in respondent's said vaults.

Metallurgical chemists estimate that respondent's vaults will retain their protective agency, unimpaired for at least fifty years.

Its vaults are absolute protection against water and other external elements, even though buried underground for a period of 25 to 50 years or more.

The weight of covering earth cannot crush its unyielding dome.

Respondent's said vaults are the ultimate in burial protection.

Human affection can provide no worthier tribute with which to safeguard and to honor the mortal part of the beloved dead.

PAR. 3. Respondent, prior to and in 1932, but not since then, issued with each vault, for delivery to ultimate purchasers thereof, and they were usually so delivered, a written certificate of warranty that each of its vaults had been tested by being submerged in water, inspected, found to be free from defects in material or workmanship and to be airtight, and waterproof, and when properly closed it will protect its contents from water and other elements from external sources; that if the contents of any vault are damaged by water or other elements, admitted because of the failure of the same, due to rust, corrosion, defective materials, or workmanship, respondent will replace said vault without cost, except in cases of damage to the casket or contents caused by dehydration of the remains.

PAR. 4. In 1932, respondent adopted, and since then 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

THE GALION METALLIC VAULT COMPANY OF GALION, OHIO,
MANUFACTURERS OF THE GALION CRYPTORIUM, WARRANTS:

(1) That every Gallion Cryptorium is manufactured of Armco Ingot Iron Copper, or Everdur Bronze, is built by skilled workmen, has been tested by being submerged in water, inspected and found to be free from defects in material or workmanship.

(2) The Gallion Metallic Vault Company will replace this Gallion Cryptorium without cost if its contents are damaged by water or other elements admitted from the grave because of the failure of the Cryptorium due to rust, corrosion, defective material or workmanship. Damage to the casket or contents caused by dehydration of the remains is excepted.

This warranty has been issued by duly authorized officers of the Company, whose signatures are hereto affixed, and has been counter-signed by the funeral director at the time of the delivery.

THE GALION METALLIC VAULT COMPANY
 By ----- *President.*
 By ----- *Secretary.*

PAR. 5. The ferrous metal used by respondent in the manufacture of its burial vaults is Armco Ingot Iron, manufactured by the American Rolling Mill Company of Middletown, Ohio.

This metal is 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 this material is considerably higher than the cost of ordinary commercial steel.

This material 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 purpose of the manufacture of its burial vaults.

This metal, purchased by the respondent and used in the manufacture of its vaults is a highly refined grade of steel, carefully made under the best, modern scientifically controlled steel making process; 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, and if the metal has not been so highly refined and freed from those impurities which facilitate the process of rusting or corrosion.

The above steel manufacturing company, from which respondent purchases this metal, represents in its advertising and otherwise to the respondent that said metal is rust resisting. It is a manufacturer of recognized responsibility and integrity. This company makes rigid inspection and testing of each sheet of said metal before it is shipped to the respondent.

This metal is by its very nature impervious and impenetrable by air, moisture, water and living organisms within the earth and will exclude them from seeping or going through or between any pores or molecules of said metal during the life of said metal, which terminates when a hole has been punctured or has penetrated through the metal from rust or corrosion.

This metal is not rustproof or corrosionproof, but will rust and corrode after it has been buried underground. It is not rust-resisting

or corrosion-resisting to the extent or degree that it will never rust or corrode after burial underground. When it has rusted and corroded to a certain degree and extent during the period of years after burial underground, it will crumble and disintegrate, just as all other materials will ultimately decay and disintegrate.

Respondent also uses in the manufacture of the Galion Cryptorium, Everdur Bronze, 12 gauge and heavier. This is a non-ferrous metal and will corrode in some soils of the United States. It is by nature impervious to water, moisture and the living organisms within the earth, and also to the usual chemical elements within the earth, until a hole is penetrated through this metal due to corrosion or other causes. It is purchased from the American Brass Company of Waterbury, Conn., and similar representations as to the quality and physical characteristics of this metal are given by the seller to this respondent.

PAR. 6. Respondent's vaults are manufactured with great care by skilled workmen. Respondent so manufactures and sells three types of the said Cryptorium vaults, to wit, the air seal, the quick closing and the bolted end.

PAR. 7. Respondent's air seal 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 $88\frac{15}{16}$ inches; width 32 inches; and height $30\frac{3}{16}$ inches. It weighs empty and without a casket in it, 440 pounds. Its inside dimensions are: length 86 inches; width 30 inches; side height $29\frac{9}{16}$ inches; center height $25\frac{15}{16}$ 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 fused to the top on standard sizes, 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 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 $3\frac{1}{8}$ 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 outward approximately $\frac{7}{8}$ th inch wide to form this flange, which extends entirely around the bottom of the vault. This flange itself has approximately a total of 3 square feet and 8 square inches, which includes a strip 4 inches wide across each

end on the under part of the base. 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 $\frac{1}{2}$ 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 $4\frac{3}{8}$ inches above the bottom of the grave or grave floor.

The bottom rim or flange of the hood rests on this outside flange of the pan, the thickness of the metal from the grave floor.

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 vaults, 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. And as the pressure of the outside water level increases, the resistance of the compressed air within the dome increases and resists the entrance of water rising from below.

Water and air will go in and out of the space underneath the raised portion of the pan of said air seal vault 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, above the lower edge of the dome, to the extent that it is not resisted by the pressure of the confined air within the dome.

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 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 waterproofed 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.

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.

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-half 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, the water will be permitted to enter the vault 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 will, and often do, permit air, vermin and water to enter them. Water entering respondent's said vaults, when buried underground, 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 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. 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 air seal 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 air seal 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 such changes in conditions 2, 3, 4, and 5 are sufficient to cause water to enter said vault to touch the casket therein, then such changes tend to damage the casket and the body contained therein.

The term "waterproof" and "airtight" and "verminproof" 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, nor vermin to enter the same, and that 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 7 above. In dry graves these vaults are not verminproof or airtight.

PAR. 8. As aforesaid, respondent manufactures two types of mechanically sealed and closing vaults, the quick closing type and the bolted end type. In these types, 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 plates on its inner side engage 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 respondent's mechanically sealed types of vaults, bolted end and quick closing type, is placed upon the surface of the ground, the casket is placed inside the vault, and the door is closed and the vault is sealed, before it is lowered into the grave.

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.

Each of the two mechanically sealed types of Galion 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 described 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. 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. 9. 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, and 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, 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 during the course of the years after its burial.

Disinterment after burial is rare and respondent has seldom been called upon to replace any of said vaults.

PAR. 10. Respondent's vaults which are made of Armco Ingot Iron 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. In some soils the corrosion is practically negligible.

There are some 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 one year or less.

Other metal grave 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 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. 13. 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 its air seal vaults are airtight either at the time of interment or after burial underground;
2. That its air seal vaults are waterproof;
3. That they will endure as waterproof under all burial conditions for a period of 50 years, or for any fixed or stated period of time;
4. That any of its said vaults are made of rust-resisting metal;
5. That they insure that the processes of change will be undefiled by the action of water, earth, or other foreign elements, when buried underground;
6. That they give permanent burial protection when buried underground;
7. That they give greater resistance than that of the bronze used by the ancients, when buried underground;
8. That they are practically indestructible after burial underground;

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9. That they are beyond the reach of external agency of change, after burial underground;

10. That they will give absolute protection against water and other external elements for a period of 25 to 50 years or more, when buried underground;

11. That the weight of the covering earth cannot crush its unyielding dome, after burial underground.

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 conclusions 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, Galion Metallic Vault Company, a corporation, its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of metal burial vaults in interstate commerce or in the District of Columbia, forthwith cease and desist from:

1. Representing in purported certificates of warranty, or guarantees, in advertising, or in any other manner, that:

(a) Its Air Seal vaults are airtight, either at the time of interment, or after burial underground,

(b) Its Air Seal vaults are waterproof;

(c) Any of its vaults will endure as waterproof under all burial conditions for a period of fifty years, or for any fixed or stated period of time;

(d) Any of its vaults are made of rust resisting metal;

(e) Any of its vaults insure that the processes of change will be undefiled by the action of water, earth, or other foreign elements, when buried underground;

(f) Any of its vaults give permanent burial protection when buried underground;

(g) Any of its vaults give greater resistance than those of bronze used by the ancients, when buried underground;

(h) Any of its vaults are practically indestructible after burial underground;

(i) Any of its vaults are beyond the reach of external agencies of change, after burial underground;

(j) Any of its vaults will give absolute protection against water and other external elements for a period of twenty-five to fifty years, or more, or for any fixed or stated period of time;

(k) The weight of the covering earth cannot crush the unyielding dome of any of its vaults after burial underground;

2. And from so making other statements or representations of like import;

3. 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.

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IN THE MATTER OF
**ROBERT R. DUNN, JR. AND TOM KECK, TRADING AS
 IOKELP COMPANY**

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

Docket 2373. Complaint, Apr. 22, 1935—Decision, Dec 11, 1936

Where two individuals engaged in the offer and sale of an alleged remedial preparation which consisted of a kelp or seaweed product compressed into tablet form, with an iodine content of about one-fourth of one percent, and other constituent elements such as those usually found in vegetables ordinarily used for food in the United States, and in approximately the same quantities and proportions—

Represented in advertisements of their said preparation, through pamphlets, circulars, and other printed matter, and through newspapers and radio broadcasts, that the same was a remedy or cure for constipation, nervous anemic conditions, prostate, pituitary, and thyroid gland troubles, including simple goiter, and was a preventative of such last-named troubles, and of indigestion, neuritis, rheumatism, and periodic irregularity in women, and was essential to the health of the thyroid gland and to that of adolescent girls and of women under certain conditions, and to health in general; facts being it did not possess the therapeutic efficacy represented by them, and their said various representations and implications were false;

With effect of misleading and deceiving many persons desiring to purchase a remedy for or preventative of, or preparation essential to, one or more of the conditions in question, and of causing a substantial portion thereof erroneously to believe that such representations and implications were true and, because of such erroneous beliefs, to buy said "Iokelp," and of thereby diverting unfairly and illegally trade to them from their competitors, many of whom truthfully represent their products and do not misrepresent their therapeutic efficacy or use such acts and practices in connection with sale thereof; to the substantial injury of such competitors and that of the public;

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.

Mr. Daniel Dougherty, of Los Angeles, Calif., for respondents.

COMPLAINT ¹

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

¹ An extended enumeration in Par. 2 of the complaint, quoting respondents' representations with respect to their "Iokelp" product, which various representations, with certain exceptions noted in footnote on page 168, are likewise set forth in the findings, *infra*, at page 172, is, except as set forth in footnote, omitted from the complaint in the interest of brevity.

to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Robert R. Dunn, Jr., and Tom Keck, copartners, trading under the name and style of Iokelp Company, hereinafter referred to as respondent, 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. Respondents, Robert R. Dunn, Jr., and Tom Keck, are copartners trading as the Iokelp Company, with their office and principal place of business in the city of San Diego in the State of California. Respondents are now, and for a considerable period of time immediately heretofore have been, engaged in manufacturing, offering for sale, selling, and distributing in commerce among or between the various States of the United States, and between the United States and foreign countries, a prepared product called "Iokelp," sometimes called "Iokelp Tablets," described as a vegetable food supplement containing iodine and other mineral properties and represented as a remedy for constipation, nervous anemic conditions, prostate, and other glandular troubles, including pituitary and thyroid; as a preventive of thyroid trouble and of indigestion, neuritis, rheumatism, and periodic irregularity; and as being essential to the health of the thyroid gland and to health in general. Respondents have caused and now cause said product when sold to be transported from the aforesaid place of business in the city of San Diego in the State of California to purchasers thereof located in various States of the United States and in foreign countries. In the course and conduct of their said business respondents have been and now are engaged in substantial competition with corporations, firms, other partnerships and with individuals offering for sale and selling in commerce between and among the various States of the United States, preparations, compounds and/or medicines for use in the treatment of the same or similar ailments or diseases, or for the same purposes as aforesaid.

PAR. 2. Respondents have offered for sale and now offer for sale and sell their said prepared product called "Iokelp" in interstate and foreign commerce, as set forth in paragraph 1 hereof, by use of the mails, by use of interstate carriers and other channels of said interstate and foreign commerce, by means of radio broadcasts, newspapers, and other periodicals which have had or have a circulation in and through various States of the United States and foreign countries, and also in circulars, letters, pamphlets, and literature which have been and are distributed by respondents to customers and prospective customers in various States of the United States and foreign countries, in the

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course and conduct of which respondents have made and now make false and misleading statements and representations to the injury of the public and to competitors in like commerce.

In the course and conduct of the business and advertising as aforesaid, respondents imply and represent that their product is a remedy for constipation, nervous anemic conditions, prostate and other glandular troubles, including pituitary and thyroid; that the same is a preventive of thyroid trouble and of indigestion, neuritis, rheumatism, and periodic irregularity, and that the same is essential to the health of the thyroid gland, to adolescent, pregnant and lactating women, and to health in general. Said advertising of respondents contains among other things the following numerous statements and representations, to wit:¹

PAR. 3. In truth and in fact the above and foregoing statements and representations by Respondents have been and are false and misleading in the following respects:

(1) That respondents' claims for said product grossly exceed the uses which may be beneficially, therapeutically and/or safely made of such products.

¹The representations referred to, as allegedly made by respondents, and quoted at length in the complaint at this point, are also, with the exceptions below noted, set forth in the findings, *infra*, at page 172, and are, for such reasons, omitted here in the interest of brevity.

Exceptions referred to follow:

"IOKELP Tablets contain many times the amount of iodine of land vegetables."

"One girl wrote the IOKELP Company that her savings in manicure costs alone since using IOKELP, the natural food iodine, more than paid for the cost of the treatment. Brittle nails may seem trivial but they are usually a symptom of calcium deficiency in the blood. Either the diet is lacking in calcium or the body is unable to assimilate the calcium that is in the diet because the thyroid gland is not functioning properly. By supplying the thyroid with needed iodine, Iokelp makes its own calcium and that contained in other foods available to the body to build strong bones, teeth and nails, and aid in resistance to disease."

"IOKELP succeeds in preventing and correcting simple goiter where other treatments have failed. That is because of the special process by which the kelp leaves are processed. Therefore, accept no substitute."

"If you already have simple goiter, the easily assimilated natural iodine supplied by IOKELP will correct the condition or the full purchase price will be immediately refunded. Otherwise, protect yourself from this disease of the thyroid gland and its accompanying disorders. Reinforce your diet with the food iodine which is supplied in abundance by Iokelp."

"Eating demineralized and devitalized foods year after year, as most of us do, produces a condition that is very difficult to overcome but which IOKELP tablets can often correct in time. IOKELP made from fresh kelp, highly concentrated, contains liberal quantities of iodine, iron, copper and other minerals absolutely essential for bodily health."

"Goiter Handicaps Washington Children

"Due to iodine deficiency in food and water of this region, a high percentage of children and adults are affected by goiter. Iokelp, a concentration of sea kelp, makes available abundant organic iodine and is a successful preventive of simple goiter. Ask your druggist or write Iokelp Co., San Diego, California. IOKELP—33-day supply in \$1.25 bottle."

"Government statistics show that an alarmingly large number of the population in this region suffer from simple goiter. Guard yourself with Iokelp, the concentrated kelp food,

(2) That the mineral ingredients present in said products are therapeutically insufficient and otherwise insufficient to benefit purchasers thereof or to accomplish the purposes or results claimed by said respondents for their product.

(3) That, while said product does contain iron, to consume a sufficient quantity of said product to get any beneficial effect from such iron, or of the other mineral ingredients of said product, would generally create a toxic condition from over dosage of other mineral ingredients of said product.

(4) That the internal or oral use of iodine has a very narrow range of usefulness because of its effect on metabolism and associated thyroid gland activities, for which reason its internal or oral use requires the medical diagnosis of the condition of persons making such internal or oral use of it, and its internal or oral use is not beneficial except under limited conditions.

(5) That said product is not a food.

(6) That said product is not a remedy for constipation, nervous anemic conditions, prostate, pituitary or other glandular troubles; and is not a remedy or useful in the treatment of thyroid troubles.

which supplies abundant organic iodine to check this disease. Ask your druggist, or write the Iokelp Co., San Diego, California. IOKELP—33-day supply in \$1.25 bottle."

"Because the food and water of this region are deficient in iodine, an alarmingly large percentage of the population suffer from simple goiter. Fight this disease with Iokelp, a concentration of the giant sea kelp, rich in the organic iodine which prevents goiter. At your druggists. Iokelp—33-day supply in \$1.25 bottle."

"Dangerous drugs and cathartics never brought anybody permanent relief from constipation and if taken regularly generally make this condition worse. Iokelp, a vegetable food supplement, stimulates the glandular secretions and gastric juices gradually promoting natural elimination. At your druggist or write Iokelp Co., San Diego, Calif. Iokelp 33-day supply in \$1.25 bottle."

A HEALTHFUL PRODUCT FROM THE SEA

"The giant kelp grown off the coast of Southern California is rich in organic minerals necessary for perfect health. Several of these minerals—especially Iodine and Iron—are lacking in sufficient quantities in every day foods, with the result that many people suffer from the so-called deficiency diseases.

"IOKELP is a pure 100% concentration of the giant kelp—scientifically dried, milled into powder and pressed into convenient tablets. If you are in ailing health and believe that mineral deficiency may be the cause of it; try Iokelp today. For sale at the Owl and other good druggists, or write the Iokelp Co., San Diego, California."

MINERALS

Necessary to Health

"Did you ever realize how essential minerals are to your health? Science has established that there should be at least 14 different minerals present in the human body. Deficiency of these minerals in the diet may lead to many serious ailments.

"Land grown vegetables and other foods are generally deficient in minerals but kelp and other marine plants contain liberal quantities of Iodine, Iron and other organic minerals necessary for health. IOKELP, a product made from the giant kelp, supplies these minerals in great abundance. If you believe mineral deficiency may be the cause of your ill health try Iokelp today. For sale at the Owl and other good druggists, or write the Iokelp Co., San Diego, California."

(7) That said product is not a preventative of indigestion, neuritis, rheumatism, periodic irregularity in women, or thyroid troubles, nor is it essential to the health of thyroid glands, adolescent, pregnant, or lactating women or to the health of the public in general. Respondents' claims, representations and statements relative to the composition and beneficial and therapeutic efficacy and uses of their said product are unwarranted and false and misleading.

PAR. 4. The statements and representations of respondents, as aforesaid, have had and have a capacity and tendency to mislead and deceive and/or have misled and deceived the purchasing public into the belief that respondents' so-called "Iokelp Tablets" are a remedy and preventive for the ailments, diseases and physical troubles as set forth in paragraph 1 hereof, and that the same are beneficial and essential to the health of the thyroid gland and to individual health in general. Said statements and representations have tended to induce and have induced the purchase of respondent's product in reliance upon such erroneous belief, and have tended to divert trade from, and have diverted trade from, and otherwise injured competitors of respondents. By such statements and representations substantial injury has been done by respondents to substantial competition in interstate commerce.

PAR. 5. The above acts and things done by said respondents, as aforesaid, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in interstate 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 April 22, 1935, issued its complaint in this proceeding against the respondents, Robert R. Dunn, Jr. and Tom Keck, copartners, trading as the Iokelp 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 Edw. W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission therefore duly designated by it, no testimony or other evidence having

been offered by the respondents in opposition to the allegations of the complaint, although the respondents were duly represented at said hearings by Daniel Daugherty, 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 in support of the allegations of said complaint, brief in support of the complaint, 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, Robert R. Dunn, Jr., and Tom Keck, are individuals, trading as the Iokelp Company, with their office and principal place of business located in the city of San Diego, State of California. Respondents are engaged in the business of offering for sale and selling an alleged remedial preparation under the name of "Iokelp."

Respondents market their said product through dealers in drugs and medicines for resale to the public and by sales direct to persons desiring remedies, treatments or preventives of the ailments, diseases and conditions for which the respondents advertise said product. The respondents offer for sale and sell said preparation "Iokelp" in interstate commerce, and make sales in many of the States of the United States other than the State of California, and when sales are made respondents cause the preparation "Iokelp" to be transported from their place of business in the city of San Diego, or from other points in the State of California, to the purchasers thereof located in States other than California.

The respondents are 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 the business of offering for sale and selling remedies, preparations and products for use for the same purposes as those for which the respondents advertise their said preparation, in said commerce.

PAR. 2. The preparation "Iokelp" is produced by dehydrating and grinding kelp or seaweed, scientifically known as "Macrocystis Pyrifera," which is compressed into tablet form, bottled and ready for sale to consumers. The preparation is sold to ultimate consumers

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for \$1.25 per bottle of 200 tablets and the dosage recommended by the respondents is two tablets three times per day. The gross business of the respondents in the preparation "Iokelp" was approximately \$18,000 in 1933 and \$30,000 in 1934.

Respondents represent that a typical analysis of the ash in "Iokelp" tablets is as follows:

Iodine.....	0.25%
Acid Insoluble Matter.....	0.70%
Iron.....	0.68%
Calcium.....	1.08%
Magnesium.....	0.57%
Sodium.....	1.66%
Potassium.....	7.20%
Carbonate.....	1.64%
Sulphur.....	0.69%
Phosphorus.....	0.92%
Manganese.....	Trace
Copper.....	40.0 ppm

An analysis made by the Department of Agriculture of the produce is as follows:

Average weight—0.33 gram.
 Taste: Salty and mucilaginous.
 Iodine total—0.28% by weight.
 Identity: Seaweed.
 Reducing sugars; trace.

The iodine content of the tablet is practically the same in both analyses, and is approximately one-fourth of one percent. The other constituent elements of the preparation are the same as those usually found in vegetables ordinarily used for food in the United States, and are found in said preparation in approximately the same quantities and proportions.

PAR. 3. The respondents, in the course and conduct of their business, advertise their said preparation through pamphlets, circulars and other printed matter, and by advertisements in newspapers and through radio broadcasts from stations located in the city of San Diego, State of California.

In the course and conduct of their business, and by the means and in the manner aforesaid, the respondents make many statements concerning the curative qualities of their preparation. Among others, the following statements are made:

Probably few people except Doctors realize the tremendous importance of the thyroid gland. Proper functioning of the thyroid is absolutely necessary for the proper functioning of the other glands and organs of the body. Lack of iodine in the daily diet is the commonest cause of thyroid trouble, and this trouble can only be corrected by taking iodine in concentrated form to make up

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for the diet deficiency. IOKELP * * * is one of the richest known sources of organic iodine.

Iodine for Simple Goiter

Lack of iodine in everyday food causes nervousness, palpitations and simple goiter. A successful treatment is Iokelp, a natural product containing abundant organic iodine and other minerals that the body needs to correct these conditions.

Kelp Preventive of Simple Goiter

The giant kelp plant is a naturally iodized food unusually rich in iodine, the preventive and corrective of simple goiter. Iokelp, a concentration of this kelp, makes available organic iodine in palatable and easily digestible form.

Statistics Show Goiter Prevalent

* * * Guard yourself with Iokelp, the concentrated kelp food, which supplies abundant organic iodine to check this disease.

Goiter Scourges State

* * * Fight this disease with Iokelp, a concentration of the giant sea kelp, rich in the organic iodine which prevents goiter.

Men Past Middle Age

Prostate troubles and other glandular ailments are caused by insufficient minerals in the daily diet. Iokelp is a natural food supplement, rich in iodine, iron and other elements necessary to health, promotes glandular health, relieves pain.

IOKELP succeeds in preventing and correcting simple goiter where other treatments have failed. * * *

If you already have simple goiter, the easily assimilated natural iodine supplied by IOKELP will correct the condition or the full purchase price will be immediately refunded. Otherwise, protect yourself from this disease of the thyroid gland and its accompanying disorders. * * *

An insidious feature of simple goiter, the iodine deficiency disease of the thyroid gland, is that it is often not recognized in its incipient stages. Preventive measures are therefore advised and urged, especially with adolescent girls and pregnant and lactating women. The daily diet should include a sufficient quantity of food iodine to maintain the thyroid gland in good health. This might be difficult or costly if it were not for the giant kelp plant of the ocean. Rich in iodine, kelp makes it available in abundance when processed into Iokelp Tablets which are palatable and inexpensive.

If you are already suffering from simple goiter, you may take IOKELP with assurance that it has proven effective in many other cases.

If your thyroid, pituitary and other glands do not receive enough minerals through daily diet, sickness is almost sure result. Iokelp is a food supplement, not a drug, made from sea plants rich in organic minerals.

Don't Drug Constipation

Dangerous drugs or cathartics never protect anybody from constipation * * * Iokelp, a vegetable food supplement, stimulates the glandular secretion and gastric juices, gradually promoting natural elimination.

Nervous Anemic Conditions

If your thyroid, pituitary and other glands do not receive enough minerals through daily diet, sickness is almost sure result.

Pregnant and lactating women, and adolescent girls, are especially in need of an *extra* supply of natural iodine in their diets. In their condition, the thyroid gland is under abnormal strain and a deficiency in iodine may work untold injury. A sufficient supply of iodine is not always to be had from ordinary foods. But the giant kelp plant of the Pacific Ocean, when specifically processed into IOKELP Tablets yields an abundance of this vital mineral.

Iokelp, made from fresh sea kelp, highly concentrated, is one of the richest sources of organic iodine.

IOKELP is unusually rich in organic iodine and supplies the deficiency of iodine that exists in every day foods in almost all parts of the country.

Without sufficient iodine the all-important thyroid gland cannot function properly, and this condition may lead to nervousness, anemia, indigestion, neuritis, periodic irregularity and finally to simple gotter.

One of the principal causes of certain types of rheumatism and neuritis is lack of sufficient minerals in the daily diet.

Don't suffer the agonies of Neuritis, and Rheumatism any longer without giving IOKELP a trial.

Probably few people who are not physicians or other students of the human body realize the tremendous importance of the thyroid gland, the master gland as it has been correctly nicknamed. It is said that the thyroid gland is to the human body what the draught is to fire and furthermore that iodine is the match that kindles it.

Nearly everyone now knows that organic iodine is vitally necessary to the health of the thyroid gland.

Proper functioning of the thyroid gland is absolutely necessary for effective metabolism, healthy lungs and breathing organs and physical growth. It is required for mental development and in fact, for proper functioning of all the organs of the body.

The principal source of organic iodine today is the sea and ocean vegetation such as the giant kelp which grows off the coast of Southern California.

Good morning, friends, how is your thyroid today? That is not such a silly question at that, when you stop to consider how important science has found the thyroid gland to be in matters of health. It doesn't always take expert knowledge to answer the question either, at least if you feel perfectly well you know your thyroid gland is functioning correctly. You wouldn't feel at all well if it weren't. Your vitality would be low and you would probably have more definite symptoms, which might be anything from nervousness and anemia to gotter.

Thyroid Pituitary and other Glands

If your thyroid, pituitary and other glands do not receive enough minerals through daily diet, sickness is almost sure result. Iokelp * * *.

SCIENCE DISCOVERS THE SECRET OF HEALTH IN THE SEA

IOKELP

The Vitalizing Marine Vegetable Food

Rich in natural iodine, iron, calcium, phosphorus and all other mineral elements essential to good health.

* * * * *

"Mineral—Element—Starvation"—means absence or deficiency in the human system of those mineral elements (iron, iodine, calcium, sulphur, magnesium, potassium, sodium and manganese) absolutely necessary to maintain the equilibrium essential between all the physiological processes of the body.

"Mineral—Element—Starvation"—strikes directly at the thyroid gland, for scientific experiments and observations prove the most alarming of all physiological process disturbances in the body center around the thyroid gland. Natural iodine, such as in Iokelp Tablets, is rated as the vitally important and essential element in maintaining and restoring the proper functioning of the thyroid gland.

PAR. 4. By the means and in the manner above set out the respondents represent and imply that the preparation "Iokelp" is a remedy for constipation, nervous anemic conditions, and prostate, pituitary and thyroid gland troubles, including simple goiter; that the preparation is a preventive of thyroid gland troubles, including simple goiter, indigestion, neuritis, rheumatism, and periodic irregularity in women; and that the preparation is essential to the health of the thyroid gland, to the health of adolescent, pregnant, and lactating women, and to health in general.

In truth and in fact the above and foregoing representations and implications are false, for said preparation "Iokelp" is not a remedy for constipation, nervous anemic conditions, and prostate, pituitary and thyroid gland troubles, including simple goiter, and is not a preventive of thyroid gland troubles, including simple goiter, indigestion, neuritis, rheumatism, and periodic irregularity in women, and is not essential to the health of the thyroid gland, to the health of adolescent, pregnant, and lactating women, and to health in general, nor does it possess the therapeutic efficacy represented by the respondents.

PAR. 5. The acts and practices of the respondent hereinabove set out have the tendency and capacity to and do mislead and deceive many persons desiring to purchase a remedy for, a preventive of, or a preparation that is essential to one or more of the conditions above mentioned, and cause a substantial portion of such persons erroneously to believe that the representations and implications made by the respondents are true and that said preparation is a remedy for constipation, nervous anemic conditions, and prostate, pituitary and thyroid gland troubles, including simple goiter; that the preparation is a preventive of thyroid gland troubles, including simple goiter, indigestion, neuritis, rheumatism, and periodic irregularity in women; and that the preparation is essential to the health of the thyroid gland, to the health of adolescent, pregnant, and lactating women, and to health in general, and possesses the therapeutic efficacy represented and implied by said respondents; and cause a substan-

Order

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tial portion of such persons, because of such erroneous beliefs, to purchase said preparation "Iokelp," thereby unfairly and illegally diverting trade to the said respondents from their competitors who truthfully represent their products, to the substantial injury of such competitors in said commerce and to the injury of the public.

PAR. 6. Among the competitors of the said respondents are many who truthfully represent their products and who do not misrepresent the therapeutic efficacy possessed by such products and who do not, in connection with the sale of their products in said commerce, use the acts and practices used by the said respondents as above set out.

CONCLUSION

The aforesaid acts and practices of the respondents Robert R. Dunn, Jr., and Tom Keck 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, 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 the complaint, brief filed herein by counsel for the Commission, and oral argument by Edw. W. Thomerson, counsel for the Commission, and by Daniel Daugherty, 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, Robert R. Dunn, Jr., and Tom Keck, their representatives, agents, and employees, in connection with the offering for sale, sale and distribution of that certain preparation now sold by the said respondents under the name "Iokelp," or any tablet, powder, or other preparation, under whatever name sold, composed of similar ingrediepts and possessing therapeutic properties similar to the preparation now known and sold by the respondents under the name of "Iokelp," in interstate commerce or in the District of Columbia, forthwith cease and desist from representing:

(1) That said preparation is a remedy for, or will cure, constipation, nervous anemic conditions, prostate, pituitary, or thyroid gland troubles including simple goiter;

(2) That said preparation is a preventative of thyroid gland troubles, including simple goiter, indigestion, neuritis, rheumatism, or periodic irregularity in women;

(3) That said preparation is essential to the health of the thyroid gland, or to the health of adolescent, pregnant, or lactating women, or to the health in general.

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
BONOMO CANDY AND NUT CORPORATION

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

Docket 2776. Complaint, Apr. 21, 1936—Decision, Dec. 11, 1936

Where a corporation engaged in manufacture and sale of "straight" goods candy and of so-called "break and take," "draw," or "deal" assortments, one of the principal trade demands 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 selling of which in the market of the other, i. e., the "straight" goods, sold exclusively by many manufacturers, has been followed by a market decrease in sales of such "straight" candy, due to gambling or lottery feature connected with so-called "break and take," "draw," or "deal" merchandise—

Sold, to wholesalers and jobbers, assortments consisting of a number of penny pieces of uniform size and shape, together with a number of boxes of candy secured as prizes by chance purchasers of those uniform penny pieces, the enclosed concealed centers of which differed from that of the majority; so packed and assembled that such 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 or rearrangement, to the consuming or purchasing public by lot or chance, in accordance with such arrangement, 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 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 be resold to the public by lot or chance;

With the result that such refusing competitors, who can compete on even terms only by furnishing the same or similar assortments, were put to a disadvantage in competing 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, for which, thus sold, there is demand, 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 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.
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 Bonomo Candy and Nut Corporation, 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 New York, with its principal office and place of business located at 649 Morgan Avenue, in the city of Brooklyn, State of New York. 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, jobbers, and retail dealers, located at points in the various States of the United States, and causes and has caused its products, when so sold, to be transported from its principal place of business in the city of Brooklyn, 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 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 December 1935, to wholesale and retail dealers, 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 boxes of candy, which boxes 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 boxes of candy heretofore referred to. 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 boxes 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, 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 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 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 boxes 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. In the course and conduct of its business, as described in paragraph 1 hereof, respondent has caused and causes the representation to be made on labels and containers for one of its candy products, as follows:

Minty Chocs. 20 Count—10 Cents

Petite Chocolate Peppermints

The effect of the use of the words, as above indicated, is to falsely represent to the public that the candy to be purchased from respondent is peppermint candy. There are among members of the purchasing public a substantial number who have a preference for peppermint candy. In truth and in fact, the candy sold and offered for sale by the respondent, under the above-stated representations, is not peppermint candy, but is principally of the type known as marshmallow candy.

PAR. 8. In the course and conduct of its business, as described in paragraph 1 hereof, respondent has advertised and offered for sale, and distributed as premiums packages of candy, falsely representing them to have a content weight of three ounces, when in truth and in fact such packages do not contain contents of the net weight of three ounces.

PAR. 9. There are among the competitors of the respondent corporation a substantial number of persons, partnerships, and corporations who do not falsely represent the type and flavor of candy offered by them for sale, or who do in fact sell and offer for sale peppermint candy and marshmallow candy, each truthfully represented and designated as such.

There are among the competitors of the respondent a substantial number of persons, partnerships and corporations who offer for sale merchandise of a like nature and character with that in which the respondent deals, offering the same for sale to the members of the purchasing public and truthfully representing the proper net weight of the candy so offered for sale, offering the same in packages similar to those used by the respondent but truthfully representing the exact and correct weight of the merchandise so offered.

Respondent's false representations have had, and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, causing them to purchase respondent's product in reliance on same. Said false representations have the tendency and capacity to, and do, divert trade to respondent from its competitors who truthfully label their products, thereby causing substantial injury to substantial competition in commerce.

PAR. 10. 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 21, 1936, issued and served a complaint upon the respondent, Bonomo Candy and Nut Corpora-

tion, 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 May 12, 1936. 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 and filed in the office of the Commission. Respondent was represented by counsel but offered no testimony or other evidence in opposition to the charges of the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the testimony and other evidence in support thereof, and on the brief of counsel for the Commission, respondent through its counsel having advised that it did not desire to file brief nor present oral argument, 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. Respondent is a corporation organized under the laws of the State of New York, with its principal office and place of business located at 649 Morgan Avenue, in the city of Brooklyn, State of New York. Respondent 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, jobbers, and retail dealers located at points in the various States in the eastern part of the United States, and causes and has caused its products, when so sold, to be transported from its principal place of business in the State of New York 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 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. Beginning about December 1935, the respondent manufactured and distributed to wholesale dealers and jobbers an assort-

ment containing a number of pieces of candy of uniform size and shape, together with a number of boxes of candy, which boxes 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 had centers of the same color but a small number of said pieces of candy had centers of a different color. The said pieces of candy of uniform size and shape in said assortment retailed at the price of 1¢ each but the purchaser, who procured one of said candies having a center colored differently from the majority, was entitled to receive, and was to be given free of charge, one of the said boxes of candy heretofore referred to. The color of the centers of said pieces of candy of uniform size and shape was effectively concealed from the purchaser and prospective purchaser until a selection had been made and the piece of candy broken open. The aforesaid purchasers of said candies, who procured a candy having a center colored differently from the majority of the said pieces of candy of uniform size and shape in said assortment, thus procured one of the said boxes of candy wholly by lot or chance.

PAR. 3. The lottery or prize assortments, similar to the assortment described in paragraph 2 hereof, 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 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. 4. Numerous retail dealers purchase assortments, as described in paragraph 2 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, and the candy contained in said assortments is sold and distributed to the consuming public in the manner described.

PAR. 5. All sales made by respondent to wholesale dealers and jobbers are absolute sales and respondent retains no control in any manner over the goods after they are delivered to the wholesale dealers or jobbers. 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 retail dealers.

PAR. 6. The sale and distribution of candy by the retail dealers in the manner described in paragraph 2 hereof is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact, that 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 disadvantage in competing. Certain retailers, who find that they can dispose of more candy by the "break and take," or "draw," or "deal" methods, buy respondent's products and the products of others employing the same or similar 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 furnishing the same or similar assortments, and 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. 7. 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.

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" 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 features connected with the "break and take," "draw," or "deal" candy.

PAR. 9. In addition to the assortment described in paragraph 2 hereof, respondent manufactures candy which it sells without any lottery or chance feature in connection with its resale to the public. Such assortments are sold to syndicate and retail accounts and to wholesale dealers and jobbers. The sale of the "break and take," or "draw," or "deal" assortments, as described in paragraph 2 hereof, is confined to wholesale dealers and jobbers. An officer of the respondent corporation was called as a witness and testified that the respondent's annual volume of business was approximately \$700,000, but the proportion represented by "straight" assortments and "break and take," or "draw," or "deal" assortments was not shown.

PAR. 10. 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.

PAR. 11. The complaint, in paragraph 7, charged the respondent with falsely representing that certain of its packages of candy were peppermint flavored. The Commission finds that the testimony and other evidence introduced do not support this allegation.

CONCLUSION

The aforesaid acts and practices of the respondent, Bonomo Candy and Nut Corporation (excluding the acts and practices referred to in paragraph 11 hereof), 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 testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the charges of the complaint, and the brief filed on behalf of counsel for the Commission, no testimony or other evidence having been offered in opposition to the allegations of the complaint and no brief having been filed by the respondent, 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, Bonomo Candy and Nut Corporation, a corporation, its officers, agents, representatives and employees, in the offering for sale, sale, and distribution in interstate commerce of candy, 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 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 contained in said packages or assortments to the public.

(3) Packing or assembling in the said packages or assortments 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 a number of small boxes of candy, which said 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.

It is further ordered, That the respondent shall, within 30 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 this order.

IN THE MATTER OF
NAT D. GOLDBERG, TRADING AS SUNSET DISTILLING
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 2416. Complaint, May 27, 1935—Decision, Dec. 12, 1936

Where an individual engaged as wholesaler and rectifier of distilled spirits in blending and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages, in a rectifying plant and under rectifier's permit, and in selling his aforesaid various products to wholesalers and distributors in substantial competition with those engaged in the manufacture, by true distillation, of gins, rums, and other spirituous beverages from mash, wort, or wash, and in selling same in trade and commerce among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in rectifying plants and under rectifiers' permits, and in similarly selling the same, and including among said competitors those who, as manufacturers and distillers from mash, wort, or wash of gins, rums, 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, and bottling cordials and other spirituous beverages as hereinbefore set forth, do not, as hereinbefore set forth, use said words—

Represented, through use of word "Distilling" in his trade name, printed on his stationery and on the labels attached to the bottles in which he sold and shipped his said products, and in various other ways, to his customers, and furnished them with the means of thus representing to their vendees, both retailers and ultimate consuming public, that the said cordials, brandies, liqueurs, rums, gins, and other spirituous beverages contained in such bottles were by him made through process of distillation from mash, wort, or wash, notwithstanding fact he did not thus distill said various beverages, thus bottled, labeled, sold, and transported by him, by original and continuous distillation, as above set forth, and through continuous closed pipes and vessels until manufacture is complete, as long definitely understood and implied to trade and ultimate purchasing public from word "Distilling," and did not own, operate, or control any place or places where alcoholic beverages are thus made, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into the belief that the cordials, brandies, liqueurs, gins, rums, and other spirituous beverages sold by him were by him made and distilled from mash, wort, or

¹Count Two 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.

wash, as above set forth, and of inducing dealers and purchasing public, acting in such belief, to buy his said rectified and bottled spirituous beverages, and of thereby diverting trade to him from his competitors who do not, by their corporate or trade names, or in any other manner, misrepresent that they are manufacturers by distillation as above set 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.

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 Nat D. Goldberg, trading as Sunset 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 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 an individual, Nat D. Goldberg, doing business under the trade name Sunset Distilling Company, with principal office and place of business at 125 North Racine Avenue, in the city of Chicago, in the State of Illinois. He is now, and for more than one year last past, has been engaged in the business of blending and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in a rectifying plant under a rectifier's permit, 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 distributors, some located within the State of Illinois and some 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 one year last past has been, in substantial

competition with corporations and with other individuals, partnerships, and firms engaged in the manufacture by true distillation of gins, rums, and other spirituous 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 his business as aforesaid respondent is, and for more than one year last past has been, in substantial competition with corporations and with other individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in rectifying plants under rectifiers' permits 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 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 spirituous beverages 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 the actual distillers and manufacturers thereof.

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 and on the 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 the said cordials, brandies, liqueurs, rums, gins, and other spirituous beverages 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 spirituous beverages by him so bottled, labeled, sold, and transported. Respondent does not own, operate, or control any place or places where alcoholic beverages are manufactured by 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 gins, 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, 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 cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in rectifying plants under rectifiers' permits who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, advertising 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 cordials, brandies, liqueurs, gins, rums, and other spirituous beverages sold by the respondent are manufactured or distilled by him from mash, wort, or wash by one continuous process 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 spirituous beverages 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 manufacturers by distillation from mash, wort, or wash of 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

PARAGRAPHS 1. Respondent is an individual, Nat D. Goldberg, doing business under the trade name Sunset Distilling Company, with principal office and place of business at 125 North Racine Avenue, in the city of Chicago, in the State of Illinois. He is now, and for more than one year last past has been, engaged in the business of blending and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in a rectifying plant under a rectifier's permit, 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 distributors, some located within the State of Illinois and some 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 one year last past has been, in substantial competition with corporations and with other individuals, partnerships, and firms engaged in the manufacture by true distillation of gins, rums, and other spirituous 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 his business as aforesaid respondent is, and for more than one year last past has been, in substantial competition with corporations and with other individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in rectifying plants under rectifiers' permits 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.

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 purpose 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 "Distilling" in his trade name, printed on his stationery and on the labels attached to the bottles in which he 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 gins, rums, and other spirituous beverages from mash, wort, or wash, and that the cordials, brandies, liqueurs, gins, rums, and other spirituous beverages by him so sold and transported have been bottled by the original distillers thereof and that the gins and rums rectified, blended and sold by respondent have been produced by a true process of distillation, 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 27, 1935, issued and served its complaint in this proceeding upon respondent Nat D. Goldberg, trading as Sunset 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, 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 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 an individual trading under the name and style of Sunset Distilling Company, with principal office and place of business at 125 North Racine Avenue, in the city of Chicago, in the State of Illinois. He 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-526," as a wholesaler and rectifier of distilled spirits, blending and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in a rectifying plant under a rectifier's permit, 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 distributors, some located within the State of Illinois, and some 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 one year last past has been, in substantial competition with corporations and with other individuals, partnerships, and firms engaged in the manufacture by true distillation of gins, rums, and other spirituous 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 his business as aforesaid respondent is, and for more than one year last past has been, in substantial competition with corporations and with other individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in rectifying plants under rectifiers' permits 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 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 spirituous beverages 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 the actual distillers and manufacturers thereof.

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 and on the 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 the said cordials, brandies, liqueurs, rums, gins, and other spirituous beverages 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 spirituous beverages by him so bottled, labeled, sold, and transported. Respondent does not own, operate, or control any place or places where alcoholic beverages are manufactured by process or 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, gins, 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, 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 cordials, brandies, liqueurs, rums, gins, and other spirituous beverages in rectifying plants under rectifiers' permits who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, or on their stationery, advertising or 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 cordials, brandies, liqueurs, gins, rums, and other spirituous beverages sold by the respondent are manufactured or distilled by him from mash, wort, or wash by one continuous process 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 spirituous beverages 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 misrep-

resent that they are manufacturers by distillation from mash, wort, or wash of spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The complaint herein was issued May 27, 1935, on the same day that the decision of the United States Supreme Court in the case of A. L. A. Schechter Poultry Corporation vs. U. S., 295 U. S. 495, was handed down, but before notice of it had been received by the Commission. Count 2 of the complaint charged violation of Section 3 of Title I of the National Industrial Recovery Act which was invalidated by the aforesaid decision. For that reason the Commission has ordered the complaint dismissed as to count 2 thereof.

CONCLUSION

The aforesaid acts and practices of the respondent Nat. D. Goldberg, trading as Sunset Distilling 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 and the answer filed herein, dated October 27, 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, Nat D. Goldberg, trading as Sunset Distilling Company, his officers, representatives, and employees, and his agents, corporate or individual, 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 "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

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whiskies, gins, or 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 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 complaint be and it 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 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.

Syllabus

IN THE MATTER OF

H. E. MARTINDALE, TRADING AS FEDERAL INSTITUTE
OF MEATS & MARKETING

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

Docket 2734. Complaint, Feb. 29, 1936—Decision, Dec. 14, 1936

Where an individual engaged in distributing and selling, from his place of business in a Michigan city, correspondence courses in butchering and meat packing, and in selling books, booklets, and pamphlets to those subscribing to and purchasing his said courses, in substantial competition with those similarly engaged and with those engaged in the business of teaching butchering and meat packing, etc., in ways other than through correspondence courses, in commerce among and between the various States and in the District of Columbia, and including among such competitors many who distribute and sell their courses without in any way misrepresenting the character, quality, size, scope, or connection with the United States Government, of their respective businesses, demand for pupils who have successfully completed their courses, or degree of proficiency that will be acquired by their pupils upon successful completion of the course—

- (a) Featured in his various advertising literature, including advertisements printed and circulated throughout the various States to pupils and prospective pupils, and extensively used questionnaires, circular letters, enrollment blanks, etc., his trade name, including words "Federal Institute," and made use of such words as "Chief of Examiners," "Board of Examiners," "Examiners," "Assistant Examiners," and "Divisional Director," notwithstanding fact neither said individual nor the business conducted by him under aforesaid name was in any way connected with, licensed, or approved by any branch or bureau of the United States Government;
- (b) Included along with his aforesaid trade name, words "Washington, D. C.," and followed his own name with term "Divisional Director," and made use of words "Central States Office," and made such statements therein as "This survey * * * now being conducted in Wisconsin, is part of a nationwide project, Wisconsin being the first state in the middle-west section (Central States Division) to be contacted," and "Due to the limited time allotted for the completion of this survey, we are resorting to the mails," etc., and depicted in certain portions of his advertising a large building, together with his aforesaid trade name, facts being the business thus conducted by him was not operated on a nation-wide or wide-spread basis covering many States, or conducted on a large and substantial basis, pupils and prospective pupils had been contacted only in a very few States, so-called "Central States Office" in said Michigan city was in reality the home and sole office of the business, which rented only a comparatively small office space in building depicted as aforesaid, and said individual or business did not, as represented, have Washington office; and
- (c) Represented, in his aforesaid advertising literature, that "The field of operation in this industry is nation-wide," and that "among many opportunities indicated are those of: buyer-shipper-inspection," etc., and that,

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as a result of the survey hereinbefore referred to, and use of the mails "to reach quickly a list of men from whom we will select a limited number for personal interviews," "We will be able to select this limited number of men who through the facilities of our various departments will quickly qualify for the branches of service outlined herein," notwithstanding fact course in question was not a complete one in butchering and meat packing, and successful completion thereof did not, of itself, qualify the pupil taking same to fill various positions in the meat slaughtering and packing industry, in which there were not many openings, and in which need and demand for trained men was not greater than actual supply thereof, and in which there were skilled men with long experience in the industry waiting the return of normal conditions for reemployment therein;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the beliefs that aforesaid business, thus conducted, was a branch or bureau of the Government, or connected or affiliated in some way therewith, or licensed and approved by some branch or bureau thereof, and was operated and conducted on a nation-wide and large and substantial basis covering many States, and that there were many openings for various positions in said industry, with need for trained men in excess of the actual supply, as above set forth, and that its course constituted a competent one, upon the completion of which the student would be qualified adequately to fill various positions therein, and with the result that a substantial number of the consuming public, as a direct result of such mistaken and erroneous beliefs, purchased his said courses, and trade was unfairly diverted to him from those similarly engaged in the distribution and sale of such or other correspondence courses and who truthfully advertised the same; to the injury of competition in commerce among and between the various States and in the District of Columbia:

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.

Mr. Wentworth T. Durant, 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 H. E. Martindale, an individual, trading as Federal Institute of Meats & Marketing, 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, H. E. Martindale, is an individual trading as Federal Institute of Meats & Marketing with its principal office

and place of business located at 805½ Sheridan Road, Menominee, in the State of Michigan. Respondent is now, and has been for some time past, engaged in the business of distributing and selling correspondence courses of instruction in the art of butchery and meat packing to persons hereinafter referred to as pupils and in selling to such pupils severally, as incidental and accessory to the instructions in and to the learning, use, and practice of such science and art, certain merchandise consisting of books, booklets, pamphlets, and other articles in commerce as herein set out.

PAR. 2. Said respondent, being engaged in business as aforesaid, when a prospective pupil enters into a contract with him, enrolls said pupil, in consideration of the agreed charge or tuition paid or agreed to be paid by such pupil, undertakes to sell and deliver to such pupil, through the United States mails or otherwise, a complete course of written, mimeographed or printed information and instruction in the particular course or courses of said instruction chosen by such pupil and causes said correspondence courses of instruction, when sold, to be transported from his office and principal place of business in the State of Michigan to purchasers thereof located at various points 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 correspondence courses of instruction in the art of butchery and meat packing 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. In the course and conduct of his 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 correspondence courses of instruction in various arts, including the art of butchery and meat packing, and also with persons, firms, and corporations engaged in the business of teaching or giving instruction in the art of butchery and meat packing and other arts in ways other than through correspondence courses, 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 individuals to purchase and pay for said correspondence course of instruction, respondent has caused advertisements to be inserted in newspapers of general circulation throughout the United States, and has printed and circulated throughout the various States to pupils and prospective pupils, through the United States mails and otherwise, circular letters, questionnaires, enrollment blanks, and other advertising literature. In all of said ques-

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tionnaires, circular letters, enrollment blanks, and advertising literature, the respondent has caused his trade name to be prominently and conspicuously displayed with the following addresses and designations:

Central States Division
Federal Institute—Meats—Marketing
Washington, D. C.
H. E. Martindale, Divisional Director
Central States Office
Menominee, Michigan

In other advertising literature, the respondent has made use of the following statements:

This survey sponsored by the F. I. M. M. now being conducted in Wisconsin is part of a nation-wide project, Wisconsin being the first state in the middle-west section (Central States Division) to be contacted.

Due to the limited time allotted for the completion of this survey, we are resorting to the mails in order to reach quickly a list of men from whom we will select a limited number for personal interviews.

The field of operation in this industry is nation-wide—among the many opportunities indicated are those of: buyer—shipper—inspection—managing—supervising; also grading—slaughter—dressing of cattle—likewise sausage making, etc. As a result of this survey, we will be able to select this limited number of men who through the facilities of our various departments will quickly qualify for the branches of service outlined herein.

In all of said literature and enrollment blanks, hereinabove referred to, the respondent also makes use of such terms as “Chief of Examiners,” “Board of Examiners,” “Examiners,” “Assistant Examiners,” and “Divisional Director” to designate certain of his employees or associates, those terms being generally used by various branches, divisions, and bureaus of the United States Government to designate certain classes of their respective employees. In certain portions of the advertising literature, hereinabove referred to, respondent displays a picturization of a large building under which there appears the designation:

FEDERAL INSTITUTE OF MEATS & MARKETING

Menominee, Michigan

All of said statements, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of the business conducted by him under the trade name Federal Institute of Meats & Marketing. In all of his advertising literature and through representations and statements made by the respondent

acting through agents and representatives, the respondent has represented, and now represents, that (1) the business conducted by him under the trade name Federal Institute of Meats & Marketing is a branch or bureau of the United States Government, has some connection or affiliation with some branch or bureau of the United States Government or is licensed and approved by some branch or bureau of the United States Government; (2) that the business operated under the trade name Federal Institute of Meats & Marketing is operated on a nation-wide basis, or is operated on a widespread basis covering many states and is conducted on a large and substantial basis; and (3) that there are many openings for various positions in the meat slaughtering and packing industry and that the need and demand for men trained in the art of butchery and meat packing is much greater than the actual demand therefor and that the course of instruction sold by the respondent is a competent course upon the completion of which the pupil will be adequately qualified to fill various positions in the meat slaughtering and meat packing industry.

PAR. 5. The representations made by the respondent as to any connection between the business conducted by him under the trade name Federal Institute of Meats & Marketing and any branch or bureau of the United States Government are, in fact, untrue. Neither the respondent nor the business conducted, as aforesaid, is in any way connected with a bureau or branch of the United States Government and neither the respondent nor the business conducted under the name of Federal Institute of Meats & Marketing maintains an office of any kind in Washington, D. C.

The business operated by the respondent is not operated on a nation-wide basis or on a widespread basis covering many states and is not conducted on a large and substantial basis. In truth and in fact, pupils and prospective pupils have been contacted in only a very few states and the so-called "Central States Office" located at Menominee, Mich., is in reality the home and sole office of the business. The Federal Institute of Meats & Marketing does not operate or completely occupy the building depicted, as hereinabove indicated, but actually rents only a comparatively small office space in said building. In truth and in fact, there are not many openings for various positions in the meat slaughtering and packing industry and the need and demand for men trained in the art of butchery and meat packing is not greater than the actual demand therefor. In truth and in fact, the course of instruction offered by the respondent is not a complete course in butchery and meat packing and a successful completion of said course does not, of itself, qualify the pupil

taking said course to fill various positions in the meat slaughtering and packing industry.

PAR. 6. There are among the competitors of the respondent many who distribute and sell either correspondence courses or other courses in butchery and meat packing, or other correspondence courses of instruction, who do not, in any way, misrepresent the character, quality, size, scope, or connection with the United States Government, of their respective businesses and do not, in any way, misrepresent the demand for pupils who have successfully completed their respective courses of instruction or the degree of proficiency that will be acquired by the pupil upon a successful completion of the course.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent, as hereinabove set out, in his advertising, in newspapers, questionnaires, circular letters, enrollment blanks, and other advertising literature, in offering for sale and selling his courses of instruction 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 the mistaken and erroneous beliefs, induced by the acts, advertisements, and misrepresentations of respondent, as hereinabove detailed, a substantial number of the consuming public has purchased a substantial volume of respondent's courses of instruction 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 correspondence courses or other courses in the art of butchery and meat packing, or other correspondence courses, and who truthfully advertise their courses of instruction. 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 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 Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission on February 29, 1936, issued and served its complaint in this proceeding upon the respondent, H. E. Martindale, trading as Federal Institute of Meats & Marketing, charging him with the use of unfair methods of competition in violation of the provisions of said act. After the issuance of said complaint, testimony and other evidence in support of the allegations of said complaint were introduced by J. T. Welch, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Wentworth T. Durant, 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 and testimony and other evidence; 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, H. E. Martindale, is an individual, trading as Federal Institute of Meats & Marketing. His place of business was formerly located at 805½ Sheridan Road, Menominee, Mich. He is now located at 647 State Street, Marinette, in the State of Wisconsin. Respondent is engaged in the business of distributing and selling correspondence courses of instruction in the art of butchery and meat packing. As incidental and accessory to the instruction in the art of butchery and meat packing, he also sells certain merchandise consisting of books, booklets, and pamphlets to those persons subscribing to and purchasing his correspondence courses of instruction.

When a prospective pupil enters into a contract with the respondent, he is enrolled in consideration of the agreed tuition charge which is paid or agreed to be paid by said pupil. The respondent delivers to such pupil, through the United States mail or otherwise, a course of written, mimeographed, or printed instructions in the particular course or courses chosen by such pupil. Respondent causes such courses of instruction, when sold, to be transported from his principal place of business in the State of Michigan to purchasers thereof located at various points in other States of the United States. The respondent has maintained, at all times for a period of more than one year last past, a constant current of trade and commerce in said correspondence courses of instruction in the art of butchery and meat packing, 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 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 correspondence courses of instruction in various arts, including the art of butchery and meat packing, and also with persons, firms, and corporations engaged in the business of teaching or giving instruction in the art of butchery and meat packing and other arts in ways other than through correspondence courses, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. For the purpose of inducing individuals to purchase and pay for said correspondence courses of instruction, the respondent has made use of advertisements which had been printed and circulated throughout the various States of the United States to pupils and prospective pupils through the United States mail and otherwise. The respondent has also made extensive use of questionnaires, circular letters, enrollment blanks, and advertising literature which has been circulated in the same way to prospective pupils. In all of his advertising literature, the respondent causes his trade name to be prominently and conspicuously displayed with the following addresses and designations:

Central States Division

Federal Institute—Meats—Marketing
Washington, D. C.

H. E. Martindale, Divisional Director

Central States Office
Menominee, Michigan

In other advertising literature, the respondent has made use of statements such as the following:

This survey sponsored by the F. I. M. M. now being conducted in Wisconsin is part of a nation-wide project, Wisconsin being the first state in the middle-west section (Central States Division) to be contacted.

Due to the limited time allotted for the completion of this survey, we are resorting to the mails in order to reach quickly a list of men from whom we will select a limited number for personal interviews.

The field of operation in this industry is nation-wide—among the many opportunities indicated are those of: buyer—shipper—inspection—managing—supervising; also grading—slaughter—dressing of cattle—likewise sausage making,

etc. As a result of this survey, we will be able to select this limited number of men who through the facilities of our various departments will quickly qualify for the branches of service outlined herein.

In all of said advertising literature, including questionnaires, circulars and enrollment blanks, the respondent makes extensive use of such terms as "Chief of Examiners," "Board of Examiners," "Examiners," "Assistant Examiners," and "Divisional Director" to designate certain of his employees or associates. In certain portions of his advertising literature, the respondent displays a picturization of a large building under which there appears the designation:

FEDERAL INSTITUTE OF MEATS & MARKETING
Menominee, Michigan

In all of his advertising literature and through representations and statements made by the respondent acting through agents and representatives, the respondent has represented and now represents that (1) the business conducted by him under the trade name Federal Institute of Meats and Marketing is a branch or bureau of the United States Government, has some connection or affiliation with some branch or bureau of the United States Government or is licensed and approved by some branch or bureau of the United States Government; (2) the business operated under the trade name Federal Institute of Meats & Marketing is operated on a nation-wide basis, or is operated on a widespread basis covering many states and is conducted on a large and substantial basis; (3) there are many openings for various positions in the meat slaughtering and packing industry and that the need and demand for men trained in the art of butchery and meat packing is much greater than the actual demand therefor; and (4) the course of instruction sold by the respondent is a competent course upon the completion of which the pupil will be adequately qualified to fill various positions in the meat slaughtering and meat packing industry.

PAR. 4. The terms "Chief of Examiners," "Board of Examiners," "Examiners," "Assistant Examiners," and "Divisional Director" are terms generally used by various branches, divisions, and bureaus of the United States Government to designate certain classes of their respective employees. The representations made by the respondent as to any connection between him or the business conducted by him under the trade name Federal Institute of Meats & Marketing and any branch or bureau of the United States Government are, in fact, untrue. Neither the respondent nor the business conducted by him under said trade name is in any way connected with, affiliated with, licensed or approved by, any branch or bureau of the United States Government. The respondent, neither individually nor under the

trade name Federal Institute of Meats & Marketing, conducts or maintains an office of any kind in the city of Washington, District of Columbia. The business operated by the respondent is not operated on a nation-wide basis or on a widespread basis covering many States and is not conducted on a large and substantial basis. As a matter of fact, pupils and prospective pupils have been contacted only in a very few States. The so-called "Central States Office" located at Menominee, Mich., is in reality the home and sole office of the business. The Federal Institute of Meats & Marketing does not completely occupy the building depicted in respondent's advertising matter but actually rents only a comparatively small office space in said building. The course of instruction sold by the respondent is not a complete course of butchery and meat packing and a successful completion of said course does not, of itself, qualify the pupil taking such course to fill various positions in the meat slaughtering and packing industry. There are not many openings of various positions in the meat slaughtering and packing industry and the need and demand for men trained in the art of butchery and meat packing is not greater than the actual supply therefor. There are skilled men with long experience in the industry who are waiting a return of normal conditions for reemployment in the meat packing industry.

PAR. 5. There are among the competitors of the respondent many who distribute and sell either correspondence courses or other courses in butchery and meat packing, or other correspondence courses of instruction, who do not, in any way, misrepresent the character, quality, size, scope, or connection with the United States Government, of their respective businesses and do not, in any way, misrepresent the demand for pupils who have successfully completed their respective courses of instruction or the degree of proficiency that will be acquired by the pupil upon a successful completion of the course.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in his advertising literature in offering for sale and selling his correspondence courses of instruction were, and are, calculated to, and had, and now have, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the beliefs that the business conducted under the trade name of Federal Institute of Meats & Marketing is a branch or bureau of the United States Government or has some connection or affiliation with some branch or bureau of the United States Government or is licensed and approved by some branch or bureau of the United States Government; that the business is operated on a nation-wide basis covering many States and is conducted

on a large and substantial basis; that there are many openings for various positions in the meat slaughtering and packing industry and that the need for men trained in the art of butchery and meat packing is much greater than the actual supply therefor; and that the respondent's course of instruction constitutes a competent course upon the completion of which a student will be adequately qualified to fill various positions in the meat slaughtering and meat packing industry. As a direct consequence of these mistaken and erroneous beliefs, a substantial number of the consuming public has purchased respondent's courses of instruction 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 correspondence courses or other courses in the art of butchery and meat packing, or other correspondence courses and who truthfully advertise their respective courses of instruction. As a consequence thereof, 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 the respondent, H. E. Martindale, trading as Federal Institute of Meats & Marketing, 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 John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said 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, H. E. Martindale, individually and trading and doing business as Federal Institute of Meats and Marketing, or trading under any other trade name, his representatives, agents, and employees, in connection with the offering for sale,

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sale, and distribution of correspondence courses of instruction in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the words "Chief of Examiners," "Board of Examiners," "Examiners," "Assistant Examiner," "Divisional Director," and "Federal Institute," alone or in conjunction with any other word or words, or through any other means, or in any other manner, that the respondent or the business conducted by him is a branch or bureau of the United States Government, or is in any way connected or affiliated with, or is licensed and approved by, any branch or bureau of the United States Government;

2. Representing that the business operated by the respondent is operated on a nation-wide basis or is operated on a widespread basis covering many states, or is conducted on a large and substantial basis, when such is not the fact;

3. Representing that there are many openings for various positions in the meat slaughtering and packing industry, or that the need and demand for men trained in the art of butchery and meat packing is much greater than the actual demand therefor;

4. Representing that the respondent's course of instruction is a competent course, upon the completion of which the pupil will be adequately qualified to fill various positions in the meat slaughtering and packing industry;

5. Representing that the respondent or the business conducted by him maintains offices in the city of Washington, District of Columbia;

6. Using the term "Federal Institute" in the name under which respondent's business is conducted, or using any other word or expression which implies or suggests any connection with any branch or bureau of the United States Government.

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.

Complaint

IN THE MATTER OF

A. KIMBALL 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 2329. Complaint, Mar. 15, 1935—Decision, Dec. 15, 1936

Where the corporate manufacturers of practically the entire supply of pin tickets in the United States, which they theretofore offered at prices determined by competition among them and, in many instances, at varying prices—

Met, discussed and compared, and came to an agreement and understanding to fix, and did fix, and thereafter charge and maintain uniform prices for their said products;

With result that they were thereby caused to offer and sell such competitive products at uniform prices, and of substantially restricting price competition among them and maintaining artificial price level:

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* and *Mr. William C. Reeves*, trial examiners.

Mr. Robt. M. McMillen for the Commission.

Mr. Abraham A. Silberberg, of New York City, for respondents.

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 A. Kimball Company, a corporation, The Reyburn Manufacturing Company, a corporation, Waterbury Buckle Company, a corporation, American Tag Company, a corporation, Dancyger Safety Pin Ticket Company, a corporation, Adam Sutcliffe Company, a corporation, and Noesting Pin Ticket Company, a corporation, 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 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. Kimball Company is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at 307 West Broadway, New York City.

The Reyburn Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business at Allegheny Avenue and Thirty Second Street in the city of Philadelphia in said State.

Waterbury Buckle Company is a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business at Waterbury in said State.

American Tag 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 at 6151 South State Street in the city of Chicago in said State.

Dancyger Safety Pin Ticket Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal place of business at 4707 Detroit Avenue in the city of Cleveland in said State.

Adam Sutcliffe Company is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, with its principal place of business at Central Falls in said State.

Noesting Pin Ticket Company is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at Mount Vernon in said State.

PAR. 2. All of the above named respondents are and for a number of years past have been engaged in the manufacture of pin tickets. These are small tickets for temporary attachment to clothing, fabrics, and like materials, by pin-like fasteners. Upon these tickets the dealer customarily endorses cost and selling price, stock number, and other information and identifying marks. Respondents sell this product to and through jobbers and direct to users located throughout the United States, and pursuant to such sales, and as a part thereof, shipment is regularly made to customers from the respective places of business of respondents through and into other States of the Union. These respondents represent practically the entire source of supply of pin tickets in the United States and their annual sales aggregate about \$750,000. But for the matters and things hereinafter set out, said respondents would be in active competition with one another for business.

PAR. 3. In or about the year 1931 respondents entered into an understanding, combination, and conspiracy among themselves for the purpose of restricting and restraining competition in the sale of their said product. Pursuant to such understanding, combination and conspiracy, respondents did and performed and still do and perform the following acts and things:

(a) Met and discussed and compared prices at which they were selling their said product and came to an understanding that they would quote uniform prices to the using public, and pursuant to such understanding and agreement did quote uniform prices and did sell to the public at such prices.

(b) By understanding and agreement from time to time changed said prices but continued to make the same uniform throughout the industry.

(c) Conferred and cooperated with one another for the purpose and with the effect of ascertaining when and by whom prices so fixed were departed from, and used persuasive and other methods to compel offending manufacturers to resume the uniform schedule of prices.

(d) Used other cooperative methods and means for making and keeping prices uniform and for preventing any price competition among themselves.

PAR. 4. The result of the formation of said understanding, combination and conspiracy has been and is to restrict and restrain competition among the manufacturers of pin tickets; to constrain all such manufacturers to sell at a price uniform with every other manufacturer and to keep prices at an artificial level.

PAR. 5. The acts and practices charged are to the prejudice of the public, and the formation of said understanding, combination and conspiracy and the things done thereunder, as herein charged, constitute unfair methods of competition in commerce within the intent and meaning of Section 5 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, on March 15, 1935, issued and served its complaint in this proceeding upon respondents A. Kimball Company, The Reyburn Manufacturing Company, Waterbury Buckle Company, American Tag Company, Dancyger Safety Pin Ticket Company, Adam Sutcliffe Company, and Noesting Pin Ticket 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 respondents' answers thereto, the attorney of record for all said respondents tendered and entered into a stipulation as to the facts with the Chief Counsel for this Commission, subject to the approval of the Commission, by

which it is agreed that the statement of facts therein contained may be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint, and in opposition thereto; and that the Commission may proceed on said statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceedings without presentation of argument or the filing of brief; which said stipulation has been by the Commission approved. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, and the said stipulation and statement of 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. All of the respondents above named are now, and were at all times hereinafter mentioned, corporations duly organized under the laws of the States of New York, Pennsylvania, Connecticut, Illinois, Ohio, Rhode Island, and New York, respectively, and each of them is and has been engaged in the manufacture and sale of pin tickets. Pursuant to such sales and as a part thereof respondents have regularly made shipments of said products from their respective places of business through and into States of the United States other than the States of the points of origin of such shipments. The pin tickets manufactured and sold by each respondent have been and are similar to and for the same or similar use and purpose as the pin tickets of all other respondents; they seek and have sought to sell the same to the same trade; and all dealers in and users of pin tickets in the various States are and have been customers or potential customers of each and all of the respondents. Respondents manufacture and have manufactured practically the entire supply of pin tickets in the United States.

PAR. 2. Prior to the year 1931 these respondents had been offering for sale and selling competitive pin tickets at prices determined by competition among them, and these prices in many instances varied as among said respondents. In the years 1931, 1932, and into 1933 these respondents held a series of meetings from time to time at which they discussed and compared prices at which they were offering for sale and selling competitive pin tickets, and at and by means of said meetings and discussions came to an agreement or understanding to

fix the prices at which they would, and did thereafter, offer for sale and sell competitive pin tickets, which prices were uniform as among respondents. From time to time thereafter, pursuant to such understanding, they uniformly changed said prices.

PAR. 3. The result of said meetings and discussions and understandings, and the things done pursuant thereto, as above stated, has been to cause and to tend to cause respondents to offer for sale and sell competitive pin tickets at prices uniform among them, and to substantially restrict price competition among them, and to keep prices at an artificial level.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, and a stipulation and statement of facts in support of the allegations of the complaint and in opposition thereto, 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, A. Kimball Company, The Reyburn Manufacturing Company, Waterbury Buckle Company, American Tag Company, Dancyger Safety Pin Ticket Company, Adam Sutcliffe Company and Noesting Pin Ticket Company, their officers, representatives, agents, and employees, in connection with the offering for sale and sale and distribution of pin tickets in interstate commerce, or in the District of Columbia, do forthwith cease and desist:

1. From entering into any agreement or understanding among themselves, or between any two or more of them, or between any one or more and others, to fix the prices at which they would offer for sale or sell pin tickets;

2. From entering into any agreement or understanding among themselves, or between any two or more of them, or between any one or more and others, fixing the prices at which they would offer for sale or sell pin tickets;

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3. From restricting or suppressing competition among themselves or any of them, or with others by any other similar concert of action;

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

THE LEADER NOVELTY CANDY COMPANY, INC.

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

Docket 2789. Complaint, Apr. 28, 1936—Decision, Dec. 15, 1936

Where a corporation engaged in sale and distribution of candy and candy products, and in manufacture, sale, and distribution of novelty toys to wholesale dealers, including so-called "break and take," "draw" or "deal" assortments, sale of which type, in competition with the exclusively "straight" merchandise of many candy manufacturers and distributors, has been followed by a marked decrease in latter, due to gambling or lottery feature connected with former, and which assortments consisted of (1) package of individually wrapped penny pieces of uniform size and shape, color of a few of which differed from that of the majority, and (2) package of novelty toys such as water pistols and rubber return balls, ordinarily sold and billed by it separately to wholesaler and jobber vendees, but not separately at same price assigned each package for sale together, and usually identical in number, so that such respective packages might be displayed side by side as a single unit and sold under a plan by which chance purchaser of one of said penny pieces, concealed color of which differed from that of majority, additionally received, for his penny, one of aforesaid toys—

Sold to wholesalers or jobbers said "break and take," "draw," or "deal" assortments, so assembled and packed by it that they were and might be sold by retail dealers to purchasing public as single unit, as hereinbefore set forth, and as a lottery or gaming device, for resale to their numerous retailer purchasers thereof, by whom the respective packages, as packed by it and as a single unit, were displayed and candy involved sold and distributed to consuming public as hereinbefore set forth, and by lot or chance; contrary to 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 candy industry in 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 be resold to public by lot or chance;

With result that sales of "straight" goods of such unwilling and refusing competitors, who could compete on even terms only by furnishing the same or similar assortments, showed a continued decrease and they were put to a competitive disadvantage, and trade was diverted from them to it and others using similar methods:

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. Victor Warren Milch, 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 The Leader Novelty Candy Co., 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 the State of New York, with its principal office and place of business located at 23 Marcy Avenue, in the city of Brooklyn, State of New York. It is now, and for several years last past has been, engaged in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers, located at points in the various States of the United States, and causes the said product, when so sold, to be transported from its principal place of business in the city of Brooklyn, New York, 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 sale and distribution of candy in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its said business, respondent has caused and causes the representation to be made to its customers and prospective customers by its salesmen and agents, and has caused and causes said representation to be set forth on its business stationery, billheads, invoices, catalogues, labels, and other trade literature, to the effect that it controls and operates factories and is the manufacturer of said candy in which it deals. A substantial portion of the purchasing public, including retail dealers in candy, have expressed, and have, a preference for dealing direct with the manufacturer of products being purchased, such purchasers believing that they secure closer prices, superior quality, and other advantages that are not obtained when they purchase from a selling agency or middleman.

PAR. 3. The use by respondent of said representation that it is a manufacturer of candy has the capacity and tendency to and does

mislead and deceive many of respondent's said customers and prospective customers into the erroneous belief that respondent is a business concern which controls and operates a factory in which aforesaid candy sold by respondent is manufactured, and that persons dealing with respondent are buying said candy directly from the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages, including advantages in service, delivery, and adjustment of account that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent neither owns, controls, nor operates any factory whatsoever and does not manufacture said candy sold by it, but on the contrary only purchases and repacks the candy which it sells.

PAR. 4. There are among the competitors of respondent referred to in paragraph 1 hereof, many who manufacture the candy which they sell and who rightfully represent that they are the manufacturers thereof. There are others of said competitors who purchase the candy in which they deal and resell the same at a profit to themselves over and above the cost of said candy to said competitors, and who in no wise represent that they manufacture said candy. The above alleged acts and practices of respondent as set out in paragraphs 2 and 3 hereof tend to and do divert business from and otherwise injure and prejudice said competitors.

PAR. 5. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers 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, and is as follows:

The said assortment is composed of a number of pieces of candy of uniform size, shape, and quality, together with a number of articles of merchandise, which articles of merchandise 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 articles of merchandise heretofore referred to. 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 thus procure one of the said articles of merchandise wholly by lot or chance.

PAR. 6. The jobbers and wholesale dealers to whom respondent sells its assortment resell said assortment 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 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 candy offered for sale and sold by its competitors.

PAR. 7. 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 articles of merchandise.

The use by respondent of said method of 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.

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. 8. 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, and who do not adopt and use said method or an equivalent method.

PAR. 9. 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. 10. 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 April 28, 1936, issued and served its complaint in this proceeding upon the respondent, The Leader Novelty Candy Co., 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 Henry C. Lank, attorney 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 Victor W. Milch, Esquire, attorney for the respondent. For the purpose of eliminating the taking of certain additional testimony, counsel for the Commission and counsel for the respondent stipulated (Tr. p. 12) concerning the substance of such testimony and agreeing that the Commission might consider such testimony as actually having been offered in this case. The said testimony and other evidence, including the stipulation of counsel, 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 and answer thereto, testimony and other evidence, including the stipulation of counsel, brief in support of the complaint, respondent having waived filing of any brief and not having requested oral argument; 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. Respondent, The Leader Novelty Candy Co., Inc., is a corporation organized under the laws of the State of New York, with its office and principal place of business located at 23 Marcy Avenue, Brooklyn, N. Y. Respondent is now, and for several years last past has been, engaged in the sale and distribution of candy and candy products and in the manufacture, sale and distribution of novelty toys to wholesale candy dealers and jobbers located throughout the United States but the majority of whom are located in New York State, in Connecticut and in the New England States. It causes the said candy and novelty toys when sold to be shipped and transported from its principal place of business in New York State to the purchasers thereof in the 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, sale, and distribution of candy and novelty toys between and among the various States of the United States.

PAR. 2. Respondent designates its business as "novelty candy business", and among the assortments which respondent assembles, sells and distributes is an assortment containing a number of small pieces of candy of uniform size and shape, each contained within wrappers, and a number of other articles of merchandise. The small pieces of candy of uniform size and shape are each contained within wrappers and the majority thereof are of the same color but a small number of said pieces of candy are of a different color. The purchaser who procures one of the small pieces of candy of a color different from the majority is entitled to receive, and is to be given free of charge, one of the other articles of merchandise. These articles of merchandise are novelty toys and among such toys are water pistols and rubber return balls. The purchaser who procures one of the candies of the color of the majority of the small 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 said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection or purchase has been made and the wrapper removed therefrom. The other articles of merchandise in said assortment are thus distributed to purchasers of the small pieces of candy of uniform size and shape wholly by lot or chance.

PAR. 3. The candy contained in the above described assortment is contained in one package and the other articles of merchandise or novelty toys are contained in a separate package. The two packages are ordinarily sold and billed separately to the wholesale dealers and jobbers to whom respondent sells its merchandise, but the packages of each which respondent sells to its customers are generally identical in number, and the said assortments are so packed and assembled that the same may be displayed side by side as a single unit and sold in accordance with the above described sales plan. The president of the respondent corporation was called as a witness and testified that the separate packages were sold and billed to wholesale dealers and jobbers at 40¢ each or 80¢ for the two packages; that the respondent did not and would not sell the package containing the other articles of merchandise at this price except in connection with the sale of the package containing the candy; that the other articles of merchandise actually cost him more than 40¢, but that by selling the two packages for 80¢ he was able to realize a profit on the transaction.

PAR. 4. The lottery or prize assortments described in paragraph 2 hereof are generally referred to in the candy trade as "break and take," "draw," or "deal" assortments, and packages or assortments of candy without any gaming device or lottery feature in connection with their resale to the public are generally referred to in the candy trade 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 packages of candy and toy novelties described in paragraph 2 above from wholesale dealers or jobbers who in turn have purchased said packages from respondent, and such retail dealers display one of each of said packages for sale to the public as packed by respondent and as a single unit, 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 are absolute sales, and respondent retains no control in any manner over the merchandise after it is delivered to the wholesale dealer or jobber. 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 as a single unit in the manner described.

PAR. 7. The sale and distribution of assortments of candy and toy novelties by retail dealers by the method described in paragraph 2 above is a sale and distribution by lot or chance and constitutes a lottery or gaming device.

PAR. 8. It was stipulated and agreed by counsel for the Commission and for respondent that various witnesses were available to the Commission and that if called would testify, and that the Commission might consider their testimony as having been offered to the effect that the sale of assortments similar to those sold and distributed by respondent injure the sale of "straight" candy assortments having no lottery or chance feature connected therewith; that the sale of such assortments is injurious to the candy trade generally and to the general public; that the resale of such assortments by retail dealers to the consuming public is violative of the statutes of the several States and is contrary to good morals; that such practices and methods are an unfair method of competition; and in accordance with said stipulation 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 and trade is diverted to respondent and others using similar methods from said competitors. Said competitors can compete on even terms only by furnishing the same or similar assortments to retailers and this they are unwilling to do and their sales of "straight" goods show a continued decrease.

PAR. 9. There are in the United States many manufacturers and distributors of candy who do not sell lottery or prize assortments of candy and who sell their "straight" merchandise in interstate commerce in competition with the "break and take" or "draw" or "deal" assortments, 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 market. This decrease in sales of "straight" candy is principally due to the gambling or lottery feature connected with the "break and take," "draw," or "deal" assortments.

PAR. 10. The exact annual volume of respondent's business was not shown but it consists principally in the sale of assortments similar to that described in paragraph 2 hereof.

PAR. 11. The Commission further finds that the sale and distribution in interstate commerce of assortments as described in paragraph 2 hereof are contrary to public policy.

PAR. 12. The complaint in this case contains an allegation that the respondent represents that it is the manufacturer of the candy in which it deals; that this representation is false; and that it is an unfair method of competition, diverts trade from respondent's competitors, and is contrary to public interest. The evidence offered concerning this allegation of the complaint is meager and indefinite, and the Commission finds that the said allegation is not supported by the testimony.

CONCLUSION

The aforesaid acts and practices of the respondent, The Leader Novelty Candy Co., Inc., except as referred to in paragraph 12 above, 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, testimony and other evidence and stipulation entered into before Miles J. Furnas, 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 by counsel for the Commission, respondent having waived filing of any 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, The Leader Novelty Candy Co., Inc., its officers, representatives, agents, and employees, in the sale, offering for sale, and distribution in interstate commerce of candy and candy products and of toy novelties, do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers candy and other articles of merchandise so packed and assembled that sales of such candy and of other articles

of merchandise 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 and other articles of merchandise 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 and other articles of merchandise contained in said packages or assortments to the public.

(3) Packing or assembling in the same package or in separate packages for sale to the public at retail pieces of candy of uniform size and shape having centers of different colors and other articles of merchandise, which other articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy of a particular color.

It is further ordered, That the respondent, The Leader Novelty Candy Co., Inc., shall, within 30 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 this order.

Complaint

IN THE MATTER OF

HELENA RUBINSTEIN, INC.

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

Docket 2939. Complaint, Oct. 2, 1936—Decision, Dec. 15, 1936

Where a corporation engaged in the advertisement, sale, and distribution of a line of cosmetics, facial creams, and toilet preparations, including some fifteen separate products and, among others, "Youthifying Hand Cream," "Grecian Anti-Wrinkle Cream," "Golden Automatic Lipstick," "Youthful Herbal Mask," "Herbal Eye Tissue Oil," "Marienbad Slenderizing Bath Salts," "Eyelash Grower and Darkener," "Eye Lotion," "Hormone Scalp Food," "Hormone Beauty Mask," and "Hormone Twin Youthifier" creams "No. 1" and "No. 2," for day and night use respectively, in substantial competition with others engaged in distribution and sale of similar preparations in commerce among various States and the District of Columbia—
 Misrepresented, in advertising said line of cosmetics, creams, and preparations in newspapers and periodicals of general circulation throughout the various States, and in advertising literature and folders printed and similarly circulated to customers and prospective customers, and through statements on the labels and containers thereof, the composition, properties and results of aforesaid various fifteen or sixteen preparations, and falsely represented that they would, as the case might be, serve as a food for or nourish the skin, muscles, or tissues, and prevent crows feet and wrinkles, and revitalize skin tissues, and contained living sparks of life which increased their therapeutic value, and that they would rebuild worn out cells and restore youth to dry, lined, wrinkled skin, and would dissolve fatty tissues and act as effective fat reducers, and strengthen the eye nerves:

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

Mr. Morton Nesmith for the Commission.

Mr. Henry M. Flateau, of New York City, for respondent.

COMPLAINT ¹

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Helena Rubinstein, Inc., hereinafter referred to as respondent, has been and is now using

¹ An extended enumeration in Par. 3 of the complaint, quoting respondent's representations in advertising and on labels and containers, purporting to describe fifteen items offered and sold by it, which also appears in the findings, *infra*, at page 231, is omitted from the complaint as published.

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, Helena Rubinstein, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 8 East 57th Street in the city of New York, State of New York. It is now and for more than one year last past has been engaged in advertising, selling, and distributing a line of cosmetics, facial creams, and toilet preparations hereinafter more particularly described. Respondent has caused and still causes said cosmetics, facial creams, and toilet preparations when sold, to be transported from its place of business in the State of New York to purchasers thereof, some located in the State of New York and others located in various States of the United States and the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade in commerce in cosmetics, facial creams, and toilet preparations sold by respondent between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now, and has been in substantial competition with other individuals, firms, and corporations likewise engaged in the business of distributing and selling similar cosmetics, facial creams, and toilet preparations in 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 said business in soliciting the sale of and selling said cosmetics, facial creams, and toilet preparations, and for the purpose of inducing the purchase of said preparations, respondent has caused and still causes advertisements to be inserted in newspapers and magazines of general circulation throughout the various States of the United States, and has printed and circulated advertising folders and literature to customers and prospective customers in the same manner. In all of its advertising literature, through statements and representations herein set out, and through statements and representations of similar import and effect displayed on the labels and containers of said preparations the respondent represents among other things the following:²

²The quoted matter set forth at length in the complaint at this point, in which respondent purports to describe the properties, nature and effect of fifteen items of cosmetics, facial creams and toilet preparations offered and sold by it, is also set forth in the findings, *infra*, at page 231, and for that reason is here omitted in the interest of brevity.

PAR. 4. The representations made by the respondent with respect to the properties, nature and effect of said cosmetics, facial creams, and toilet preparations, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, said preparations do not possess properties or contain ingredients that will feed or nourish the skin or lips, revitalize or restore youth to the skin, or prevent crows feet, wrinkles, or lines about the eyes. Said preparations do not contain hormones or living sparks of life which increase the therapeutic value of the products. Respondent's "Marienbad Slenderizing Bath Salts" will not dissolve fatty tissues, nor are they effective weight reducers. Respondent's "Eye Lotion" will not relieve eye strain or strengthen eye nerves. Respondent's "Eyelash Grower and Darkener" will not grow or promote the growth of eyelashes in all cases, nor will respondent's "Hormone Scalp Food" improve the growth and texture of the hair in all cases. Respondent's "Youthful Herb Mask" does not contain the juices of 23 different herbs.

PAR. 5. There are among the competitors of the respondent, many who distribute and sell similar cosmetics, facial creams, and toilet preparations in commerce, who do not misrepresent the properties, qualities, therapeutic virtues, functions, uses or effects of their said competing products.

PAR. 6. The representations of respondent as aforesaid, have had and have the capacity and tendency to confuse, 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 respondent will be obtained by the purchasers thereof from the use of said products in the treatment of various conditions named therein. Said representations of respondent have had and have the capacity and tendency to induce members of the public to purchase said preparations because of the erroneous beliefs engendered by said representations, and to unfairly divert trade to respondent from competitors engaged in the sale in interstate commerce of cosmetics, facial creams and toilet preparations similar to those sold by respondent, and substantial injury has been and is being done by respondent to substantial competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 7. 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 October 2, 1936, issued and on October 5, 1936, served its complaint upon the respondent, Helena Rubinstein, Inc., a corporation, charged with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

Thereafter the respondent through its attorney, Henry M. Fleteau, executed a stipulation as to the facts in and by which stipulation, the respondent consented that the Commission may, without trial and without further evidence and without any intervening procedure, make, enter and issue and serve upon 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 as therein stipulated. The facts so stipulated embrace substantially all of the material allegations of the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint and the 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. The respondent, Helena Rubinstein, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 8 East 57th Street, in the city of New York, State of New York. It is now, and for more than one year last past, has been engaged in advertising, selling, and distributing a line of cosmetics, facial creams, and toilet preparations, hereinafter more particularly set out. The respondent has caused and still causes said cosmetics, facial creams, and toilet preparations, when sold, to be transported from its place of business in the State of New York, to purchasers thereof, some located in the State of New York, and others located in the various States of the United States and the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade in commerce in cosmetics, facial creams, and toilet preparations sold by respondent between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of distributing and selling similar cosmetics, facial creams, and toilet preparations in 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 said business in soliciting the sale of and selling said cosmetics, facial creams and toilet preparations, and for the purpose of inducing the purchase of said preparations, respondent has caused and still causes advertisements to be inserted in newspapers and magazines of general circulation throughout the various States of the United States, and has printed, and circulated advertising literature and folders to customers and prospective customers in the same manner. In all of its advertising literature, and through statements and representations herein set out, and through statements and representations of similar import and effect displayed on the labels and containers of said preparations the respondent represents among other things the following:

(1) Youthifying Hand Cream.

Keeps hands lovely, overcomes roughness, redness and chapping, youthifies age betraying hands.

Restores youth to age betraying hands.

Wonderful nourisher of dry lined or shriveled hands, restores youth to scrawny ageing hands.

(2) Grecian Anti-Wrinkle Cream.

A nourishing skin food; corrects and prevents crows feet, lines and wrinkled lids, nourishes their dry skins.

It contains nourishing ingredients the tissues need.

A rich nourishing cream that is unusually effective.

(3) Golden Automatic Lipstick.

Actively nourishes the lip tissues; contains biological ingredients; produces youthful moisture.

(4) Youthful Herbal Mask.

Contains the juices of twenty-three different herbs which replenish the skin with the elements of youth and loveliness; irons out lines and wrinkles.

(5) Herbal Eye Tissue Oil.

Its nourishing biological ingredients smooth and soften the delicate eye area.

Prevents and corrects crows feet, lines and under eye wrinkles.

(6) Marienbad Slenderizing Bath Salts.

Marienbad Slenderizing Bath Salts dissolving the fatty particles in the body, their beneficial action dries out layer after layer of fatty tissue, until excess fat disappears; they stimulate the skin, increase the metabolism and restore the normal weight of the body without the depressing effects of severe reducing methods. The pores are thoroughly cleansed and the skin becomes firm and silky smooth.

This amazing new scientific discovery dissolves fatty tissue, reducing the weight by one to three pounds in one week; process is as simple as it is safe, swift.

Findings

24 F. T. C.

(7) Novena Cerate. (a rich feeding night cream).

A remarkable nourisher and rebuilder.

Excellent for very fine dry sensitive skins.

(8) Eyelash Grower and Darkener.

(9) Herbal Cream.

Ideal nutritive for dry, harsh, wrinkled and sensitive skins.

An absolutely unique tissue creation compounded of rare and nourishing herbs.

It quickly restores satiny smoothness and exquisite texture to wrinkled weather beaten and prematurely aged skin.

(10) Anti-Wrinkle Lotion.

Youthifies dry, lined skin and tired eyes.

Corrects and prevents fine lines and crows feet.

(11) Eye Lotion.

Cleanses, refreshes, relieves strain; strengthens the eye nerves.

(12) Herbal Muscle Oil.

Contains the nourishing ingredients that the tissues need in a form easily assimilated by the skin cells; rounds out hollows under the eyes.

Restores lined, stringy throats to youthful smoothness.

(13) Hormone Scalp Food.

Improves growth and texture of hair; smoothes irritated scalps.

(14) Hormone Beauty Mask.

Contains living hormones—those "sparks of life", the youth giving powers of hormones—those "sparks of life" are directly responsible for the marvelous effect Hormone Tissue Mask has on the skin.

Absorbs lines and drabness; firms the contour, revitalizes the skin tissues.

Resculptures, youthifies and beautifies fatigued skin.

(15) Hormone Twin Youthifier #1 Day Cream.

Hormone Twin Youthifier #2 Night Cream.

The Hormone Twin Youthifiers, which contain the elements used by nature herself—hormones—are "sparks of life." The Hormone Twin Youthifiers are two creams so compounded that the glandular substances which they contain are richly assimilated by the skin. They penetrate deeply, stimulating skin metabolism, rebuilding worn out cells. Shrunken tissues are quickly rebuilt; relaxed muscles are tightened and the dull, weather beaten look of age vanishes. They restore youth to dry, lined, wrinkled skin. You will marvel at the instantaneous youthifying action of these two creams—the day cream or awakening cream, and the night cream or feeding cream. They work together in marvelous harmony, literally lifting the years from you, actually feeding the return of youth.

PAR. 4. Respondent's Youthifying Hand Cream does not restore youth to scrawny, ageing hands. Respondent's Grecian Anti-Wrinkle Cream is not a nourishing skin food; does not correct and prevent crows feet, lines and wrinkled lids, neither does it nourish dry skin nor contain nourishing ingredients the tissues need, nor is it a rich nourishing cream that is unusually effective. Respondent's Golden Automatic Lipstick does not actively nourish the lip tissues. Respondent's Youthful Herbal Mask does not contain the juices of 23

different herbs which replenish the skin with elements of youth and loveliness. Respondent's Herbal Eye Tissue Oil does not contain nourishing ingredients, nor does it prevent and correct crows feet, lines and under-eye wrinkles. The respondent's bath salts "Marienbad Slenderizing Bath Salts," will not dissolve the fatty particles in the body, nor will their beneficial action dry out layer after layer of fatty tissues until excess fat disappears; nor will they stimulate the skin, increase the metabolism and restore the normal weight of the body without the depressing effects of severe reducing methods; nor will this amazing new scientific discovery dissolve fatty tissues, reduce the weight by one to three pounds in one week, and neither is its process as simple as it is safe, swift. Respondent's Novena Cerate is not a remarkable nourisher and builder of skin. Respondent's Eyelash Grower and Darkener will not grow or promote the growth of eyelashes except in cases where the present eyelashes have living follicles. Respondent's Herbal Cream is not an ideal nutritive for the skin. Respondent's Anti-Wrinkle Lotion will not prevent fine lines and crows feet in the skin. Respondent's Eye Lotion will not strengthen eye nerves. Respondent's Herbal Muscle Oil does not contain nourishing ingredients that the tissues need in a form easily assimilated by the skin cells. The respondent's product, "Hormone Scalp Food" is not a scalp food, and will not improve growth and texture of the hair or soothe irritated scalps. Respondent's Hormone Beauty Mask does not contain living "sparks of life,"—those "sparks of life" are directly responsible for the marvelous effect Hormone Beauty Mask has on the skin nor will it absorb lines and drabness; firm the contour, or revitalize the skin tissues; and neither will it resculpture and youthify fatigued skin. Respondent's Hormone Twin Youthifier #1, Day Cream and Hormone Twin Youthifier #2, Night Cream do not contain "sparks of life," neither do they rebuild worn out cells; nor do they quickly rebuild shrunken tissues nor restore youth to dry, lined, or wrinkled skin. Neither will they literally lift the years from one, or actually feed the return of youth.

CONCLUSION

The aforesaid acts and practices of the respondent, Helena Rubinstein, 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

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ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the complaint filed herein on the 2nd day of October, 1936, and a stipulation as to the facts in lieu of testimony heretofore entered into by and between the respondent and the Federal Trade Commission in which stipulation the respondent admits without further evidence and without intervening procedure the Commission may make, enter, issue and serve upon respondent its 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 considered the complaint and the facts so stipulated 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 ordered, That the respondent, Helena Rubinstein, Inc., a corporation, its directors, officers, agents, and representatives and employees, in connection with the distribution and sale of cosmetics, facial creams, and toilet preparations in interstate commerce cease and desist from:

Advertising or representing directly or indirectly, in newspapers, magazines, radio broadcasts, circulars, display cards, on cartons or any other form of advertising literature or in any other way, that any of said cosmetics, facial creams and toilet preparations

(1) will serve as a food for or nourish the human skin, muscles, or tissues;

(2) will prevent crow's feet and wrinkles and revitalize the skin tissues;

(3) will strengthen the eye nerves;

(4) contain living sparks of life which increase the therapeutic value of the products;

(5) will rebuild worn-out cells;

(6) will restore youth to dry, lined, wrinkled skin;

(7) will dissolve fatty tissues or act as effective weight reducers;

It is further ordered, That the respondent, Helena Rubinstein, Inc., a corporation, its directors, officers, agents, and representatives and employees shall within 90 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 has complied with the order herein set forth.

Syllabus

IN THE MATTER OF

ALBERT F. COOLEY, DOING BUSINESS UNDER THE
 NAMES AND STYLES OF RANGO TABLET COMPANY,
 A. F. RANGO, DADDY RANGO, ETC.

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

Docket 2641. Complaint, Nov. 29, 1935—Decision, Dec. 18, 1936

Where an individual, engaged in sale and distribution of various medicinal preparations, including four sold under name of "Daddy Rango's," namely, his thus designated "Laxative Herb Tablets," "Sunshine Kelp Tablets," "Asthma and Hay Fever Remedy," and "H and H Tablets"—

Represented, in advertisements of his said preparations in newspapers and periodicals circulated to the purchasing public in the various States, and in radio broadcasts to the general public, and through circulars and other advertising material distributed to such purchasing public, that said four preparations constituted cures, remedies, or competent and adequate treatments, as the case might be, for constipation, headaches, dizzy spells, neuritis, rheumatism, over-acid condition, etc., and for removing poisons from the system, or for goiter and run-down conditions, or for asthma and hay fever, or for neuritis, dizzy spells, headache, backache, rheumatism, and ulcers, and for the removal of impurities from the body, and that said Kelp Tablets likewise would promote growth and build sturdy bones and teeth in children, and supply all the minerals necessary for the body and assure buoyant and vigorous health, and prevent goiter, and that they possessed and imparted to those taking them the therapeutic, medicinal, and beneficial effects of natural sunshine, etc.;

Facts being the formulae of said remedies or medicines were not such that they could be considered a cure, remedy, or competent and adequate treatment for the conditions and ailments for which thus represented and offered, and they did not have the properties and would not produce the results claimed, and were not proper and efficient remedies, treatments, or palliatives for the various maladies, diseases, and conditions for which they were thus represented by him, and had little or no therapeutic value;

With effect of confusing, misleading, and deceiving members of the public into the erroneous belief that said products constituted cures, or satisfactory and adequate remedies or treatments, for said various ailments, diseases, etc., as above set forth, and into the purchase of the same on account of such erroneous beliefs, and of thereby diverting trade unfairly to him, and to those selling his products, from individuals and concerns engaged in the sale of other medicinal preparations, designed and intended or used and recommended for the treatment or relief of the same diseases, maladies, and conditions, without making similar false and misleading representations as to the character of their respective products or the extent of the effectiveness thereof when used; to the 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.

Complaint

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

Mr. John W. Hilldrop for the Commission.

Reames-Lake & Mulvihill, 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 Albert F. Cooley, doing business under the names and styles of Rango Tablet Company, A. F. Rango, Daddy Rango, Daddy Rango Tablet Company, Rango Company, and Daddy Rango Company, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That said respondent, Albert F. Cooley, doing business under the names and styles of Rango Tablet Company, A. F. Rango, Daddy Rango, Daddy Rango Tablet Company, Rango Company, and Daddy Rango Company, is now and has been engaged for more than two years last past in the sale and distribution in interstate commerce of various medicinal preparations with his office and principal place of business in the city of Los Angeles, in the State of California. Among the medicinal preparations, so sold and distributed by respondent, are the following:

Daddy Rango's H and H Tablets,
Daddy Rango's Laxative Herb Tablets,
Daddy Rango's Sunshine Kelp Tablets,
Daddy Rango's Asthma and Hay Fever Remedy.

Said respondent, in the course and conduct of his said business, causes the medicines sold by him, including those above named, 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 such medicines are or have been sold.

PAR. 2. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of preparations similar in kind to those of respondent as above named or of the same general therapeutic properties or adapted to and used for the purposes for which respondent's said preparations are recommended to be used in the advertising matter hereinafter

referred to, and such other individuals, firms, and corporations have caused and do now cause their said preparations, when sold by them, to be transported from various States of the United States to, into and through States other than the State of the origin of the shipment thereof. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said preparations with such other individuals, firms, and corporations.

PAR. 3. That said respondent, in advertising his said preparations, causes advertisements to be inserted in newspapers and magazines circulated to the purchasing public in the various States of the United States and also causes broadcasts to be made by means of the radio to the general public in the various States of the United States. He also advertises his said preparations by means of circulars and other advertising materials distributed to the purchasing public in various States of the United States by mail or otherwise.

By one or more of the aforesaid means, respondent represents that said Daddy Rango's H and H Tablets are a cure, remedy, or competent and adequate treatment for an "over-acid condition" of the system, neuritis, stomach disorders generally, dizzy spells, headache, backache, rheumatism, stomach ulcers, gastric ulcers, duodenal ulcers, and for the removal of all impurities from the body.

By one or more of the aforesaid means, respondent represents that said Daddy Rango's Laxative Herb Tablets are a cure, remedy, or competent and adequate treatment for constipation, headaches, dizzy spells, neuritis, rheumatism, "over-acid condition" of the system, back troubles, liver and kidney troubles, and for removing poisons from the system.

By one or more of the aforesaid means, respondent represents that said Daddy Rango's Sunshine Kelp Tablets are a cure, remedy or competent and adequate treatment for goiter and for a run-down condition. It is further represented that said preparation promotes growth and builds sturdy bones and teeth in children; that it will supply all the minerals to assure "buoyant, vigorous health"; that it supplies the need of the body for minerals; that it will produce health and happiness; that it will remedy a run-down condition; and that it will prevent goiter.

By one or more of the aforesaid means, respondent represents that said Daddy Rango's Asthma and Hay Fever Remedy is a cure, remedy or competent and adequate treatment for asthma and hay fever.

PAR. 4. That, in truth and in fact, respondent's said medicines, respectively, do not constitute a cure, remedy, or competent and adequate treatment for the several and various diseases, ailments,

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and bodily conditions aforesaid for which they are recommended, respectively, by respondent in his advertising as aforesaid. Respondent's said representations are misleading in that they are either false and beyond the therapeutic effects of the said medicines or they are grossly exaggerated and inaccurate or only true to a limited extent or under certain conditions.

PAR. 5. That respondent, in effecting the sale of his preparations, as aforesaid, makes various false, inaccurate, and misleading representations by one or more of the means aforesaid, among which are those that represent or imply that Daddy Rango's Laxative Herb Tablets are not habit forming regardless of how long they are used; that the "stomach is the most important organ of the body"; that "Impurities must be removed" (from the system) "as fast as they accumulate"; that "It is now known that the basic cause of almost every case of illness is an over-acid condition"; that "As long as these acids and poisons remain in the system there will be trouble with dizzy spells, headache, backache, rheumatism, neuritis, stomach ulcers, etc."; that "Sluggish action of the stomach causes it to become seriously afflicted, weakening the entire body. Loss of vigor and vitality results. Illness is liable in other parts of the body"; that "The various named ulcers" (in the stomach and small intestine) "all come under the common name 'stomach ulcers'"; that "A clean healthy stomach means you are generally well, full of vigor with an active body and mind to successfully carry on your life plans in the business and social world"; that "The stomach is the seat of a large percentage of all ills"; that Daddy Rango's Sunshine Kelp Tablets possess and impart to those taking them, the therapeutic, medicinal and beneficial effects of natural sunshine; that said Kelp Tablets are "rich in organic minerals" and bring to the "daily diet abundant supply of iodine, copper, iron . . ."; that said tablets "are an ideal food supplement"; that "A lot of you no doubt need minerals in your body. If you had the same you probably would not be sick today"; that "If your body needs minerals", said Kelp tablets should be tried to supply the deficiency; and that "When any one has plenty of minerals there should be no worry over goiter."

That, in truth and in fact, said representations are inaccurate, deceptive and misleading and do not correctly and properly set forth the true facts in the particulars involved.

PAR. 6. That the representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead and deceive members of the public in the particulars as aforesaid and to cause and induce them to buy and use respondent's said medicines

because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale of medical preparations in interstate commerce of the same or similar kind as those sold by respondent or of those beneficial in or adapted to and used for the treatment of the various diseases and bodily ailments and conditions for which respondent recommends his said medicines as aforesaid. There are, among the competitors of respondent, those who in no wise make the same or similar false and misleading representations as made by respondent and as herein set out.

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

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 29, 1935, issued and served its complaint in this proceeding upon respondent Albert F. Cooley, doing business under the names and styles of Rango Tablet Company, A. F. Rango, Daddy Rango, Daddy Rango Tablet Company, Rango Company, and Daddy Rango 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 John W. Hilldrop, 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 Leroy Reames, 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 of counsel for the Federal Trade Commission in support of the complaint; and the Commission having duly considered the same and now 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. The respondent, Albert F. Cooley, doing business under the names and styles of Rango Tablet Company, A. F. Rango, Daddy Rango, Daddy Rango Tablet Company, Rango Company, and Daddy Rango Company, is now, and has been for more than two years last past engaged in the sale and distribution in commerce as herein set out of various medicinal preparations. His office and principal place of business are located in the city of Los Angeles, in the State of California. Among the medicinal preparations, so sold and distributed by respondent, are the following:

Daddy Rango's II and II Tablets;
Daddy Rango's Laxative Herb Tablets;
Daddy Rango's Sunshine Kelp Tablets;
Daddy Rango's Asthma and Hay Fever Remedy.

Said respondent in the course and conduct of his business, causes said medicines when sold by him to be transported in commerce from his said place of business in California to, into, and through States of the United States other than California to the various persons located in such other States to whom such medicines are or have been sold.

PAR. 2. During the time above mentioned, other individuals, firms, and corporations located in various States of the United States have been engaged in the sale and distribution, in commerce among and between the various States of the United States of preparations similar in kind to those of respondent above named or of the same general therapeutic properties or adapted to and used for the purposes for which respondent recommends his said preparations. Such other individuals, firms, and corporations have caused and do now cause their said preparations when sold by them to be transported from various States of the United States to, into, and through States other than the State of the origin of the shipment thereof to the purchasers thereof. Said respondent has been during the aforesaid time in competition in such commerce in the sale of his said preparations with such other individuals, firms, and corporations.

PAR. 3. Respondent in advertising his said preparations, causes advertisements to be inserted in newspapers and magazines circulated to the purchasing public in the various States of the United States and also causes broadcasts to be made by means of the radio to the general public in the various States of the United States. He also advertises his said preparations by means of circulars and other advertising material distributed to the purchasing public in the various States of the United States by mail or otherwise.

By one or more of the aforesaid means, respondent represents that said Daddy Rango's H and H Tablets are a cure, remedy, or competent and adequate treatment for an "over-acid condition" of the system, neuritis, stomach disorders generally, dizzy spells, headache, backache, rheumatism, stomach ulcers, gastric ulcers, duodenal ulcers, and for the removal of all impurities from the body.

By one or more of the aforesaid means, respondent represents that said Daddy Rango's Laxative Herb Tablets are a cure, remedy or competent and adequate treatment for constipation, headaches, dizzy spells, neuritis, rheumatism, "over-acid condition" of the system, back troubles, liver and kidney troubles, and for removing poisons from the system.

By one or more of the aforesaid means, respondent represents that said Daddy Rango's Sunshine Kelp Tablets are a cure, remedy, or competent and adequate treatment for goiter and for a run-down condition. It is further represented that said preparation promotes growth and builds sturdy bones and teeth in children; that it will supply all the minerals to assure "buoyant, vigorous health"; that it supplies the need of the body for minerals; that it will produce health and happiness; that it will remedy a run-down condition; and that it will prevent goiter.

By one or more of the aforesaid means, respondent represents that said Daddy Rango's Asthma and Hay Fever Remedy is a cure, remedy, or competent and adequate treatment for asthma and hay fever.

PAR. 4. The formula of respondent's remedy or medicine known and designated as "H and H Tablets" is as follows:

Magnesium Oxide.....	Grams.....	0.648
Sodium Bicarbonate.....	"	0.648
Calcium Carbonate.....	"	0.324
Bismuth Subcarbonate.....	"	0.324
Corn Starch.....	"	0.2805
Pancreatin.....	"	0.065
Tertrazine.....	"	0.001
Oil Peppermint.....	CC	0.006

The formula for said product, as above set out, is not such that the product can be considered a cure, remedy or competent and adequate treatment for an over-acid condition of the system, neuritis, stomach disorders, dizzy spells, headache, backache, rheumatism, stomach ulcers, gastric ulcers, duodenal ulcers and for the removal of all impurities from the human body.

The formula of respondent's remedy or medicine known and designated as "Kelp Tablets" is as follows:

Kelp.....	Grams.....	0.324
Acacia.....	"	0.0259

Findings

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The formula for said product as above set out, is not such that the product can be considered a cure, remedy or competent and adequate treatment for goiter or run-down condition of the human body. The use of this preparation does not promote growth or build sturdy bones and teeth in children. Its use will not supply all the minerals necessary to assure buoyant and vigorous health. It does not supply the need of the body for minerals and its use will not produce health and happiness. It will not remedy a run-down condition and its use will not prevent goiter.

The formula of respondent's remedy or medicine known and designated as "Herb Tablets" is as follows:

Sugar.....	Grams..	0.13
Corn Starch.....	"	-- 0.0974
Aloin.....	"	-- 0.0324
Extract Licorice.....	"	-- 0.0324
Cascarin.....	"	-- 0.0162
Podophyllin.....	"	-- 0.012
Oleoresin Ginger.....	"	-- 0.004

The formula for said product, as above set out is not such that the product can be considered a cure, remedy or competent and adequate treatment for constipation, headaches, dizzy spells, neuritis, rheumatism, over-acid condition of the system, back troubles, liver and kidney troubles, and for the removal of poisons from the system.

The respondent's remedy or medicine known and designated as "Daddy Rango's Asthma and Hay Fever Remedy" is not composed of such ingredients as to make it a satisfactory remedy or competent and adequate treatment for asthma and hay fever.

None of the respondent's medicines or remedies, herein referred to, are proper and efficient remedies, treatments or palliatives for the various maladies, diseases and conditions of the human body represented by the respondent to be cured, remedied, or benefited by the use of said products. The remedies and medicines herein described have little or no therapeutic value.

PAR. 5. The representations made by the respondent with respect to the nature and effectiveness in use of the various remedies and medicines, herein referred to, have had, and do now have, the capacity and tendency to, and do, confuse, mislead, and deceive members of the public into the erroneous belief that said products are cures or satisfactory and adequate remedies or treatments for the various ills, diseases, maladies, and conditions of the human body as set out herein, and into the purchase of respondent's said medicines on account of said erroneous beliefs. As a result, trade has been unfairly diverted to the respondent and to those selling his products from corporations, firms and individuals engaged in the sale of other medicinal prepara-

tions designed and intended or used and recommended for the treatment or relief of the same diseases, maladies and conditions for which the respondent recommends his products, and who do not make similar false and misleading representations as to the character of their respective products or the extent of the effectiveness of said products when used. Injury has therefore been 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, Albert F. Cooley, doing business under the names and styles of Rango Tablet Company, A. F. Rango, Daddy Rango, Daddy Rango Tablet Company, Rango Company, and Daddy Rango 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 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 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, Albert F. Cooley, doing business under the names and styles of Rango Tablet Company, A. F. Rango, Daddy Rango, Daddy Rango Tablet Company, Rango Company, and Daddy Rango Company, or under any other name, style or designation; his representatives, agents, and employees in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia, of the products known as Daddy Rango's "H and H Tablets," Daddy Rango's "Laxative Herb Tablets," Daddy Rango's "Sunshine Kelp Tablets," or Daddy Rango's "Asthma, Hay Fever Remedy," or any products of substantially the

same composition and ingredients, sold under the above-mentioned names or under any other names, do forthwith cease and desist from representing directly or indirectly through handbills, circular letters, labels, radio broadcasts, or through any other method of advertising, means, or device:

(a) That Daddy Rango's Laxative Herb Tablets or any other products of substantially the same composition and ingredients are a cure, remedy, or competent and adequate treatment for constipation, headaches, dizzy spells, neuritis, rheumatism, over-acid condition of the system, back troubles, liver and kidney troubles, and for removing poison from the system; or that said tablets are not habit forming no matter how long taken;

(b) That Daddy Rango's Sunshine Kelp Tablets or any other products of substantially the same composition and ingredients are a cure, remedy, or competent and adequate treatment for goiter and for a run-down condition; that they promote growth and build sturdy bones and teeth in children; that they will supply all the minerals necessary to the human body, and assure buoyant and vigorous health; that they produce health and happiness; that they will prevent goiter; that said tablets possess and impart to those taking them the therapeutic, medicinal, and beneficial effects of natural sunshine; that said tablets are rich in organic minerals and bring to the daily diet an abundant supply of iodine, copper, and iron, and that said tablets are an ideal food supplement;

(c) That Daddy Rango's Asthma and Hay Fever Remedy or any other product of substantially the same composition and ingredients is a cure, remedy, or competent and adequate treatment for asthma and hay fever;

(d) That Daddy Rango's II and II Tablets or any other products of substantially the same composition and ingredients are a cure, remedy, or competent and adequate treatment for over-acid condition of the system, neuritis, dizzy spells, headache, backache, rheumatism, stomach ulcers, gastric ulcers, duodenal ulcers, and for the removal of impurities from the body;

(e) That any of said products have such therapeutic value to constitute a proper, competent, and adequate treatment or remedy for the diseases, ailments, maladies, and conditions of the human body named herein.

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.

Syllabus

IN THE MATTER OF
CHARLES ELISCO, TRADING AS MAYWOOD 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 2970. Complaint, Nov. 6, 1936—Decision, Dec. 18, 1936

Where an individual, engaged in packing and assembling candy into assortments, including those 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 were composed of a number of small penny packages of candy, within the majority of which there were concealed articles of merchandise or prizes of equal value and amounting to a small fractional part of a cent, and within a few of which there were similarly concealed a one cent coin, thus distributed to purchasers wholly by lot or chance—

Sold to wholesalers and to retailers, for display and resale to 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 his said products 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 candy so packed and assembled, or otherwise arranged and packed, to the purchasing public as to involve a game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, refrained therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing said products and by element of chance involved in sale thereof as aforesaid, and 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 the 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 or an equivalent practice because unlawful, lessen competition therein and tend to create a monopoly thereof in him and such other distributors as use such or an equivalent practice, deprive purchasing public of benefit of free competition in trade involved, and eliminate from said trade all actual, and exclude all potential, competitors who do not use such or equivalent methods.

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

Mr. Henry C. Lank and Mr. P. C. Kolinski, for the Commission.

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 Charles Elisco, individually, and trading as Maywood Candy 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, Charles Elisco, is an individual doing business under the trade name Maywood Candy Company, with his principal office and place of business located at 415 Lake Street, Maywood, Ill. Respondent is now and for six months' last past has been engaged in the business of packing and assembling candy into assortments and selling and distributing such assortments of candy to wholesale and retail dealers located at points in 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 Maywood, State of Illinois, to purchasers thereof in the State of Illinois and in other States of the United States, at their respective places of business; and there is now and has been for six 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 said business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy 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 consumers thereof.

Said assortments, sold and distributed by respondent, are composed of a number of small packages of candy which said packages retail at the price of one cent each. Each of said small packages of candy contains, in addition to the candy, an article of merchandise or a one cent coin. The majority of these articles of merchandise or prizes contained within the said packages have a value of a small fractional part of one cent, but a small number of the said packages contain a one cent coin. The articles of merchandise or prizes or

the one cent coin are concealed from the consuming public within the small packages of candy until after a selection has been made and the particular package selected broken open. The articles of merchandise, although having value of only a fractional part of a cent, are, nevertheless, of unequal value and are of a much lesser value than the one cent coins. The articles of merchandise or prizes of unequal value and the one cent coins are thus distributed to purchasers of the small packages of candy wholly by lot or chance.

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 plan. 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 plan hereinabove set forth and said sales plan has the capacity and tendency 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 the sale of a chance to procure an article of merchandise of greater value or a one cent coin.

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 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 November 6, 1936, issued and served its complaint in this proceeding upon respondent, Charles Elisco, individually, and trading as Maywood Candy Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On November 23, 1936, respondent filed his answer dated November 20, 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 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, Charles Elisco, is an individual doing business under the trade name Maywood Candy Company, with his principal office and place of business located at 415 Lake Street, Maywood, Ill. Respondent is now and for six months last past has been engaged in the business of packing and assembling candy into assortments and selling and distributing such assortments of candy to wholesale and retail dealers located at points in 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 Maywood, State of Illinois, to purchasers thereof in the State of Illinois and in other States of the United States, at their respective places of business; and there is now and has been for six 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 said business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy 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 consumers thereof.

Said assortments sold and distributed by respondent are composed of a number of small packages of candy which said packages retail at the price of one cent each. Each of said small packages of candy contains, in addition to the candy, an article of merchandise or a one cent coin. The majority of these articles of merchandise or prizes contained within the said packages have a value of a small fractional part of one cent, but a small number of the said packages contain a

one cent coin. The articles of merchandise or prizes or the one cent coin are concealed from the consuming public within the small packages of candy until after a selection has been made and the particular package selected broken open. The articles of merchandise, although having value of only a fractional part of a cent, are nevertheless of unequal value and are of a much lesser value than the one cent coins. The articles of merchandise or prizes of unequal value and the one cent coins are thus distributed to purchasers of the small packages of candy wholly by lot or chance.

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 plan. 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 plan hereinabove set forth, and said sales plan has the capacity and tendency 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 the sale of a chance to procure an article of merchandise of greater value or a one cent coin.

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 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, Charles Elisco, individually, and trading as Maywood Candy 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 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, Charles Elisco, individually, and trading as Maywood Candy Company, his agents, representatives, and employees, in the sale, offering for sale, and distribution in interstate commerce of candy, do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, and 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 and 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 contained in said assortments to the public.

(3) Packing or assembling in the same assortment of candy for sale to the public at retail small packages of candy of uniform appearance, a few of which small packages of candy have concealed within them a one cent coin in addition to the candy contained in said small packages.

It is further ordered, That the respondent, Charles Elisco, individually, and trading as Maywood Candy Company, 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

SOL BLOCK AND SIDNEY BLUMENTHAL, TRADING AS
RITTENHOUSE CANDY COMPANY

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

Docket 2071. Complaint, May 15, 1936¹—Decision, Dec. 19, 1936

Where two partners engaged in manufacture and sale of "straight" goods candy and of so-called "break and take," "draw," or "deal" assortments, one of the principal trade demands 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 of candy carrying with sale thereof to public 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" candy when displayed side by side by reason of lottery or gambling feature connected with former, and selling 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 sales of such "straight" candy, due to gambling or lottery feature connected with so-called "break and take," "draw," or "deal" merchandise—

Sold, to wholesalers and jobbers, assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to the consumers thereof and the consuming public in grocery stores, candy stores, drug stores, stores in vicinity of schools selling candy, and in practically all retail outlets where such product is sold, and which consisted of a number of penny pieces of candy of uniform size, shape, and quality, together with a small number of larger pieces of candy, a small number of one-cent coins inserted in an aluminum "lucky piece," and a punch board, for sale and distribution to purchasers under a plan by which penny purchasers secured one of said small uniform pieces only, or, additionally, one of the larger pieces, or a one-cent coin in the "lucky piece," in accordance with the particular number punched and procured by chance, as set forth on board's explanatory legend; so assembled and packed that such assortments were and might be sold by retailers to purchasing public, and with knowledge and intent that such assortments might be thus sold, as hereinbefore set forth, without alterations, addition, or rearrangement, to public by lot or chance by aforesaid retail dealers, 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 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

¹ Date is that of amended and supplemental complaint. Original findings and order in this matter on April 3, 1934 (18 F. T. C. 330), were vacated by order reopening, etc., on May 15, 1936. See 22 F. T. C. 911.

Complaint

24 F. T. C.

States, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can be resold to public by lot or chance;

With result that certain retailers, finding such candy more salable, purchased their products and those of others employing the same methods of sale, some competitors began sale and distribution of candy for resale to public by lot or chance, for which, thus sold, there is demand, "straight" goods sales of such refusing competitors, who can compete on even terms only by giving same or similar devices to retailers, showed a continued decrease in their unwillingness to do so, public and competitors were prejudiced and injured and trade was diverted to them from their 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.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, the Federal Trade Commission did heretofore, to wit on October 24, 1932, issue its complaint herein charging and alleging that respondents herein are and have 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 respondents herein have been and are 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 Sol Block & Sidney Blumenthal, individually and as copartners trading under the name and style of Rittenhouse Candy Company, have been and now are 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. The respondents are copartners trading under the name and style of Rittenhouse Candy Company, with their principal office and place of business located at Worth and Herbert Streets, in the city of Philadelphia, State of Pennsylvania. Respondents are engaged in the manufacture, sale, and distribution of candy and in the sale and distribution of candy specialties and punch board devices

for use in the sale of their candy products. Respondents sell their products to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States, and cause said products when so sold to be transported from their said principal place of business in the city of Philadelphia, in the State of Pennsylvania, 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 and conduct of their said business, respondents are in competition with other individuals, partnerships, and corporations 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 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.

One of said assortments is composed of a number of pieces of candy of uniform size, shape, and quality, a smaller number of larger pieces of candy, some penny coins, and an article of merchandise, together with a device commonly called a punchboard. The candy and article 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 as there are punches on said board. The board bears statements or legends informing the prospective purchaser as to which numbers entitle him to receive a small piece of candy, and which numbers entitle him to receive a penny and a larger piece of candy. All purchasers of punches from said board receive a piece of candy, but certain punches, namely those disclosing a number specified in the legend, entitle the purchaser to a penny and a larger piece of candy. The purchaser of the last punch on the board receives a small piece of candy and the article of merchandise. The numbers on said punchboard are effectively concealed from purchasers or prospective purchasers until a punch has been made and the particular number separated from the punchboard. The additional article of merchandise, penny coins and larger pieces of candy contained in said assortment are thus distributed to purchasers of punches from said punchboards wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, to whom respondents sell their assortment, resell said assortment to retail dealers, and said retail dealers, and the 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 product in accordance with the sales plan hereinabove set forth, and with the capacity and tendency 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 penny coins, larger pieces of candy, or an article of merchandise.

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 method, acts, and practices of the respondents are all to the prejudice of the public and of respondents' 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 October 24, 1932, issued and served a complaint upon the respondents, Sol Block and Sidney Blumenthal, individually and as copartners trading under the name and style of Rittenhouse Candy Company, charging that the respondents had been and were using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress. Thereafter on May 15, 1936, the Commission issued and served its amended and supplemental complaint on the respondents, charging them 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 October 24, 1932, as aforesaid. No answer was filed by respondents; nevertheless hearings were had and testimony and other evidence in support of the 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 said testimony and other evidence were duly

recorded and filed in the office of the Commission. No testimony or other evidence was introduced or offered by respondents.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said amended and supplemental complaint, testimony and other evidence in support of the allegations of said complaint, the respondents having offered no testimony or other evidence in opposition thereto; 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. Respondents are individuals trading as a partnership under the firm name and style of Rittenhouse Candy Company, having their principal office and place of business at Worth and Herbert Streets in the city of Philadelphia, State of Pennsylvania. They are now, and for several years last past have 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 cause their said products, when so sold, to be transported from their principal place of business in the State of Pennsylvania 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 and conduct of such business, respondents are in competition with other partnerships and with corporations 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 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 of said assortments is composed of a number of pieces of candy of uniform size, shape, and quality, a small number of larger pieces of candy, and a small number of one cent coins inserted in an aluminum "lucky piece," together with a device commonly called a punchboard. The candy and the one cent coins inserted in the lucky pieces 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 as there are punches on said board. The punch-board bears statements or legends informing customers and prospective customers as to which numbers entitle them to receive a small piece of candy, which numbers entitle them to receive a small piece of candy and one of the larger pieces of candy, and which numbers entitle them to receive the one cent coin in the lucky piece and a small piece of candy. All purchasers of punches from said board receive one of the small pieces of candy, but certain punches, namely, those disclosing a number specified in the legends, entitle the purchaser to a larger piece of candy or a one cent coin inserted in the lucky piece in addition to the small piece of candy. The numbers on said punch-board are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular number separated from the board. The larger pieces of candy and the one cent coins inserted in the lucky piece are thus distributed to purchasers of punches from said punchboard wholly by lot or chance.

PAR. 3. The lottery or prize assortment, as described in paragraph 2 hereof, is generally referred to in the candy industry as "break and take," "draw," or "deal" assortment, and packages or assortments of candy without any gaming device or lottery feature in connection with their resale to the public are generally referred to in the candy industry as "straight" goods. These terms will be used hereafter in these findings to describe these respective types of candy.

PAR. 4. Numerous retail dealers purchase the assortment described in paragraph 2 above from wholesale dealers or jobbers who in turn have purchased said assortment from respondents, and such retail dealers display said packages or assortments for sale to the public as packed by the respondents, and the candy contained in said assortments is sold and distributed to the consuming public in the manner described.

PAR. 5. All sales made by respondents are absolute sales and respondents retain no control in any manner over the goods, after they are delivered to the wholesale dealer or jobber. 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.

The respondents have knowledge that said assortments will be resold to the purchasing public by retail dealers by lot or chance, and they pack and assemble 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. 6. The sale and distribution of candy by retail dealers by the method described in paragraph 2 hereof is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

Respondents' candy is sold to the consuming public in grocery stores, candy stores, drug stores, stores in the vicinity of schools selling candy, and in practically all retail outlets where candy is sold.

Competitors of respondents 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 respondents 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 respondents' products and the products of others employing the same methods of sale, and thereby trade is diverted to respondents 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 respondents have begun the sale and distribution of candy for resale to the public by lot or chance. The use of such methods by respondents in the sale and distribution of their candy is prejudicial and injurious to the public and to respondents' competitors and has resulted in the diversion of trade to respondents from their said competitors and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. 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.

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" 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 features connected with the "break and take," "draw," or "deal" candy.

PAR. 9. In addition to the assortment described in paragraph 2 hereof, the respondents manufacture candy which they sell to wholesale dealers and jobbers without any lottery or chance features. The annual volume of respondents' business is approximately \$250,000 or \$275,000 and while at the time of taking testimony the portion of respondents' business represented by the lottery or prize assortment, as described in paragraph 2 hereof, was comparatively small yet the evidence shows, and the Commission finds, that it has until recently constituted the major portion of respondents' total volume of business.

PAR. 10. 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 respondents, Sol Block and Sidney Blumenthal, individually and as copartners trading under the name and style of Rittenhouse Candy 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

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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 testimony and other evidence in support of the allegations of said complaint taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, the respondents having offered no testimony or other evidence in opposition to the allegations of said 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, Sol Block and Sidney Blumenthal, individually and as copartners trading under the name and style of Rittenhouse Candy Company, their 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 which may be used, without alteration or rearrangement of the contents of such package 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 assortments 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 distributing said candy to the public at retail.

(4) Furnishing to wholesale dealers and jobbers a device commonly called a punchboard, either with assortments of candy or separately, bearing a legend or legends or statements informing the consuming 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.

It is further ordered, That the respondents shall, within 30 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.

Complaint

IN THE MATTER OF

C. G. HYRE, TRADING AS THE PEPSOTALIS COMPANY

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

Docket 2977. Complaint, Nov. 10, 1936—Decision, Dec. 19, 1936

Where an individual engaged in the compounding of a medicinal preparation called "Pepsotalis," and in the sale thereof to the drug trade—

Represented, on the containers thereof and in radio broadcasts, that his said preparation was an intestinal antiseptic and very helpful in cases of indigestion, acidity, and stomach disorders in general, and afforded quick relief in such cases, and had brought relief to countless numbers suffering from stomach trouble, and read and caused to be read purported letters from users thereof in which they were represented as stating that it had cured them or given them permanent relief from different forms of such trouble, notwithstanding fact it was nothing more than an antacid, whose only therapeutic effect was to decrease, temporarily, gastric hyperacidity;

With capacity and tendency to mislead and deceive purchasers into the erroneous and mistaken belief that said product was a competent intestinal antiseptic, and adequate and satisfactory remedy or treatment for indigestion and stomach troubles, and into the purchase thereof by reason of such belief, and with result that trade was unfairly diverted to him from those competitors who do not misrepresent the quality and character or effectiveness of their respective products; to the 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. Robt. N. McMillen for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that C. G. Hyre, 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, C. G. Hyre is now, and has been for more than one year last past, doing business under the name and style of the Pepsotalis Company, with his principal place of business at Morgantown, W. Va. He is and has been engaged in the business of compounding and selling to the drug trade a medicinal preparation called Pepsotalis. Pursuant to such sales, and as a part thereof, respondent

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ships and has shipped said preparation from his place of business aforesaid through and into various States of the United States to the purchasers thereof.

PAR. 2. On the container in which such medicinal preparation is packed by respondent it is represented that it is an intestinal anti-septic and that it will be found very helpful in cases of indigestion, gas, acidity, belching, heart burn, sour stomach, and stomach disorders in general; that it is a quick relief for indigestion.

For the purpose and with the effect of creating consumer demand for his said preparation and induce the wholesalers and retailers of drugs and remedies to purchase the same for resale to the public, respondent has, in radio broadcasts over various stations, during the year 1936, represented and caused to be represented, in substance, that his said medicinal preparation gives relief in cases of stomach trouble in any form; that it has brought relief to countless numbers suffering from stomach trouble. That during such radio broadcasts he has read and caused to be read what purported to be letters from users of said medicinal preparation, in which they were represented to state that Pepsotalis had cured them, or had given them permanent relief, from different forms of stomach trouble.

PAR. 3. In truth and in fact respondent's said medicinal preparation is nothing more than an antacid and its only therapeutic effect can be and is to decrease temporarily gastric hyperacidity. It is not and cannot be of benefit in any other form of stomach ailment. It is not of benefit in cases of indigestion and is not a corrective in cases of stomach trouble except as an antacid as above alleged.

PAR. 4. There are, and have been at all times hereinabove mentioned, in the United States other persons, partnerships, and corporations engaged in the sale to the drug trade and public of remedies for various stomach ailments and, pursuant to such sales and as a part thereof, in shipping the same to purchasers thereof in States other than the States of the origin of such shipments. With such persons, partnerships, and corporations respondent is and has been in active, substantial competition, and respondent's said misrepresentations have had and have the capacity, tendency, and effect of diverting business to respondent from such competitors, to the substantial injury of said competitors and to the prejudice of the public interest.

PAR. 5. The said misrepresentations made by respondent in the sale of his medicinal preparation, as aforesaid, constitute unfair methods of competition in commerce within the intent and meaning 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 10th day of November 1936, issued and served its complaint in this proceeding upon respondent, C. G. Hyre, trading as The Pepsotalis Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 5, 1936, 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. The respondent, C. G. Hyre is now, and for more than one year last past has been, doing business under the name and style of The Pepsotalis Company, with his principal place of business at Morgantown, W. Va. He is, and has been, engaged in the business of compounding and selling to the drug trade for resale a medicinal preparation called "Pepsotalis." Pursuant to such sales, and as a part thereof, he ships and has shipped said preparation from his place of business at Morgantown to the purchasers thereof located in various States of the United States.

PAR. 2. During all the time respondent has offered for sale and sold his said medicinal preparation there have been in the United States other persons, partnerships, and corporations engaged in the sale, to the drug trade and to the public, of remedies for various stomach ailments, and who, pursuant to such sales and as a part thereof, have shipped the same to purchasers thereof located in various States of the United States other than the States of the origin of such shipments. With these persons, partnerships, and corporations respondent has been and is in active and substantial competition.

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PAR. 3. The container in which such medicinal preparation is packed by respondent carries the representation that it is an intestinal antiseptic and that it will be found very helpful in cases of indigestion, gas, acidity, belching, heartburn, sour stomach, and stomach disorders in general, and that it is a quick relief for indigestion.

PAR. 4. For the purpose and with the effect of creating consumer demand for his said preparation and of inducing wholesalers and retailers of drugs and remedies to purchase his said preparation for resale to the public, respondent has, during the year 1936, represented and caused to be represented in radio broadcasts over various broadcasting stations that his said medicinal preparation gives relief in cases of stomach trouble in any form; and that it has brought relief to countless numbers suffering from stomach trouble. As a part of such radio broadcasts he had read and caused to be read, from time to time, what purported to be letters from users of said medicinal preparation in which they were represented to state that "Pepsotalis" had cured them or had given them permanent relief from different forms of stomach trouble.

PAR. 5. Respondent's medicinal preparation is nothing more than an antacid whose only therapeutic effect is to decrease, temporarily, gastric hyperacidity. It cannot be a corrective to any extent except to reduce, temporarily, gastric hyperacidity.

PAR. 6. The acts and practices of the respondent in falsely representing that said product "Pepsotalis" is a competent intestinal antiseptic and that it constitutes an adequate treatment in cases of indigestion and stomach disorders in general have had, and now have, the capacity and tendency to mislead and deceive the purchasers into the erroneous and mistaken belief that said product is a competent intestinal antiseptic and is an adequate and satisfactory remedy or treatment for indigestion and stomach disorders, and into the purchase of respondent's said product on account of such belief. As a result thereof, trade has been unfairly diverted to the respondent from those competitors who do not misrepresent the quality and character or effectiveness of their respective products. In consequence thereof, injury has been done by the respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, C. G. Hyre, 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 December 5, 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, C. G. Hyre, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a medicinal preparation designated by respondent as "Pepsotalis," or any other product of substantially the same composition and ingredients, or having the same therapeutic properties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly, either in the form of assertions by himself or by repeating the words or statements, or what purport to be the words or statements, of others:

1. That said preparation is an intestinal antiseptic;
2. That said product constitutes a relief for indigestion;
3. That the use of said product will be beneficial in cases of stomach disorders in general;
4. That said product will bring relief or has brought relief to sufferers from stomach trouble;
5. That said product possesses any therapeutic qualities which beneficially affect any maladies or conditions of the human body except a temporary reduction of gastric hyperacidity.

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.

IN THE MATTER OF

D. GOLDENBERG, INC., AND FRANK RABINOWITZ, TRADING AS NOVELTY SWEETS 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 2808. Complaint, May 16, 1936—Decision, Dec. 21, 1936

Where an individual engaged in purchase of various types of candies and in assembling thereof into assortments which involved a lottery or chance feature when sold and distributed to ultimate consumers, and which consisted of a number of penny pieces of chocolate-covered candy of uniform size and shape, some of the enclosed concealed centers of which had colors differing from color of the majority thereof, and chance selection of which entitled recipient to certain larger pieces of candy and other articles of merchandise included therewith—

Sold said assortments to wholesalers, jobbers, and retailers, together with explanatory display cards for retailers' use, so assembled and packed that they might be and were displayed and sold by retail dealers to the consuming and purchasing public as hereinbefore described, and with knowledge and intent that, without alteration, addition or rearrangement, they might thus be resold to public by lot or chance by such retail dealers, and through use of such a lottery or gaming device, in violation of public policy:

Held, That such 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. Alfred M. Roth and *Mr. Isaac Ash*, of Philadelphia, Pa., for D. Goldenberg, Inc.

Mr. Lester L. Dolfman, of Philadelphia, Pa., for Frank Rabinowitz.

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 D. Goldenberg, Inc., a corporation, and Frank Rabinowitz, an individual, trading as Novelty Sweets Company, 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:

¹ Dismissed as to D. Goldenberg, Inc.

PARAGRAPH 1. D. Goldenberg, Inc., is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business located at I and Ontario Streets in the city of Philadelphia, State of Pennsylvania. The respondent, Frank Rabinowitz, is an individual, with his principal office and place of business located at 2019 East Arizona Street, in the city of Philadelphia, State of Pennsylvania. The above-named respondents are engaged in business at 2019 East Arizona Street, in the city of Philadelphia, State of Pennsylvania, and are doing business under the trade name of Novelty Sweets Company. They are now, and for some time last past have been, engaged in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States, and cause and have caused their products when so sold to be transported from their 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 some time 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 and conduct 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 wholesale and retail dealers 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. The following detailed description of certain of said packages or assortments is not an all inclusive list of the packages sold and distributed by respondents, but illustrates the sales plan involved in the several assortments sold and distributed by respondents.

One of said assortments consists of a number of pieces of chocolate coated candy of uniform size and shape, together with a number of larger pieces of candy and other articles of merchandise, which larger pieces of candy and other articles of merchandise 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, and a still smaller number of said pieces of candy have centers of a still different color. The said pieces of candy of uniform size and shape in said assortment retail at the price of 1¢ each, but the pur-

chaser who procures one of said candies 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, or one of the other articles of merchandise 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 one of the said other articles of merchandise. The color of the centers of said pieces of candy of uniform size and shape is effectively concealed from the purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. 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 one of the other articles of merchandise wholly by lot or chance.

The respondents sell and distribute several variations of the above assortment, but all involving the same principle or sales plan. Some of the assortments which respondents sell by the above sales plan are named and designated: "Bullseye," "Knockout Punch," "Movies," "Pen and Pencil," "Harmony," "Easy Sailing," "Champion," "Good Scout," "Rainbow Eggs."

Respondents also furnish with certain of said assortments a display card to be used by the retailer in offering said assortments to the consuming public.

PAR. 3. The wholesale dealers and jobbers, to whom respondents sell their assortments, resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondents sell direct expose said assortments for sale and sell the same 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 its 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 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 larger pieces of candy or other articles of merchandise.

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 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 method, acts and practices of the respondent are all to the prejudice of the public and of respondents' 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 16, 1936, issued and served a complaint upon the respondents, D. Goldenberg, Inc., a corporation, and Frank Rabinowitz, an individual, trading as Novelty Sweets Company, charging that the respondents had been and were using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress. Respondent, D. Goldenberg, Inc., was represented by Isaac Ash, Esq., and Alfred M. Roth, Esq., and filed answer dated June 1, 1936, denying the material allegations of the complaint. Respondent, Frank Rabinowitz, was represented by Lester L. Dolfman, Esq., and subsequent to the hearings herein filed answer dated December 15, 1936, admitting all the material allegations of the complaint except those which the said respondent denied when he was called as a witness in this matter on July 7, 1936. Hearings were held and testimony and other evidence 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. 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 said complaint, the answers thereto, testimony and other evidence in support thereof and on the brief of counsel for the Commission respondents through their counsel having advised that they did not desire to file brief nor to present oral argument; 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. Respondent, D. Goldenberg, Inc., is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business located at I and Ontario Streets, Philadelphia, Pa., and is and has been for several years last past engaged in the manufacture, sale, and distribution of candy and

candy products to wholesale dealers and jobbers located at points in the various States in the eastern part of the United States, and has caused such products, when so sold, to be transported from its principal place of business in the State of Pennsylvania to the purchasers thereof at their respective points of location.

Respondent, Frank Rabinowitz, is an individual with his place of business located at 2019 East Arizona Street, Philadelphia, Pa., and has been engaged in the sale and distribution of candy and candy products to wholesale dealers, jobbers, and retail dealers located at points in the various States of the eastern part of the United States, and has caused such products, when so sold, to be transported from his principal place of business to the purchasers thereof at their respective points of location.

PAR. 2. Respondent, Frank Rabinowitz, was called as a witness by counsel for the Commission and testified, and the Commission finds, that he is an individual and was doing business under the trade name Novelty Sweets Company; that he began such business on or about November 15, 1935, purchasing various types of candies from the respondent, D. Goldenberg, Inc., and assembling such candies into assortments; and that he sold and distributed such assortments to wholesale dealers, jobbers, and retail dealers in the State of Pennsylvania and in the several States of the United States bordering on or surrounding the State of Pennsylvania.

The respondent, Frank Rabinowitz, trading as Novelty Sweets Company, before reselling said candy, assembled the same into assortments involving a lottery or chance feature when sold and distributed to the ultimate consumers thereof, as follows: Said assortments consisted of a number of pieces of chocolate covered candy of uniform size and shape, together with a number of larger pieces of candy and other articles of merchandise. The majority of the said pieces of candy of uniform size and shape had centers of the same color, but a small number of said pieces of candy had centers of a different color, and a still smaller number of said pieces of candy had centers of a still different color. The said pieces of candy of uniform size and shape in said assortments retailed at the price of 1¢ each, but the purchaser who procured one of the said candies colored differently from the majority was entitled to receive, and was to be given free of charge, one of the said larger pieces of candy or one of the other articles of merchandise heretofore referred to. The purchaser of the last piece of candy of uniform size and shape in said assortments was entitled to receive, and was to be given free of charge, one of the said other articles of merchandise. The color of the centers 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 piece of candy broken open. The aforesaid purchasers of said candies, who procured a candy having a center colored differently from the majority of said pieces of candy of uniform size and shape in said assortments, thus procured one of the said larger pieces of candy or one of the other articles of merchandise wholly by lot or chance.

The respondent, Frank Rabinowitz, assembled, sold and distributed several variations of the above assortment but all involving the same principle or sales plan. Some of the assortments which the respondent, Frank Rabinowitz, sold and distributed, and which involved the above described sales plan, were named and designated: "Bull's Eye," "Knockout Punch," "Movies," "Pen and Pencil," "Harmony," "Easy Sailing," "Champion," "Good Scout," and "Rainbow Eggs."

Respondent, Frank Rabinowitz, also included and furnished with certain of said assortments a display card to be used by the retail dealer in offering said assortments to the consuming public, which display cards bore legends or statements informing the consuming public that the said assortments were being sold and distributed in accordance with the above sales plan.

PAR. 3. The lottery or prize assortments, as described in paragraph 2 above, are generally referred to in the candy industry as "break and take" assortments, and assortments of candy without any 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. 4. Numerous retail dealers purchased the assortments described in paragraph 2 above direct from the respondent, Frank Rabinowitz, or from wholesale dealers or jobbers who in turn had purchased said assortments from respondent, Frank Rabinowitz, and such retail dealers displayed said packages for sale to the public as packed by said respondent, and the candy contained in said assortments were sold and distributed to the consuming public in the manner described.

PAR. 5. All sales made by respondent, Frank Rabinowitz, whether to wholesale dealers and jobbers or to retail dealers, were absolute sales and said respondent retained no control in any manner over the goods after they were delivered to the wholesale dealer or jobber or retail dealer. The assortments, as described in paragraph 2 hereof, were assembled and packed in such a manner that they might be sold by retail dealers to the purchasing public in the manner described.

The respondent, Frank Rabinowitz, had knowledge that said assortments would be resold to the purchasing public by retail dealers by lot or chance, and he packed and assembled such candy in the way and manner described so that, without alteration, addition or rearrangement, they might be resold to the public by lot or chance by said retail dealers.

PAR. 6. The sale and distribution of candy by retail dealers by the methods described in paragraph 2 above is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

PAR. 7. The respondent, Frank Rabinowitz, when called as a witness denied that the business conducted by him under the trade name Novelty Sweets Company was in any way a partnership or joint enterprise with the respondent, D. Goldenberg, Inc., but stated that the said business was his business exclusively, and he did not deny any of the facts hereinabove set forth.

PAR. 8. 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.

PAR. 9. The respondent, Frank Rabinowitz, commenced business as described in paragraph 1 hereof, on or about November 15, 1935, and, according to his testimony, discontinued said business on or about June 15, 1936, said discontinuance being subsequent to the issuance of the complaint herein but prior to the date when hearings were held. The Commission further finds that the use of the trade name or style, Novelty Sweets Company, was used by respondent, Frank Rabinowitz, and was not a trade name or style also adopted by respondent, D. Goldenberg, Inc.

PAR. 10. The testimony is to the effect, and the Commission finds, that for several years last past the respondent, D. Goldenberg, Inc., has not manufactured and distributed, in its own name and right or by any trade name or style, any candy assortments involving the lottery or chance feature and described in these finds as "break and take" assortments; said testimony is further to the effect, and the Commission finds, that the respondent, D. Goldenberg, Inc., has packed and sold all of its candy products as "straight" merchandise. The Commission further finds that the evidence adduced fails to support the allegation of the complaint that the business carried on under the trade name, Novelty Sweets Company, was a joint enterprise of D. Goldenberg, Inc., a corporation, and Frank Rabinowitz, an individual; and finds that the business carried on under the trade name, Novelty Sweets Company, was the exclusive business of the respondent, Frank Rabinowitz.

Order

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CONCLUSION

The aforesaid practices of the said respondent, Frank Rabinowitz, individually, and trading as Novelty Sweets Company, 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, ETC.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, D. Goldenberg, Inc., the answer of the respondent, Frank Rabinowitz, individually and trading as Novelty Sweets Company, admitting all the material allegations of the complaint to be true except those which said respondent denied when he was called as a witness on July 7, 1936, the testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it; and the Commission having made its findings as to the facts and its conclusion that the respondent, Frank Rabinowitz, 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 issued herein be and the same hereby is dismissed as to the respondent, D. Goldenberg, Inc., for the reason that the evidence fails to establish the allegations of the complaint as to said respondent.

It is further ordered, That the respondent, Frank Rabinowitz, individually, and trading as Novelty Sweets 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 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 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 but having centers of different colors, 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 of a particular color.

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 Frank Rabinowitz, individually, and trading as Novelty Sweets Company, 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
FORT CLARK 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 2949. Complaint, Oct. 16, 1936—Decision, Dec. 21, 1936

Where a corporation engaged, as rectifier and wholesaler of distilled spirits, in purchasing and bottling whiskies, gins, and other spirituous beverages, including product by it branded as "Prescription Whiskey," and in making gin with a still which it used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products in trade and commerce among the various States and in the District of Columbia, in substantial competition with those engaged in manufacture by true distillation of whiskies, gins, and other spirituous beverages from mash, wort, or wash, and in sale thereof as aforesaid, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and in similarly selling same, and including among said 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, advertising, and labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth, and also with those who do not misrepresent the strength, quality, or purity of their whiskies nor that such products are specially produced for medicinal use—

- (a) Represented, through use of 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 to its customers, and furnished the same with the means of representing to their vendees, both retailers and ultimate consuming public, that 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 such various beverages thus bottled, labeled, sold, and transported by it, and did not own, operate, or control any place where alcoholic liquors are made by original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture thereof is complete, as long definitely understood in trade and by ultimate purchasing public from word "distillery," and was not a distiller, for the purchase of the bottled products of which there is a preference on the part of a substantial portion of the purchasing public; and
- (b) Represented and implied, by various references to its "Prescription" Brand whiskey and to physicians, hospitals, and nurses and the United States Pharmacopoeia, in advertising booklets attached to each bottle, that its aforesaid whiskey conformed to the requirements thereof or was of a kind, nature, and quality superior to the standard of whiskey speci-

Complaint

fied therein for medicinal use, and that it had been endorsed by the medical profession generally and was a superior brand of such product, specially distilled and prepared for distribution for medicinal use, through such statements, among others, as that its said "Prescription" Brand was "prepared for nurses, hospitals, and physicians," and through statements stressing purity and requirements of the physician, compliance with the Food and Drug Act, specifications of the Pharmacopoeia, potability, uniformity, etc., "the purest money can buy," etc., notwithstanding fact that content of said product in esters did not meet specifications of the Pharmacopoeia, had not been aged for four years or more in the wood, as required thereby, but, on the contrary, was made from new beverage whiskey treated in charred wood containers under a certain process for about five days only, prior to bottling for sale, and in no wise conformed to the standards of strength, quality or purity of so-called medicinal whiskey, and in various other ways was not the kind or quality of said product represented by it, and was adulterated and inferior to the standards referred to;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that the whiskies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash by one continuous process, and that its aforesaid "Prescription" Brand whiskey was of the strength, quality, and purity specified by the Pharmacopoeia for medicinal whiskey, and of inducing dealers and 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 manufacturers by distillation from mash, wort, or wash of whiskies, gins, or other such beverages, or misrepresent the strength, quality, or purity of their whiskies; 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. PGad B. Morehouse for the Commission.

Miller, Elliott & Westervelt, of Peoria, 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 Fort Clark 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 Illinois, with its office

and principal place of business at 915 Forsythe Street, in the city of Peoria, in said State. It is now, and since the 24th day of June 1935, has been, engaged in the business of manufacturing and bottling whiskies, gins, and other spirituous beverages, including a product by it branded as "Prescription" Whiskey, in a rectifying plant under a rectifier's permit, and in the sale thereof and constant course of trade in 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, respondent causes its said products, when sold, to be transported from its place of business aforesaid into and through the various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in 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 since the 24th day of June 1935, 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 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 since the 24th day of June 1935, has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages in rectifying plants under rectifiers' permits 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 "distillery" 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, a place where such alcoholic 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 the 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, 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, 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 the public. Respondent does not own, operate, or control any place or places where such alcoholic beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 4. In the course and conduct of its business, as aforesaid, in connection with the sale and distribution of its so-called "Prescription" Brand Whiskey, respondent caused to be attached to each bottle thereof an advertising booklet, in which respondent represents to its vendees, and thereby furnishes them with the means of so representing to the ultimate purchasers and consumers of said whiskey, in part as follows:

(BOTTLE LABEL): PRESCRIPTION BRAND STRAIGHT BOURBON WHISKEY "CHEMICALLY ASSAYED"

Prescription Brand Whiskey is * * * standardized straight bourbon whiskey, prepared for nurses, hospitals, and physicians.

(BOOKLET): PRESCRIPTION WHISKEY (Chemically Assayed)

PRESCRIPTION WHISKEY for the MEDICAL PROFESSION Rx

* * * U. S. Food and Drug Acts have been complied with in the manufacture of this *Prescription Whiskey*.

PURITY: The Physician requires that his Digitals be physiologically tested and standardized. Why not the same *caution* for the Doctor's *Prescription Whiskey?*

* * *

Complaint

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Spirits Frumenti, U. S. P. specifically state that whiskey shall be aged in charred oak barrels for a period of four years, but they forget to specify from what proofed distilled spirits distillate, reduced to proper proof, should be used. Should the requirements be that of 110° proof spirits distillate or any degree of proof spirits distillate up 159° reduced to proper proof? (Any distillate distilled above 159° proof is classified as alcohol and cannot be called whiskey.)

* * *

POTABILITY: The Nurse is desirous of all pharmaceuticals that are to be administered, to be highly potable, thus eliminating all possibility of nausea and stomach disturbance, so as not to cause any discomfort of her patient. Why not the same caution for the Doctor's Prescription Whiskey?

* * *

159° proof spirit distillate of the *proper kind* is the *starting point* in the making of *Prescription Whiskey*.

* * *

Prescription Whiskey, which is the result of this technique, is recognized by the *Medical Profession*.

Do not confuse *Prescription Whiskey* with whiskies of U. S. P. requirements in purity.

Controlled *purity* and *standardized constituents* make it a pharmaceutical for the physician's use.

UNIFORMITY: The Pharmacist is required to use discretion in dispensing U. S. P. and C. P. drugs and chemicals. Why not the same *caution* for the Doctor's *Prescription Whiskey*?

THE PUREST MONEY CAN BUY

PRESCRIPTION WHISKEY is prepared especially for the use of the physician who recognizes the need for combining purity of product with accessibility of price. Its standards of excellence, going beyond U. S. P. requirements for purity, make it the ideal stipulation for the physician who wishes to direct his patient to the best.

The physician knows how essential is purity in the use of whiskey as a specific. He knows the lack of scruple which has characterized the manufacture of many products intended to be taken into the body.

In Prescription Whiskey he finds the ideal answer to his problem. It is well flavored and palatable, it is not priced at the excessive figure established for other whiskies approaching it in purity. It is chemically assayed for your protection.

For Your Patients: Prescription Whiskey superior to U. S. P. requirements for **PURITY**

By means of the foregoing statements and representations, respondent in substance and effect represents that the said "Prescription" Brand Whiskey is of a kind, nature and quality superior to the standard of whiskey specified for medicinal use in the United States Pharmacopoeia, whereas, in truth and in fact, the whiskey is adulterated, is inferior to, and does not conform to, the standards of whiskey there specified, in that, to wit, the United States Pharmacopoeia specifies that whiskey contains in 50 cc. esters equivalent to not less than 1.7 cc. of tenth-normal sodium hydroxide, and respondent's said "Pre-

scription" brand contains esters in 50 cc. equivalent to 1 cc. of tenth-normal sodium hydroxide. Also, the standard of the whiskey specified for medicinal use in the United States Pharmacopoeia aforesaid requires such article to be aged in the wood for four years or more, and respondent's "Prescription" brand Whiskey has not been aged in the wood for four years or more.

By its aforesaid references to "Prescription" Brand and to physicians, hospitals, nurses, and the United States Pharmacopoeia (U. S. P.), respondent directly and impliedly represents that its whiskey conforms to the requirements of the Pharmacopoeia, has been endorsed by the medical profession generally, and is a superior brand of whiskey specially distilled and prepared for distribution for medicinal use, when, as a matter of fact, the article is made from new beverage whiskey, treated in charred wood containers at an elevated temperature for a period of approximately five days, after which it is bottled for sale and sold, and in no wise conforms to the standards of strength, quality or purity of so-called medicinal whiskey, and in various and divers other ways is not the kind or quality of whiskey as represented by respondent.

PAR. 5. 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, 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 in rectifying plants under rectifiers' permits who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, advertising nor on the labels attached to the bottles in which they sell and ship their said products.

There are also among such competitors corporations, firms, partnerships, and individuals who do not misrepresent the strength, quality, or purity of whiskies by them sold in interstate commerce, nor that such whiskies are specially produced for medicinal use.

PAR. 6. The representations by respondent, as hereinbefore set forth, are calculated to and have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that the whiskies, gins, and other spirituous beverages sold

by the respondent are manufactured and distilled by it from mash, wort, or wash by one continuous process, and that its "Prescription" Brand Whiskey is of the strength, quality, and purity specified by the United States Pharmacopoeia for whiskey designed to be used medicinally, 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 whiskeys, gins, and other spirituous 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 manufacturers by distillation from mash, wort, or wash of whiskeys, gins, or other spirituous beverages, or misrepresent the strength, quality or purity of their whiskeys, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 7. 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 October 16, 1936, issued and served its complaint in this proceeding upon respondent, Fort Clark 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 respondent's answer, dated November 25, 1936, was duly filed in the office of the Commission by which said answer respondent admitted all the material allegations of the complaint to be true and waived 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 is a corporation organized, existing and doing business under the laws of the State of Illinois, with its office and principal place of business at 915 Forsythe Street in the city of Peoria in said State. It is now, and since June 24, 1935, has been, engaged in business as a rectifier and wholesaler of distilled spirits, operating since November 23, 1935, under a basic permit, No. R-643, issued by the Federal Alcohol Administration. Its business consists of purchasing and bottling whiskies, gins, and other spirituous beverages, including a product by it branded as "Prescription Whiskey," in a rectifying plant under a rectifier's permit, 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, respondent causes its said products, when sold, to be transported from its place of business aforesaid into and through the various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in 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 since the 24th day of June 1935, 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 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 since the 24th day of June 1935, 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 in rectifying plants under rectifiers' permits 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 "distillery" 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, a place where such alcoholic 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 the 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, 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, 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 the public. Respondent does not own, operate or control any place or places where such alcoholic beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash.

PAR. 4. In the course and conduct of its business, as aforesaid, in connection with the sale and distribution of its so-called "Prescription" Brand Whiskey, respondent caused to be attached to each bottle thereof an advertising booklet, in which respondent represents to its vendees, and thereby furnishes them with the means of so representing to the ultimate purchasers and consumers of said whiskey, in part as follows:

(BOTTLE LABEL): PRESCRIPTION BRAND STRAIGHT BOURBON WHISKEY "CHEMICALLY ASSAYED"

Prescription Brand Whiskey is * * * standardized straight bourbon whiskey, prepared for nurses, hospitals, and physicians.

(BOOKLET): PRESCRIPTION WHISKEY (Chemically Assayed)

PRESCRIPTION WHISKEY for the MEDICAL PROFESSION Rx

* * * U. S. Food and Drug Acts have been complied with in the manufacture of this *Prescription Whiskey*.

PURITY: The Physician requires that his *Digitalis* be physiologically tested and standardized. Why not the same *caution* for the *Doctor's Prescription Whiskey?*

* * *

Spirit Frumenti, U. S. P. specifically state that whiskey shall be aged in charred oak barrels for a period of four years, but they forget to specify from what proofed distilled spirits distillate, reduced to proper proof, should be used. Should the requirements be that of 110° proof spirits distillate or any degree of proof spirits distillate up to 159° reduced to proper proof? (Any distillate distilled above 159° proof is classified as alcohol and cannot be called whiskey.)

* * *

POTABILITY: The Nurse is desirous of all pharmaceuticals that are to be administered, to be highly potable, thus eliminating all possibility of nausea and stomach disturbance, so as not to cause any discomfort of her patient. Why not the same caution for the *Doctor's Prescription Whiskey?*

* * *

159° proof spirit distillate of the *proper kind* is the starting point in the making of *Prescription Whiskey*.

* * *

Prescription Whiskey, which is the result of this technique, is recognized by the *Medical Profession*.

Do not confuse *Prescription Whiskey* with whiskies of U. S. P. requirements in purity.

Controlled *purity* and *standardized constituents* make it a pharmaceutical for the physician's use.

UNIFORMITY: The Pharmacist is required to use discretion in dispensing U. S. P. and C. P. drugs and chemicals. Why not the same *caution* for the *Doctor's Prescription Whiskey?*

THE PUREST MONEY CAN BUY

PRESCRIPTION WHISKEY is prepared especially for the use of the physician who recognizes the need for combining purity of product with accessibility of price. Its standard of excellence, going beyond U. S. P. requirements for purity, make it the ideal stipulation for the physician who wishes to direct his patient to the best.

The physician knows how essential is purity in the use of whiskey as a specific. He knows the lack of scruple which has characterized the manufacture of many products intended to be taken into the body.

In *Prescription Whiskey* he finds the ideal answer to his problem. It is well flavored and palatable, it is not priced at the excessive figure established for other whiskies approaching it in purity. It is chemically assayed for your protection.

For your Patients: *Prescription Whiskey* superior to U. S. P. requirements for **PURITY**.

By means of the foregoing statements and representations, respondent in substance and effect represents that the said "Prescription" Brand Whiskey is of a kind, nature and quality superior to the standard of whiskey specified for medicinal use in the United States

Pharmacopoeia, whereas, in truth and in fact, the whiskey is adulterated, is inferior to, and does not conform to, the standards of whiskey there specified, in that, to wit, the United States Pharmacopoeia specifies that whiskey contains in 50 cc. esters equivalent to not less than 1.7 cc. of tenth-normal sodium hydroxide, and respondent's said "Prescription" brand contains esters in 50 cc. equivalent to 1 cc. of tenth-normal sodium hydroxide. Also the standard of the whiskey specified for medicinal use in the United States Pharmacopoeia aforesaid requires such article to be aged in the wood for four years or more, and respondent's "Prescription" Brand Whiskey has not been aged in the wood for four years or more.

By its aforesaid references to "Prescription" Brand and to physicians, hospitals, nurses, and the United States Pharmacopoeia (U. S. P.), respondent directly and impliedly represents that its whiskey conforms to the requirements of the Pharmacopoeia, has been endorsed by the medical profession generally and is a superior brand of whiskey specially distilled and prepared for distribution for medicinal use, when, as a matter of fact, the article is made from new beverage whiskey, treated in charred wood containers at an elevated temperature for a period of approximately five days, after which it is bottled for sale and sold, and in no wise conforms to the standards of strength, quality or purity of so-called medicinal whiskey, and in various and divers other ways is not the kind or quality of whiskey as represented by respondent.

PAR. 5. 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, 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 in rectifying plants under rectifiers' permits who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, advertising nor on the labels attached to the bottles in which they sell and ship their said products.

There are also among such competitors corporations, firms, partnerships, and individuals who do not misrepresent the strength, quality,

or purity of whiskies by them sold in interstate commerce, nor that such whiskies are specially produced for medicinal use.

PAR. 6. The representations by respondent, as hereinbefore set forth, are calculated to and have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that the whiskies, gins and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort or wash by one continuous process, and that its "Prescription" Brand Whiskey is of the strength, quality, and purity specified by the United States Pharmacopoeia for whiskey designed to be used medicinally, 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 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 manufacturers by distillation from mash, wort, or wash of whiskies, gins, or other spirituous beverages, or misrepresent the strength, quality, or purity of their whiskies, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 7. 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 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 respondent Fort Clark 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 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 agrees 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 purpose."

It is ordered, That the respondent, Fort Clark Distilleries, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, and distribution of whiskies, gins, and other spirituous beverages in interstate commerce and in the District of Columbia (except gins produced by it through a process of rectification whereby alcohols purchased, but not produced, by respondent are redistilled over juniper berries and other aromatics), do forthwith cease and desist from:

1. 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 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;

2. Representing that any of its whiskey is of the kind, nature, or quality usually or ordinarily prescribed by physicians for medicinal treatment; or is of the kind, nature, and quality especially prepared for nurses, hospitals, or physicians; or that any of said whiskey is the kind, nature, and quality of whiskey of the standard specified for medicinal use in the United States Pharmacopoeia; or that any of said whiskey is aged in the wood for four years or more, when such are not the facts.

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
PRATT FOOD COMPANY

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

Docket 2964. Complaint, Nov. 2, 1936—Decision, Dec. 23, 1936

Where a corporation engaged in the manufacture, sale and distribution of
"Pratt's 'Split-Action' N-K Capsules" for poultry—

Falsely represented, in pamphlets, labels attached to containers of product,
and in advertisements in newspapers and periodicals and otherwise, that
said product, fed to fowls, would destroy all worms or parts thereof and
tapeworm heads with which the fowls were infested, through such state-
ments as "* * * worms your bird as thoroughly as though you gave
each fowl two treatments," "Stop wasting money on treatments that get
only a few * * *," and "* * * the best tapeworm destroyer";

With capacity and tendency to mislead and deceive purchasers of its product
into the belief that the same, bought by them, would accomplish afore-
said results, and with effect of causing a substantial number of the pur-
chasing public to buy its said product on account of the mistaken and
erroneous belief thus induced, and of unfairly diverting thereby trade
to it from many competitors who make and distribute products designed
for similar uses without misrepresenting the capacities or effects thereof:

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 Sep-
tember 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 Pratt
Food 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 Com-
mission that a proceeding by it in respect thereof will be in the
public interest, hereby issues its complaint, stating its charges in that
respect as follows:

PARAGRAPH 1. The respondent is a corporation organized, existing,
and doing business under and by virtue of the laws of the State of
Pennsylvania with its principal place of business at 126 Walnut Street
in the city of Philadelphia in said State. Respondent is now and
for more than three years last past has been engaged in the com-
pounding and manufacture for sale of the product designated by it

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"Pratt's 'Split-Action' N-K Capsules," and in the sale thereof in commerce between and among the various States of the United States and the District of Columbia, and causes and has caused said product when sold by it to be transported in interstate commerce from its place of business in the State of Pennsylvania and from other States of the United States to purchasers thereof located in various States of the United States other than the State of origin of the shipment and in the District of Columbia.

PAR. 2. In the course and conduct of its said business respondent is now and has for more than three years last past been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture for sale, sale, and distribution of products in interstate commerce between and among the various States of the United States and the District of Columbia used for purposes similar to purposes for which respondent's "Pratt's 'Split-Action' N-K Capsules" are represented by respondent to be efficacious, and competitors in interstate 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 its said business as hereinabove described the respondent in soliciting the sale of and selling in interstate commerce "Pratt's 'Split-Action' N-K Capsules," in advertising said product by pamphlets, labels attached to the containers thereof, newspapers, periodicals, magazines, and otherwise, has made many extravagant, deceptive, misleading and false statements regarding the therapeutic value, efficacy, and effect of its said product among which is the following:

One "Split-Action" capsule worms your bird as thoroughly as though you gave each fowl two treatments * * * Stop wasting money on treatments that get only a few of the worms * * * Kamala is the best tapeworm destroyer.

PAR. 4. In truth and in fact respondent's representations as set forth in paragraph 3 hereof, and respondent's advertisements and representations in pamphlets, labels attached to containers of respondent's said product, newspapers, periodicals, magazines, and otherwise, are extravagant, false, misleading, and deceptive in the following respects:

The representations quoted in paragraph 3 are made in such a way that purchasers and prospective purchasers of respondent's product are led to believe that respondent's said product when fed to fowls will destroy all worms and all parts of worms, including tapeworm heads, with which the fowls may be infested, whereas respondent's

said product "Pratt's 'Split-Action' N-K Capsules" will not when fed to fowls destroy all worms or all parts of worms, including tape-worm heads, with which the fowls may be infested.

PAR. 5. Respondent's advertising and representations hereinabove described have had and still have a tendency and capacity to and do mislead and deceive the purchasing public regarding the therapeutic value, efficacy, and effect of "Pratt's 'Split-Action' N-K Capsules," and further, as a direct consequence of the deceptive acts and representations of respondent and mistaken beliefs induced by said acts, as herein set out, the purchasing public has purchased respondent's "Pratt's 'Split-Action' N-K Capsules" with the result that trade has been unfairly diverted to respondent from competitors engaged in the business of distributing or selling products designed for similar usage who truthfully advertise and represent the properties of their respective products and the results which may be expected to be obtained from the use thereof. As a result thereof substantial injury has been and now is 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. 6. The acts, practices and representations of the respondent hereinabove set forth have been and are all to the injury and prejudice of the public and to the competitors of the respondent in interstate commerce, and have constituted and now 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 2, 1936, issued, and on November 4, 1936, served its complaint in this proceeding upon respondent, Pratt Food 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, 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 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. For more than three years last past the respondent, Pratt Food Company, a corporation, has been organized and existing as a corporation under the laws of the State of Pennsylvania, and has maintained during all of said time, and now maintains, its principal place of business at 126 Walnut Street, in the city of Philadelphia, Pa.

PAR. 2. For more than three years last past the respondent has been engaged in the manufacture, sale, and distribution of a product sold by it under the trade name "Pratt's 'Split-Action' N-K Capsules." This product has been sold by the respondent to various firms, persons, associations, or corporations located not only in the State of Pennsylvania but in other States of the United States, and after sales have been consummated the respondent has shipped the purchased goods, or caused them to be shipped, from respondent's place of business in Philadelphia, Pa., or from other States, to purchasers thereof located in States other than the State of Pennsylvania or other than the State of origin of the shipment. The respondent has maintained a constant current of trade and commerce between and among various States of the United States and the District of Columbia in the sale and distribution of its said product during all of the time referred to herein.

PAR. 3. The respondent, during all of the time herein referred to, has represented that its product, "Pratt's 'Split-Action' N-K Capsules" is an efficient remedy for certain diseases of poultry, and has recommended that its said product be fed to poultry, and has represented that when it is so used results will be achieved, as hereinafter more fully set forth, which will be greatly beneficial to the purchasers of said product.

PAR. 4. There are other corporations, individuals, associations, and partnerships engaged in similar business to that of the respondent, to wit: the sale and distribution of products which will relieve poultry from worm infestation. Said other corporations, individuals, associations, and partnerships have been and are engaged in

commerce among and between the various States of the United States in said business. The respondent, during all of the aforesaid time, was, and still is, in competition in such commerce in the sale of the said "Pratt's 'Split-Action' N-K Capsules" with such other corporations, individuals, associations, and partnerships likewise engaged in the sale and distribution of products having an efficacy similar to that claimed by the respondent for "Pratt's 'Split-Action' N-K Capsules."

PAR. 5. In soliciting the sale of its product respondent has continuously, during all of the aforesaid time, represented by pamphlets, labels attached to containers of the product, advertisements inserted in newspapers, periodicals and magazines, and otherwise, as follows: "One 'Split-Action' Capsule worms your bird as thoroughly as though you gave each fowl two treatments"; "Stop wasting money on treatments that get only a few of the worms"; and "Kamala is the best tapeworm destroyer." These representations have been made through advertising mediums and otherwise, and have been caused by respondent to be circulated to customers and prospective customers residing in the various States.

PAR. 6. As a matter of fact, respondent's said product, "Pratt's 'Split-Action' N-K Capsules," when fed to fowls, will not destroy all worms or all parts of worms, including tapeworm heads, with which the fowls are infested.

PAR. 7. There is a preference among members of the purchasing public, located in various States of the United States, of a product that will, when fed to fowls, destroy all worms and all parts of worms, including tapeworm heads, with which the fowls may be infested, and the foregoing representations by the respondent describe a product that members of the public desire to purchase. The representations made by the respondent above referred to have the capacity and tendency to mislead and deceive the purchasers of its product into believing that when they purchase said product they will obtain a product that will, when fed to fowls, destroy all worms and all parts of worms, including tapeworm heads, with which the fowls may be infested.

PAR. 8. The representations of the respondent as aforesaid have had, and do have, the tendency and capacity and effect of causing a substantial number of the purchasing public to buy respondent's product on account of the mistaken and erroneous belief induced by respondent's representations.

PAR. 9. There are many of the competitors of respondent who manufacture and distribute products designed for similar usage to

that sold and distributed by the respondent in various States of the United States who do not misrepresent the capacities or effects of their products.

Respondent's acts and practices are hereinabove set forth tend to, and do, unfairly divert trade to respondent from such competitors, to the substantial injury and prejudice of competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Pratt Food 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 and the answer filed herein on December 21, 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, Pratt Food Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of a product designated as "Pratt's 'Split-Action' N-K Capsules," or any product of substantially the same composition and ingredients or of substantially the same therapeutic effect sold under the name "Pratt's 'Split-Action' N-K Capsules" or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through statements such as

One "Split-Action" Capsule worms your bird as thoroughly as though you gave each fowl two treatments;

Stop wasting money on treatments that get only a few of the worms;

Kamala is the best tapeworm destroyer;

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or other statements of similar import and effect, or through any other device or in any other manner, that said product will destroy all worms and all parts of worms (including tapeworm heads) with which poultry may be infested.

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
B. H. KRUEGER, INC., AND LIGHTFOOT SCHULTZ
COMPANY

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

Docket 2515. Complaint, Aug. 14, 1935—Decision, Dec. 29, 1936

Where a corporation engaged in manufacturing, compounding, selling, and distributing a line of toiletries and cosmetics including perfumes, toilet water, face powder, lipstick, rouge, and similar products, to purchasers in the various States, and including a line of toiletries sold and distributed by an American concern in interstate commerce under trade name or brand "Drury Lane English Lavender"—

Caused its aforesaid products or line of toiletries to be labeled and branded with aforesaid words and words "Distributed by Worthall, Ltd., London, Montreal, New York", notwithstanding fact said American corporation thus referred to was not a limited corporation as commonly understood by the public, nor an English company, and had no operating branch or office in London, or Montreal, and products sold and distributed by it in interstate commerce were not made or compounded in London or imported from England or made from English materials, but were all made or compounded in the United States and principally of materials produced therein, and were in no sense products of English manufacture nor English in origin;

With effect of misleading and deceiving dealers and purchasing public into erroneous and mistaken belief that the said toilet preparations and supplies made, compounded and sold by it and marketed by said American distributor, were genuine English products and that its said distributor was an English company with offices in London and Montreal, and that its said products were of English origin and manufacture or were imported from England, and of inducing dealers and purchasing public, acting in such beliefs, to buy such imitation toilet preparations, and thereby unfairly divert trade to it from its competitors who do not thus, or otherwise, misrepresent the nature and kind of their products, and from competitors who actually do sell and distribute toilet products and cosmetics of English origin which, as genuine English toiletries long compounded, blended and made in England by English companies of English materials and imported and appropriately labeled and branded for sale and distribution in the United States, are bought by a substantial portion of the purchasing public in preference to imitations thereof not of English origin or manufacture; to 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.

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

Mr. Allen C. Phelps for the Commission.

Mr. Milton Dammann, of New York City, for Lightfoot Schultz Co.

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 B. H. Krueger, Inc., a corporation, and Lightfoot Schultz Company, a corporation, 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. B. H. Krueger, Inc., 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 at 151 West 19th Street in the city of New York, N. Y. The officers of said respondent B. H. Krueger, Inc. are Bernard H. Krueger, president and treasurer, and Max Krueger, secretary. Respondent Lightfoot Schultz Company is a corporation organized, existing, and doing business under the laws of the State of New York, with its office at 389 Fifth Avenue, New York City, and a factory at 1412 Park Avenue, Hoboken, N. J. The officers of said Lightfoot Schultz Company are Milton Dammann, president, Marshall Mundheim, vice president and secretary, and Jules B. deMesquite, treasurer.

PAR. 2. Respondent B. H. Krueger, Inc., since prior to September 1934, has been and now is engaged in the business of manufacturing, compounding, selling, and distributing a line of toiletries and cosmetics, including perfumes, toilet water, face powder, lip stick, rouge, and similar products to purchasers in the various States of the United States. Respondent Lightfoot Schultz Company since prior to September 1934, has been and now is engaged in manufacturing, compounding, selling, and distributing a line of toilet soaps to purchasers in the various States of the United States. Both of said respondents ordinarily sell and distribute their said products at wholesale and cause the said products to be transported from the States of New York and New Jersey into other States of the United States and the District of Columbia, and in the course and conduct of their said businesses said respondents were and are in competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, compounding, sale, and distribution in interstate commerce of similar products.

PAR. 3. During the time above mentioned respondent B. H. Krueger, Inc. in the course and conduct of its said business manufactured and compounded, wrapped, packed, and delivered to the order of one Worthall, Ltd., a corporation, a line of toiletries which were sold and distributed by said Worthall, Ltd. in interstate commerce under the trade name or brand of "Drury Lane English Lavender." Respondent Lightfoot Schultz Company during the time above mentioned manufactured and compounded, wrapped, packed, and delivered to the order of Worthall, Ltd. a line of toilet soaps, which was sold and distributed in interstate commerce by said Worthall, Ltd. under the trade name or brand of "Drury Lane English Lavender." The labels attached to the containers and packages in which said toiletries and soaps were packed, sold, and distributed were furnished to said respondents by said Worthall, Ltd., but said labels were attached to said packages or containers and the packaging and bottling of said products were done by the respondents, who thereupon delivered the finished products to destinations and consignees in the several States designated by said Worthall, Ltd.

PAR. 4. For a long period of time the terms "English," "Made in England" and "Imported from England" and similar terms when used in connection with toilet articles such as perfumes, soaps, toilet water, face powder, rouge, and similar articles, have had and still have a definite significance in the minds of wholesalers and retailers and the ultimate purchasing public, to wit: Such toiletries and products have for many years been compounded, blended and manufactured in England by English companies of English materials and imported into the United States, and where so compounded, produced and imported have been appropriately labelled and branded for sale and distribution in the various States of the United States. Such terms as the above when applied to toilet products not made of English materials or manufactured by an English company or imported from England are false and misleading, and a substantial portion of the purchasing public prefers to buy genuine English toiletries produced as aforesaid, rather than imitations thereof which are not of English origin or manufacture.

PAR. 5. In the course and conduct of their said businesses, as aforesaid, respondents have caused their products so sold and distributed in interstate commerce, to be labeled and branded with the words "Drury Lane," "English Lavender," and "Distributed by Worthall, Ltd., London, Montreal, New York," when in truth and in fact the said Worthall, Ltd. is not a limited corporation nor is it an English company, it had no branch or office in London or Montreal, none of the products which it so sold and distributed in interstate commerce

were manufactured or compounded in London nor were the same imported from England or made from English materials. On the contrary, Worthall, Ltd. is a New York corporation; all of said products were manufactured or compounded in the United States, principally of materials produced in this country, and same were in no sense products of English manufacture nor English in origin.

PAR. 6. The representations so made by respondents, as above set forth, and the use of the word "Limited" instead of incorporated; by said corporation, in combination with the words "London, Montreal, New York," of the trade name "Drury Lane" and the words "English Lavender," are calculated to and have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the toilet articles and supplies manufactured, compounded, and sold by respondents are genuine English products, and that respondents' distributor Worthall, Ltd. is an English company with offices in London and Montreal, and that said products are imported from England, when such is not the fact. Said representations have the capacity and tendency to and do induce dealers and the purchasing public, acting on such beliefs, to purchase the said imitation toilet articles, thereby diverting trade to respondents from their competitors who do not by their corporate trade names or by false and misleading advertising or in any other manner misrepresent the nature and kind of their products, and from competitors who actually do sell and distribute toilet products and cosmetics of English origin and manufacture, and thereby respondents do substantial injury to competitors and to the purchasing public in interstate commerce.

PAR. 7. 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 August 14, 1935, issued and served its complaint in this proceeding upon respondents B. H. Krueger, Inc., and Lightfoot Schultz Company, charging them with the use of unfair methods of competition in commerce in violation of the pro-

visions of said act. After the issuance of said complaint, and the filing of respondents' 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 John W. Addison, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by the respondent B. H. Krueger, Inc., and by Milton Dammann, attorney for respondent Lightfoot Schultz Company; 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 answers thereto, testimony and other evidence, and briefs in support of the complaint and in opposition thereto (no oral argument having been applied for); 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: B. H. Krueger, Inc., 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 at 151 West Nineteenth Street in the city of New York, N. Y. The officers of said respondent B. H. Krueger, Inc., are Bernard H. Krueger, president and treasurer, and Max Krueger, secretary.

PAR. 2. Respondent B. H. Krueger, Inc., since prior to September 1934, has been, and now is, engaged in the business of manufacturing, compounding, selling, and distributing a line of toiletries and cosmetics, including perfumes, toilet water, face powder, lipstick, rouge, and similar products to purchasers in the various States of the United States. Said respondent ordinarily sells and distributes its said products at wholesale and causes the said products to be transported from the State of New York into other States of the United States and the District of Columbia. In the course and conduct of its said business, said respondent was, and is, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, compounding, sale, and distribution in interstate commerce of similar products.

PAR. 3. During the time above mentioned, respondent B. H. Krueger, Inc., in the course and conduct of its said business manufactured and compounded, wrapped, packed, and delivered to the order of one Worthall, Ltd., a corporation, a line of toiletries which were sold and distributed by said Worthall, Ltd., in interstate com-

merce under the trade name or brand of "Drury Lane English Lavender." The labels attached to the containers and packages in which said toiletries and soaps were packed, sold, and distributed were furnished to said respondent by said Worthall, Ltd., but said labels were attached to said packages or containers, and the packaging and bottling of said products were done by the respondent, who thereupon delivered the finished products to destinations and consignees in the several States designated by said Worthall, Ltd.

PAR. 4. For a long period of time the terms "English," "Made in England," and "Imported from England" and similar terms of English connotation or derivation, when used in connection with toilet preparations such as perfumes, soaps, toilet water, face powder, rouge, and similar articles, have had, and still have, a definite significance in the minds of wholesalers and retailers and the ultimate purchasing public, to wit: that such toiletries and products have for many years been compounded, blended, and manufactured in England by English companies of English materials and imported into the United States, and where so compounded, produced, and imported, have been appropriately labelled and branded for sale and distribution in the various States of the United States. A substantial portion of the purchasing public prefers to buy genuine English toiletries produced as aforesaid, rather than imitations thereof which are not of English origin or manufacture. Such terms as the above, when applied to toilet products not made of English materials or manufactured by an English company or imported from England, are false and misleading.

PAR. 5. In the course and conduct of its said business, as aforesaid, respondent has caused its products so sold and distributed in interstate commerce, to be labelled and branded with the words "Drury Lane," "English Lavender," and "Distributed by Worthall, Ltd., London, Montreal, New York," when in truth and in fact the said Worthall, Ltd., is not a limited corporation as such term is commonly understood by the public, nor is it an English company. It has no operating branch or office in London or Montreal. None of the products which it sold and distributed in interstate commerce was manufactured or compounded in London, nor were the products imported from England or made from English materials. On the contrary, Worthall, Ltd., is a New York Corporation; all of said products were manufactured or compounded in the United States, principally of materials produced in this country, and said products were in no sense products of English manufacture nor English in origin.

PAR. 6. The representations so made by respondent, as above set forth, and the use on labels placed on its said products by respondent-

ent of the word "Limited" instead of "Incorporated" for said Worthall corporation, in combination with the words "London" or "Montreal"; of the trade name "Drury Lane" and the words "English Lavender"; are calculated to, and have the capacity and tendency to, and do, mislead and deceive dealers and the purchasing public into the erroneous and mistaken belief that the toilet preparations and supplies manufactured, compounded, and sold by respondent and marketed by said distributor Worthall, Ltd., are genuine English products, and that respondent's distributor Worthall, Ltd., is an English company with offices in London and Montreal, and that said products are of English origin and manufacture or are imported from England. Said representations have the capacity and tendency to, and do, induce dealers and the purchasing public, acting on such beliefs, to purchase the said imitation toilet preparations, thereby unfairly diverting trade to respondent from its competitors who do not by the means above set forth, or in any other manner, misrepresent the nature and kind of their products, and from competitors who actually do sell and distribute toilet products and cosmetics of English origin and manufacture, to the injury of competition in commerce among and between the various States of the United States.

PAR. 7. The testimony and evidence recorded and filed in this proceeding have failed to establish the allegations of the complaint herein as against respondent Lightfoot Schultz Company.

CONCLUSION

The aforesaid acts and practices of the respondent B. H. Krueger, 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 answers of respondents, testimony and other evidence taken before John W. Addison, 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 respondent B. H. Krueger, 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 that the allegations of the complaint have not been established as against respondent Lightfoot Schultz Company by the testimony and evidence herein;

It is ordered, That the respondent, B. H. Krueger, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of cosmetics and toilet preparations, including perfumes, soaps, toilet water, face powder, and similar articles in interstate commerce or in the District of Columbia, by the use of labels, or otherwise, do forthwith cease and desist from representing:

1. That said products are of English manufacture or origin, or are imported from England;

2. That said products contain ingredients of English origin, when such is not the fact;

3. That said products are manufactured or prepared for, or distributed by, an English company or a company with offices and places of business in England or Canada, when such is not the fact;

4. That any of said products manufactured for, or sold to, Worthall, Ltd., a New York corporation, are offered for sale, sold, or distributed by an English company, or by a company with offices in England or Canada;

5. That any of said products manufactured for, or sold to, Worthall, Ltd., a New York corporation, are of English manufacture or origin, or have been imported from England.

It is further ordered, That the respondent, B. H. Krueger, Inc., a corporation, 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.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice as against respondent Lightfoot Schultz Company, a corporation.

IN THE MATTER OF
NATIONAL ELECTRICAL MANUFACTURERS
ASSOCIATION 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 2565. Complaint, Nov. 16, 1935¹—Decision, Dec. 29, 1936

Where corporations engaged in (1) the manufacture of various kinds of power cable and of rubber covered building wire, largest consumers of which products were privately and publicly owned public utilities, municipal, State, and Federal Governments, and large industrial plants and office buildings, and in (2) soliciting, selling, and delivering such various products directly to the larger consumers, and in supplying the smaller requirements of such consumers and the entire requirements of the smaller consumers by selling and placing stocks of goods in the hands of jobbers and retailers, and (3) controlling a large, valuable and continuous trade and commerce among the several States, and transporting and delivering or causing to be transported and delivered, in the course thereof, large quantities of material and finished products across State lines, and (4) in a position, to the extent that they acted collectively and collusively in the production and pricing of their goods, to dominate the markets in which unorganized consumers must buy the same, and, but for the matters hereinbelow set forth, in active competition with one another as to price and otherwise; acting in combination and agreement with one another and through their association and subsidiary groups and sectional organizations thereof, promoted in aid of such agreements and combinations directed to avoiding, frustrating and suppressing price competition, both prior to and during the role as Code Authority under the National Industrial Recovery Act, of said association, in using, interpreting and applying various provisions of said Code with intent and effect of supporting, supplementing and reinforcing such agreements, understandings, policies, and methods; and making use of frequent meetings and conferences among the members of the various groups, sections, and subdivisions of the association, and systematic exchange of price information among the members; and acting in pursuance thereof—

- (a) Entered into agreements and understandings to quote, sell, and deliver their goods according to identical delivered prices, terms, and sales conditions, determined by joint or cooperative action of the members' groups, etc., as above indicated, and systematically prepared, circulated, exchanged, adopted, and used certain price lists promulgated by three of the said member manufacturers, with the assurance that such lists and changes thereof, with due notice, would be observed by the promulgating manufacturers if respected by the others, with intent and effect of avoiding and suppressing price competition among all, and with the understanding of all that purchase on a delivered price basis only would be permitted, and with inclusion of formula through which such delivered prices were to be calcu-

¹ Amended.

lated, whether for the entire United States and possessions, or within various price zones, as the case might be; and

- (b) With intent and effect of further suppressing price competition among themselves, supplemented said uniform delivered price lists by imposing uniform charge for the large wooden reels on which cable is wound for delivery and uniform allowance for return thereof, together with uniform charge for return freight, which, in some cases, was in excess of and, in other cases, less than actual cost of such return freight to plant of a given manufacturer, and adopted uniform terms of sale, including uniform discounts for quantity and for prompt payment and uniform grades and specifications and methods of calculating prices on goods which varied therefrom; and
- (c) With intent and effect aforesaid and, more specifically, to ascertain if, when and to what extent any of such manufacturers had deviated in actual transactions from any such aforesaid identical delivered prices or any factor required by their agreements and understandings, adopted and carried on a system with the advice, assistance and cooperation of their said association, under which they agreed to and did report to each other, upon request of any member of the respective groups, detailed information as to the prices and all factors entering into or affecting the prices quoted on particular transactions, and with similar intent and effect exchanged communications and held meetings and conferences at which investigations were made into cases of alleged price cutting and criticized or otherwise disciplined offender competitors;

With result, necessarily, by reason of said delivered price policy, that said manufacturers habitually and systematically discriminated in price among their various customers after making due allowance for cost of transportation, exacted higher prices from customers having little or no transportation expense and accepted lower prices from those having heavy transportation expense, and with further result that competitors at or near the place of manufacture and shipment were deprived of the advantage of such location and were required to contribute to the cost of transportation of more distant customers, notwithstanding fact that such customers frequently were in competition with each other, and further result that such manufacturers charged and collected from many of their customers, in the guise of transportation and delivery charges, more, and from other of their customers, less, than the actual cost thereof; and

- (d) Fixed, through cooperative group activities within the association, the selling price of a certain patented rubber covered building wire, under cover of a licensing contract between themselves as licensees and one of their number and competitor as owner of the patent and licensor, by first jointly determining upon and then having named in such license contract the identical price which they desired to obtain from their respective customers; and
- (e) Adopted identical discounts from their published list prices to cover sales to jobbers, and required of jobbers that they resell commodities in question at list price in order to avoid any price competition among the respective jobbers or between the jobbers and manufacturers respectively, and supported their said requirement by jointly determining status and eligibility of jobbers, detecting failures on part of jobbers to maintain prescribed resale price, and refusing supplies to such jobbers;

With the result that, through such agreements, understandings, rules, policies, and cooperative methods, they took away from purchasers of power cable and rubber covered building wire, advantages of normal competition which formerly existed, and would otherwise exist among them, compelled unorganized purchasers to buy commodities involved at prices and on terms determined collectively and collusively by them, and artificially enhanced amounts exacted from such purchasers above those obtainable, absent such determination, which, in some instances and insofar as exacted from public utilities and the Government as an incident to the transmission of electric light and power, became a part of the permanent investment on which consumers of electricity are called upon to pay a continual return, or, where publicly owned, at least sufficient to retire the investment therein, and in other instances became a part of utility and Government operating expenses which must be borne by consumers and rate payers, and with intent and effect of unduly and unreasonably restricting, restraining and obstructing competition in the sale of power cable and rubber covered building wire through said wrongful and unlawful combination, conspiracy and agreement thus engaged in:

Held, That such acts and things and methods of competition were all to the injury and prejudice of the public engaged in purchase or purchase and resale of electric power cable and rubber covered building wire, of competitors engaged in production and sale thereof, and of consumers of electricity, and constituted unfair methods of competition.

Mr. Walter B. Wooden and Mr. R. L. Kennedy for the Commission. *Rounds, Dillingham, Mead & Neagle*, of New York City, for National Electrical Manufacturers Association, its officers, etc.

Palmer & Serles, of New York City, and *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for American Electrical Works.

Mr. Kenneth B. Halstead, of New York City, for American Steel and Wire Co.

Chadbourne, Wallace, Parke & Whiteside, of New York City, for Anaconda Wire and Cable Co.

Reed & Chapman, of New York City, for Bishop Wire and Cable Corp.

Herrick, Smith, Donald & Farley, of Boston, Mass., for Boston Insulated Wire and Cable Co., and Simplex Wire and Cable Co.

Lichtenstein, Schwartz & Friedenberg, of Hoboken, N. J., for Crescent Insulated Wire and Cable Co.

Mr. Carlyle E. Yates, of New York City, and *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for General Cable Corp.

Mr. Darius E. Peck, of Schenectady, N. Y., and *Wright, Gordon, Zachry & Parlin*, of New York City, for General Electric Co.

Gleason, McLanehan, Merritt & Ingraham, of New York City, for Habirshaw Cable and Wire Corp., National Electrical Products Corp., and Phelps-Dodge Copper Products Corp.

Mr. George Murray Brooks, of New York City, for The Okonite Co.

McCarter & English, of Newark, N. J., for John A. Roebling's Sons Co.

Mr. Bertram L. Marks, of New York City, for Triangle Conduit and Cable Co.

Arthur, Dry & Dole, of New York City, for United States Rubber Products, Inc.

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 the respondents named and represented in the caption hereof have been and 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The members of respondent association and of its various groups, sections, and divisions, consist of several hundred corporations, individuals, firms, and partnerships, their number varying from time to time by the separation of some and the addition of others, so that it is impracticable at any given time to name as respondents and to bring before the Commission each and all the members without manifest delay and inconvenience. Therefore, the Commission names and includes as respondents in this proceeding, the National Electrical Manufacturers Association, both separately and as representatives of all the members of the association the following officers: F. C. Jones, president, and member of board of governors; W. J. Donald, managing director; T. W. Howard, director uniform accounting and statistical department; C. M. Cogan, director engineering department; the board of governors (whose present membership is not known to the Commission) and the following members of respondent association: American Electrical Works, Philadelphia, Pa. (a Rhode Island corporation), American Steel and Wire Co., Worcester, Mass. (a New Jersey corporation); Anaconda Wire and Cable Co., New York, N. Y. (a Delaware corporation); Bishop Wire and Cable Corporation, New York, N. Y. (a New York corporation); Boston Insulated Wire and Cable Co., Boston, Mass. (a Massachusetts corporation); Crescent Insulated Wire and Cable Co., Trenton, N. J. (a New Jersey corporation); General Cable Corporation, New York, N. Y. (a New Jersey corporation); General Electric Company, Schenectady, N. Y. (a New

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York corporation); Habirshaw Cable and Wire Corporation, New York, N. Y. (a New York corporation); National Electrical Products Corporation, Pittsburgh, Pa. (a Delaware corporation); The Okonite Company, Passaic, N. J. (a New Jersey corporation); Phelps-Dodge Copper Products Corporation, New York, N. Y. (a New York corporation); John A. Roebling's Sons Company, Trenton, N. J. (a New Jersey corporation); Simplex Wire and Cable Company, Boston, Mass. (a Massachusetts corporation); Triangle Conduit and Cable Company, Brooklyn, N. Y. (a New York corporation); United States Rubber Products, Inc., New York, N. Y. (a New Jersey corporation).

PAR. 2. The power cable and wire with which this proceeding is chiefly concerned are used for the transmission of electric current of large voltages. Much of it is copper wire insulated by various processes to meet the special needs of various classes of customers. Impregnated paper cable is used for transmitting current from the power house to substations and other outlets, where, depending on the use to which it is to be put, the current is diverted into varnished cambric, rubber power, or parkway cable. Where used in buildings for lighting purposes, the current is distributed through what is known as building wire. Bare and weatherproofed wires are used for overhead transmission across long stretches of country and among other uses, for overhead trolleys on electric railways.

Among the largest consumers of these commodities are public utilities, whether privately or publicly owned; municipal, State, and Federal Governments for use in the lighting of streets, parks, highways, and public buildings; and large industrial plants and office buildings in carrying current for power and light.

Respondent manufacturers solicit, sell, and deliver these commodities directly to the larger consumers. They supply the smaller requirements of such consumers and the entire requirements of the smaller consumers by selling and placing stocks of goods in the hands of jobbers and retailers.

Respondent manufacturers have control of a large, valuable, and continuous trade and commerce among the several States in the goods with which this proceeding deals, and in the course of such trade and commerce ship, transport and deliver large quantities of material and finished products across State lines, or cause them to be so transported and delivered. To the extent that respondent manufacturers act collectively and collusively in the production and pricing of their goods they are in position to dominate and manipulate the markets in which unorganized consumers must buy such goods.

PAR. 3. Respondent National Electrical Manufacturers Association is a voluntary, unincorporated organization composed of the principal

manufacturers of copper cable and wire for electrical transmission. It also includes in its membership manufacturers of electric tools, and a large variety of electrical equipment and apparatus. For each of the commodities with which this amended complaint deals the members of respondent association collectively produce, sell, and distribute the major part, and in some cases all, of the output of such commodities in the United States.

In order to accomplish more effectively the purposes of the combination and conspiracy hereinafter alleged, respondent association, its officers, board of governors, and members, have promoted, established and conducted within said association, a number of separate groups and sections, each of which is composed of manufacturers who produce and sell similiar and competing kinds of electrical wire and cable or similar and competing kinds of electric tools and of electrical equipment and apparatus. A number of respondent members are manufacturers of more than one kind of the commodities referred to and accordingly affiliate themselves with more than one of the group and sectional organizations within respondent association, making separate contributions to the support of each such group. Among such groups are the respective manufacturers which produce impregnated paper cable, varnished cambric cable, rubber power cable, parkway cable, rubber covered building wire, bare and weather-proofed wire, rigid steel conduit, fibre underground conduit, outlet boxes, and electric tools.

PAR. 4. The aforesaid respondent association, its officers, board of governors, and members, have been and are engaged in a wrongful and unlawful combination, conspiracy, and agreement in and affecting trade and commerce in power cable, copper wire for electrical transmission, and various kinds of electrical apparatus and equipment throughout the United States and its possessions, for the purpose and with the effect of unduly and unreasonably restricting, restraining, and obstructing competition in the sale of such goods. To that end the respondents by concerted action and agreement among themselves have adopted and put into effect the following policies, rules, practices, and methods of competition:

(a) As the first step in their plan to suppress or restrain price competition, respondents have created, organized and conducted subsidiary group and sectional organizations composed of manufacturers which, but for the activities herein alleged, would be in active competition with each other as to price and otherwise.

(b) Respondents have promoted and held frequent meetings and conferences among the members of the various groups, sections, and subdivisions of the associations, and have systematically exchange

price information among such members. In the course of such activities respondents have entered into agreements and understandings that they would quote, sell, and deliver their goods according to identical prices, terms, and sales conditions determined by the joint or cooperative action of the members of the respective groups, sections or subdivisions of respondent association organized to have jurisdiction over such goods.

PAR. 5. As instances and illustrations of the methods used in carrying out the above alleged conspiracy the Federal Trade Commission alleges the following:

(a) Respondent manufacturers of impregnated paper cable, of varnished cambric cable, of parkway cable, and of rubber power cable, respectively, have concertedly adopted and maintained fixed and uniform selling prices on said commodities, under the leadership of and in cooperation with respondents The Okonite Co., the General Electric Co., and the Habirshaw Cable and Wire Corporation. The last named respondents compiled, printed, and circulated among the other respondent manufacturers of said commodities exceedingly complex and detailed price lists, offering and assuring such other respondent manufacturers, their competitors, that if the latter would not quote and sell at less than the list prices of the respective compilers, then said compilers would maintain the prices in their respective lists and would immediately notify their said competitors of all proposed changes in price or in the methods of calculating same. Acting upon said offers and assurances respondent manufacturers of said commodities systematically prepared, circulated, exchanged, adopted, and used, the price lists so compiled as the amount to be quoted to and obtained from their customers, for the purpose and with the effect of avoiding and suppressing price competition among all of respondent manufacturers of said commodities.

(b) In the compilation, adoption, and use of said price lists, it was understood and agreed among said respondent manufacturers that no customer should be allowed to purchase except on a delivered price basis. Pursuant to such understanding and agreement, said price lists embodied and contained only delivered prices and the formula by which such prices were to be calculated. As to some products the price lists specified a single delivered price to be paid by all customers throughout the United States and including Panama Canal Zone, Puerto Rico, Hawaiian Islands, and Alaska. As to other products the price lists specified a single delivered price to be paid by all customers throughout and within each of a number of price zones, each composed of a number of States or parts of States. The purpose of said delivered price policy was to prevent respondent manufacturers from

allowing differences in the proximity of any given customer to their respective plants, to create any difference in the amount to be paid by him delivered from any source of supply.

(c) For the purpose and with the effect of further suppressing price competition among themselves, respondent manufacturers of said commodities supplemented said uniform delivered price lists by imposing a uniform charge for the large wooden reels on which cable is wound for delivery and a uniform allowance for the return of such reels. Said price lists included a uniform charge for the return freight on such reels, which charge, in some cases, was more and in other cases less than the actual cost of such return freight to the plant of a given manufacturer.

(d) For the purpose and with the effect of further suppressing price competition among themselves, respondent manufacturers of said commodities adopted uniform terms of sale, including uniform discounts for quantity and for prompt payment, uniform grades and specifications, and uniform methods of calculating prices on goods which varied from such uniform grades and specifications.

(e) For the purpose and with the effect of further suppressing price competition among themselves and specifically for the purpose of ascertaining if, when, and to what extent any of respondent manufacturers had deviated in actual transactions from the identical delivered price or from any factor therein which their conspiracy and combination demanded, respondent manufacturers of said commodities, with the advice, assistance, and cooperation of respondent association, adopted and carried on a system under which they agreed to report and did report to each other upon the request of any member of their respective groups, detailed information as to the prices and all factors entering into or affecting the prices which they had quoted on particular transactions. For a similar purpose and effect, respondent manufacturers have exchanged communications and held meetings and conferences at which investigations were made into cases of alleged price cutting and where any such offenders were criticized or otherwise disciplined by their competitors.

(f) As an incident to and a necessary result of said delivered price policy respondent manufacturers habitually and systematically discriminated in price, after making due allowance for the cost of transportation, among their various customers, exacted higher prices from customers having little or no transportation expense, and accepted lower prices from those having heavy transportation expense. As a further result of said delivered price policy, customers located at or near the place of manufacture and shipment were deprived of the advantage of such location and were required to contribute to the cost

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of transportation of more distant customers, notwithstanding that such customers frequently were in competition with each other. As a further result of such policy, respondent manufacturers charged and collected from many of their customers, in the guise of transportation and delivery charges, more, and from others of their customers, less, than the actual cost thereof.

PAR. 6. Respondent manufacturers of rubber covered building wire, through cooperative group activities within respondent association, have fixed the selling price of a patented kind of such wire under cover of a so-called licensing contract between themselves as licensees and respondent National Electrical Products Company as owner of the patent and licensor. Said contract is not a valid licensing contract under the patent laws in that, among other things, the licensees and licensor, being competitors of each other, jointly determine the identical price which they desire to obtain from their customers and then go through the formality of having same named and imposed by the licensor on the licensees under said agreement.

PAR. 7. Respondent manufacturers of the commodities named in paragraphs 5 and 6 have adopted identical discounts from their published list prices to cover sales to jobbers and have required of jobbers that they re-sell said commodities at the list price in order that there may be no price competition among their respective jobbers or between the jobbers and manufacturers respectively, supporting such requirement by jointly determining the status and eligibility of jobbers, by detection of failures by jobbers to maintain the prescribed resale price and by refusal to supply goods to such jobbers.

PAR. 8. Some of the above alleged agreements, understandings, policies, and concerted practice of avoiding and suppressing price competition have been carried on continuously since 1929 or longer, but respondent association, as Code Authority to administer the code adopted by the industry under the National Industrial Recovery Act, used, interpreted, and applied various provisions of said Code for the purpose and with the effect of supporting, supplementing, and reinforcing such agreements, understandings, policies, and practice.

PAR. 9. Respondent members and manufacturers comprising various groups and sections of respondent association other than those whose activities are described in paragraphs 5, 6, 7, and 8 of this amended complaint have engaged in cooperative efforts to eliminate and suppress price competition among themselves by the use of methods and devices similar to but not identical with or confined to those alleged in said paragraphs.

PAR. 10. By means of the aforesaid agreements, understandings, rules, policies, and cooperative practices respondents have taken away

from purchasers of power cable and electrical transmission wire, and of other electrical apparatus and equipment the advantages of normal competition which formerly existed and would otherwise exist among respondent manufacturers. Respondents thereby compelled unorganized purchasers to purchase such commodities at prices and on terms determined collectively and collusively by respondents and artificially enhanced the amounts exacted from such purchasers above the amounts obtainable had there been no such determination. The amounts so exacted from public utilities whether publicly or privately owned and from municipalities and the government as an incident to the transmission of electric light and power in some cases become a part of the permanent investment on which consumers of electricity are called upon to pay a continual return or if publicly owned, at least sufficient to retire the investment in such utilities. In other cases the amounts exacted become a part of utility and government operating expenses which must be borne by the consumers and rate payers.

PAR. 11. The above alleged acts and things done by respondents are all to the injury and prejudice of the public engaged in the purchase and resale of electric power cable and wire, electrical equipment and apparatus, of competitors engaged in the production and sale thereof, and of consumers of electricity, 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 September 26, 1935, issued and served its original complaint in this proceeding and on November 16, 1935, issued and served its amended complaint in this proceeding upon the parties named in the above caption. It included said parties as respondents in this proceeding, both separately and as representatives of all the members of respondent association, charging them with the use of unfair methods of competition in violation of the provisions of said act. After the issuance and service of said amended complaint respondents filed their respective answers thereto making general denial of the substantial allegations of said complaint. Subsequently all the respondents petitioned the Federal Trade Commission for permission to withdraw said answers

and to file their substituted answers to the amended complaint, consenting therein that for the purposes of this proceeding, all the material allegations of said complaint might be deemed to be admitted in so far as they relate to the business of selling power cable and "Safecote" rubber covered building wire. Pursuant to permission granted by the Commission said original answers were withdrawn by said respondents and said substituted answers were filed in lieu thereof. Said respondents also consented therein that the Commission might proceed to make its findings of fact without further proceedings and that an order to cease and desist might issue in the terms hereinafter stated.

The said Commission, having duly considered the above and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes these its findings as to the facts and its conclusions of fact and law drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. At the time the amended complaint was issued and served, the following corporate respondents were among the members of respondent association: American Electrical Works, Philadelphia, Pa. (a Rhode Island corporation), succeeded by Kennecott Wire and Cable Company through change of name; American Steel and Wire Co., Worcester, Mass. (a New Jersey corporation); Anaconda Wire and Cable Co., New York, N. Y. (a Delaware corporation); Bishop Wire and Cable Corporation, New York, N. Y. (a New York corporation); Boston Insulated Wire and Cable Co., Boston, Mass. (a Massachusetts corporation); Crescent Insulated Wire and Cable Co., Trenton, N. J. (a New Jersey corporation); General Cable Corporation, New York, N. Y. (a New Jersey corporation); General Electric Company, Schenectady, N. Y. (a New York corporation); Habirshaw Cable and Wire Corporation, New York, N. Y. (a New York corporation); Kennecott Wire and Cable Company, Philadelphia, Pa. (a Rhode Island Corporation) successor by change of name to American Electrical Works, National Electrical Products Corporation, Pittsburgh, Pa. (a Delaware corporation); The Okonite Company, Passaic, N. J. (a New Jersey corporation); Phelps-Dodge Copper Products Corporation, New York, N. Y. (a New York corporation); John A. Roebling's Sons Company, Trenton, N. J. (a New Jersey corporation); Simplex Wire and Cable Company, Boston, Mass. (a Massachusetts corporation); Triangle Conduit and Cable Company, Brooklyn, N. Y. (a New York corporation); United States Rubber Products, Inc., New York, N. Y. (a New Jersey corporation).

The said respondent members, through the respondent association, have promoted, established, and utilized within said association, a number of separate groups and sections, each of which is composed of manufacturers who produce and sell similar and competing kinds of electrical wire and cable. A number of respondent members are manufacturers of more than one kind of the commodities referred to and accordingly affiliate themselves with more than one of the group and sectional organizations within respondent association making separate contributions to the support of each such group. Among such groups are the respective manufacturers which produce impregnated paper cable, varnished cambric cable, rubber power cable, parkway cable, and rubber covered building wire.

PAR. 2. The power cable and wire to which these findings relate are used for the transmission of electric current of large voltages. Much of it is copper wire insulated by various processes to meet the special needs of various classes of customers. Impregnated paper cable is used for transmitting current from the power house to substations and other outlets, where depending on the use to which it is to be put, the current is diverted into varnished cambric, rubber power, or parkway cable. Where used in buildings for lighting purposes, the current is distributed through what is known as building wire.

Among the largest consumers of these commodities are public utilities, whether privately or publicly owned; municipal, State, and Federal Governments, for use in the lighting of streets, parks, highways, and public buildings; and large industrial plants and office buildings in carrying current for power and light.

The respondent manufacturers specifically named in paragraph 1 generally solicit, sell and deliver these commodities directly to the larger consumers. Some of them supply the smaller requirements of such consumers and the entire requirements of the smaller consumers by selling and placing stocks of goods in the hands of jobbers and retailers.

Said respondent manufacturers have control of a large, valuable and continuous trade and commerce among the several States, and in the course of such trade and commerce ship, transport and deliver large quantities of material and finished products across State lines, or cause them to be so transported and delivered. To the extent that respondent manufacturers act collectively and collusively in the production and pricing of their goods they are in position to dominate the markets in which unorganized consumers must buy such goods.

PAR. 3. The respondent manufacturers specifically named in paragraph 1, by concerted action and agreement among themselves have

adopted and put into effect, the following policies, rules, practices, and methods of competition:

(a) As the first step in a plan to frustrate, suppress, or restrain price competition, said respondents have promoted, established, and utilized subsidiary group and sectional organizations within respondent association, composed of manufacturers which, but for the facts herein found, would be in active competition with each other as to price and otherwise.

(b) Said respondents have promoted and held frequent meetings and conferences among the members of the various groups, sections, and subdivisions of the association, and have systematically exchanged price information among such members. In the course of such activities, said respondent manufacturers have entered into agreements and understandings that they would quote, sell and deliver their goods according to identical delivered prices, terms and sales conditions determined by the joint or cooperative action of the members of the respective groups, sections, or subdivisions of respondent association organized to have jurisdiction over such goods.

PAR. 4. As instances and illustrations of the methods used in carrying out the above plan and practice, the Federal Trade Commission finds the following:

(a) Said respondent manufacturers of impregnated paper cable, of varnished cambric cable, of parkway cable, and of rubber power cable, respectively, have concertedly adopted and maintained fixed and uniform selling price on said commodities, under the leadership of and in cooperation with respondents, The Okonite Co., the General Electric Co., and the Habirshaw Cable and Wire Corporation. The last named respondents compiled, printed and circulated among the other respondent manufacturers of said commodities, exceedingly complex and detailed price lists, offering and assuring such other respondent manufacturers, their competitors, that if the latter would not quote and sell at less than the list prices of the respective compilers, then said compilers would maintain the prices in their respective lists and would immediately notify their said competitors of all proposed changes in price or in the methods of calculating same. Acting upon said offers and assurances, respondent manufacturers of said commodities systematically prepared, circulated, exchanged, adopted and used the price lists so compiled as the amount to be quoted to and obtained from their customers, for the purpose and with the effect of avoiding and suppressing price competition among all of respondent manufacturers of said commodities.

(b) In the compilation, adoption, and use of said price lists, it was understood and agreed among said respondent manufacturers that no

customer should be allowed to purchase except on a delivered price basis. Pursuant to such understanding and agreement, said price lists embodied and contained only delivered prices and the formula by which such prices were to be calculated. As to some products, the price lists specified a single delivered price to be paid by all customers throughout the United States and including Panama Canal Zone, Puerto Rico, Hawaiian Islands, and Alaska. As to other products, the price lists specified a single delivered price to be paid by all customers throughout and within each of a number of price zones, each composed of a number of States of the United States or parts of such States. The purpose of said delivered price policy was to prevent respondent manufacturers from allowing differences in the proximity of any given customer to their respective plants, to create any difference in the amount to be paid by him delivered from any source of supply.

(c) For the purpose and with the effect of further suppressing price competition among themselves, respondent manufacturers of said commodities supplemented said uniform delivered price lists by imposing a uniform charge for the large wooden reels on which cable is wound for delivery and a uniform allowance for the return of such reels. Said price lists included a uniform charge for the return freight on such reels, which charge, in some cases, was more and in other cases less than the actual cost of such return freight to the plant of a given manufacturer.

(d) For the purpose and with the effect of further suppressing price competition among themselves, respondent manufacturers of said commodities adopted uniform terms of sale, including uniform discounts for quantity and for prompt payment, uniform grades and specifications, and uniform methods of calculating prices on goods which varied from such uniform grades and specifications.

(e) For the purpose and with the effect of further suppressing price competition among themselves, and more specifically for the purpose of ascertaining if, when, and to what extent any of respondent manufacturers had deviated in actual transactions from the identical delivered price or from any factor therein which their agreements and understandings required, respondent manufacturers of said commodities, with the advice, assistance and cooperation of respondent association, adopted and carried on a system under which they agreed to report and did report to each other upon the request of any member of their respective groups, detailed information as to the prices and all factors entering into or affecting the prices which they had quoted on particular transactions. For a similar purpose and with a similar effect, respondent manufacturers have exchanged communications and

held meetings and conferences at which investigations were made into cases of alleged price cutting and where any such offenders were criticized or otherwise disciplined by their competitors.

(f) As an incident to and a necessary result of said delivered price policy, respondent manufacturers habitually and systematically discriminated in price among their various customers after making due allowance for the cost of transportation, exacted higher prices from customers having little or no transportation expense, and accepted lower prices from those having heavy transportation expense. As a further result of said delivered price policy, customers located at or near the place of manufacture and shipment were deprived of the advantage of such location and were required to contribute to the cost of transportation of more distant customers, notwithstanding that such customers frequently were in competition with each other. As a further result of such policy, respondent manufacturers charged and collected from many of their customers, in the guise of transportation and delivery charges, more, and from other of their customers, less than the actual cost thereof.

PAR. 5. Said respondent manufacturers of rubber covered building wire, through cooperative group activities within respondent association have fixed the selling price of a patented kind of such wire known as "Safecote," under cover of a licensing contract between themselves as licensees and respondent National Electrical Products Company as owner of the patent and licensor. Said respondents, including both the licensees and licensor, are competitors of one another. They have first jointly determined upon an identical price which they desired to obtain from their respective customers and then went through the formality of having such price named and imposed by respondent licensor on respondent licensees under said contract.

PAR. 6. Said respondent manufacturers of the commodities named in paragraphs 4 and 5 herein have adopted identical discounts from their published list prices to cover sales to jobbers and have required of jobbers that they re-sell said commodities at the list price in order that there may be no price competition among their respective jobbers or between the jobbers and manufacturers respectively, supporting such requirement by jointly determining the status and eligibility of jobbers, by detection of failures on the part of jobbers to maintain the prescribed resale price, and by refusal to supply goods to such jobbers.

PAR. 7. Some of the above described agreements, understandings, policies, and methods of avoiding, frustrating and suppressing price competition have been carried on continuously since 1929 or longer, but respondent association, as Code Authority to administer the code

adopted by the industry under the National Industrial Recovery Act, used, interpreted, and applied various provisions of said code for the purpose and with the effect of supporting, supplementing, and reinforcing such agreements, understandings, policies, and methods.

PAR. 8. By means of the agreements, understandings, rules, policies, and cooperative methods described above in paragraphs 4 to 7, inclusive, respondents have taken away from purchasers of power cable and rubber covered building wire, the advantages of normal competition which formerly existed and would otherwise exist among respondent manufacturers. Respondents thereby compelled unorganized purchasers to purchase such commodities at prices and on terms determined collectively and collusively by respondents and artificially enhanced the amounts exacted from such purchasers above the amounts obtainable had there been no such determination. The amounts so exacted from public utilities whether publicly or privately owned and from municipalities and the Government as an incident to the transmission of electric light and power, in some cases became a part of the permanent investment on which consumers of electricity are called upon to pay a continual return, or if publicly owned, at least sufficient to retire the investment in such utilities. In other cases, the amounts exacted become a part of utility and Government operating expenses which must be borne by the consumers and rate payers.

CONCLUSION

By reason of the admitted agreements, understandings, rules, policies and cooperative methods described above in paragraphs 4 to 7, inclusive, the respondent association and members named in paragraph 1 have been and are engaged in a wrongful and unlawful combination, conspiracy and agreement in and affecting trade and commerce throughout the United States and its possessions, in power cable and rubber covered building wire, for the purpose and with the effect of unduly and unreasonably restricting, restraining and obstructing competition in the sale of such goods; which acts and things and methods of competition are all to the injury and prejudice of the public engaged in the purchase or purchase and resale of electric power cable and rubber covered building wire, of competitors engaged in the production and sale thereof, and of consumers of electricity; and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission on the complaint filed herein on September 26, 1935, the amended complaint filed herein on November 16, 1935, and the proposed substituted answers of the respondents, National Electrical Manufacturers Association, F. C. Jones, as president and member of the board of governors, W. J. Donald, as managing director and C. M. Cogan, as director of the engineering department of National Electrical Manufacturers Association and American Electrical Works (now known as Kennecott Wire and Cable Company), American Steel and Wire Co., Anaconda Wire and Cable Co., Bishop Wire and Cable Corporation, New York N. Y., (a New York corporation), Boston Insulated Wire and Cable Co., Crescent Insulated Wire and Cable Co., General Cable Corporation, General Electric Company, Habirshaw Cable and Wire Corporation, National Electrical Products Corporation, The Okonite Company, Phelps-Dodge Copper Products Corporation, John A. Roebling's Sons Company, Simplex Wire and Cable Company, Triangle Conduit and Cable Company, United States Rubber Products, Inc., in which they state that they desire to and have hereby waived hearing on the charges set forth in the amended complaint insofar as the same refer to alleged 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," and that they and each of them for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding, refrain from contesting the proceeding, and that they and each of them consent that all the material facts alleged in said amended complaint in so far as the same are connected with the business of selling or offering for sale impregnated paper cable, varnished cambric cable, rubber power cable, parkway cable and "Safe-cote" rubber covered building wire may be deemed to be admitted as alleged unfair methods of competition in commerce within the intent and meaning of Section 5 of said Federal Trade Commission Act but not within the intent and meaning of any other law of the United States, such proposed substituted answers not constituting an admission of any conclusions of law and not constituting an admission of fact for any other purpose nor to be used against them in any other proceeding, suit, or action, and that they and each of them consent that the Commission may without trial and without further evidence and without any intervening proceeding make and enter its findings as to the facts and issue and serve upon them and each of them an order to cease and desist from any methods of competition alleged

in the amended complaint which constitute violations of Section 5 of the Federal Trade Commission Act.

Now therefore, it is hereby ordered, That the respondents above named be and hereby are permitted to withdraw the answers heretofore filed by them, and to file their proposed substituted answers in lieu thereof, and the substitute answers tendered are received and filed.

It is further ordered, That said respondent corporations American Electrical Works (now known as Kennecott Wire and Cable Company), American Steel and Wire Co., Anaconda Wire and Cable Co., Bishop Wire and Cable Corporation, Boston Insulated Wire and Cable Co., Crescent Insulated Wire and Cable Co., General Cable Corporation, General Electric Company, Habirshaw Cable and Wire Corporation, National Electrical Products Corporation, The Okonite Company, Phelps-Dodge Copper Products Corporation, John A. Roebbling's Sons Company, Simplex Wire and Cable Company, Triangle Conduit and Cable Company, and United States Rubber Products, Inc., and their successors, officers, agents, and employees, and the respondent, National Electrical Manufacturers Association, cease and desist, in connection with the business of selling and offering for sale impregnated paper cable, varnished cambric cable, rubber power cable, parkway cable and "Safecote" rubber covered building wire in interstate commerce, from doing and performing, by agreement, combination or conspiracy between or among any two or more of said respondent corporations acting directly or by or through the respondent, National Electrical Manufacturers Association, the following acts and things:

1. Fixing, maintaining, or enhancing prices, special charges, discounts, transportation charges or any terms or conditions of sale which terms or conditions constitute a substantial element in competition:

2. Providing that any price lists compiled and distributed by any of them among their competitors are to be adopted and adhered to until modifications thereof are similarly compiled and distributed with the result that such original lists and amendments are so adopted and adhered to by any of them and their competitors;

3. Imposing, attempting or threatening to impose, by any means whatsoever, any penalty on manufacturers who fail or refuse to adopt and adhere to the prices or lists compiled and distributed as stated in paragraphs (1) and (2) hereof.

4. Participating with competitors in initiating or conducting any investigation for the purpose of ascertaining and reporting for their

joint benefit if, when and to what extent any competitor has deviated from any price list or any announced or quoted price, or otherwise bringing pressure or persuasion to bear upon competitors not to deviate from any such price list or price, provided that this paragraph shall not prevent the circulation of reports of the prices, terms, conditions and like particulars of closed transactions, when not done for the purpose of policing the activities prohibited in paragraphs (1) or (2);

(5) Compiling and distributing among competitors information as to any discounts from, or terms of sale applicable to, any price or price list agreed to be adopted and adhered to as described in paragraphs (1) and (2), whether for specified quantities for prompt payment or for other reasons, including any means or methods by which to calculate prices on goods that vary in grade or specification from the grades and specifications to which such prices or price lists ordinarily apply, with the understanding that such discounts, terms of sale, or means or methods are to be adopted and adhered to by any of them and their competitors until modifications thereof are distributed among such competitors and with the result that such discounts, terms of sale, or means or methods are so adopted and adhered to;

6. Determining or attempting to determine what concerns shall be recognized as jobbers for the distribution of the products of the industry, refusing to sell concerns not jointly recognized by the manufacturers as jobbers, requiring jobbers to sell their customers at list prices or at other prices, prescribed by the manufacturers detecting and reporting jobbers who fail to maintain the prescribed resale price, and refusing to sell such jobbers, where the effect may be to prevent jobbers from competing with each other as to price on the goods of a particular manufacturer or on the goods of said manufacturers generally;

7. Refusing to sell any buyer who so elects at a price calculated f. o. b. point or place from which the goods purchased are actually shipped;

8. Requiring that customers purchase only on a delivered price basis, whether in the form of a single delivered price throughout the United States or throughout each of any number of price zones;

9. Making any payment or allowance to buyers for the return of reels on which cable or wire is wound for delivery, where such payment or allowance is other than the actual cost of return freight to place of shipment and where as a necessary incident to paying or allowing other than the actual freight, identity of delivered prices is preserved and maintained among the respective respondent manufacturers.

10. Agreeing or attempting to agree with any competing manufacturer when both are selling goods as licensees under the same patent for the purpose and with the effect of fixing a price or prices at which they shall each sell the article covered by their licenses, and for the purpose or with the effect of obtaining from their licensor a requirement that the price so arrived at shall be adhered to under the terms of their respective license agreements; provided that this paragraph shall not abridge any legal rights of a licensor under a patent or patent license agreement;

Provided, however, That the prohibitions of this order shall not apply to any lawful action taken under patents or license agreements relating thereto.

It is further ordered, That the above 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 and each of them have complied with this order.

IN THE MATTER OF
ARROW 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 2400. Complaint, May 20, 1935—Decision, Dec. 30, 1936

Where a corporation engaged as rectifier and wholesaler of spirituous beverages, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the making of gin with a still which it used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products to wholesalers and retailers in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages, and in selling same in trade and commerce among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and in similarly selling same, and including among said competitors those who, as manufacturers and distillers of whiskies, gins, and other spirituous beverages sold by them, by process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery, advertising, and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distilleries" in its corporate name, in advertising matter, on its stationery and invoices, and on the labels attached to the bottles in which it sold and shipped its said beverages, together with words "Distilled by" on labels for gin redistilled by it, "Prepared by" on labels for some of the cordials and other beverages which it compounded, and words "Bottled by" or "Prepared by" on whiskey labels, and with nothing further on the labels of some of its cordials to indicate that they were not distilled by it, and with such prefixes, insofar as reproduced in advertising matter, not legible without use of a magnifying glass, and with words "Peoria, Illinois" in close conjunction with its said corporate name on labels and advertising, and in various other ways represented to its customers, and furnished the same with the means of representing to their vendees, both retailers and ultimate consuming public, 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 said various beverages thus bottled, labeled, sold, and transported by it, as commonly accepted and understood in the trade and by the public, and did not operate or control any place or places where such beverages were made by process of original and con-

¹ Count Two 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.

tinuous distillation from mash, etc., as hereinbefore set forth, and was not a distiller or distillery, for the purchase of the bottled or packaged liquors of which there is a preference on the part of a substantial portion of the liquor purchasing public;

With effect of misleading and deceiving dealers and purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash as hereinabove set forth, and of inducing dealers and purchasing public, acting in such belief, to buy its said whiskies, etc., rectified, blended, and bottled by it, and of thereby diverting trade to it from its competitors who do not, by their corporate name or in any other manner, misrepresent that they are distilleries or that they manufacture by distillation from mash, etc., as above set forth, whiskies, gins 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. W. W. Sheppard*, *Mr. Joseph A. Simpson* and *Mr. John W. Addison*, trial examiners.

Mr. John J. Keenan, *Mr. Edw. W. Thomerson* and *Mr. PGad B. Morehouse* for the Commission.

Shurtleff & Niehaus of Peoria, Ill., and *Mr. Lawrence A. Jacobson*, 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 Arrow 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 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 Illinois, with its office and principal place of business in the city of Peoria in said State. It is now, and has been for more than one year last past 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 in Peoria 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 Illinois 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. In the course and conduct of its business as aforesaid respondent has, upon its 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 distillery, 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 such alcoholic 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 complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled by distilleries.

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, 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 said 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 nor a distillery, does not distill the said whiskies, gins, 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 redistillation 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, 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, 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 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. 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, 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 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 distilleries or that they manufacture by distillation from mash, wort, or wash as aforesaid whiskies, gins,

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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 Illinois, with its office and principal place of business in the city of Peoria, in said State. It is now, and has been for more than one year last past, 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 in Peoria 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 Illinois 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.

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 allegations thereof were separately,

by like numbered paragraphs, set out at length herein, and 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 each of the said paragraphs of count 1 were here 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 purpose 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 interinference 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 operates a place or places where alcoholic spirits are distilled from mash, wort, or wash, and that the spirituous beverages by it so sold and transported have been bottled by a distillery or 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 20, 1935, issued and served its complaint on Arrow 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

John J. Keenan, Edward W. Thomerson, and PGad B. Morehouse, attorneys for the Commission, before W. W. Sheppard, Joseph A. Simpson, and John W. Addison, examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Messrs. Shurtleff and Niehaus, and Lawrence A. Jacobson, 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 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

PARAGRAPHS 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its principal office and place of business at 401 South Washington Street, in the city of Peoria, in said State. From the date of its organization in November 1933 to February 26, 1936, it was engaged in business solely as a rectifier and wholesaler of spirituous beverages, 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, and it still engages in that business under basic permit No. R 224 issued by the Federal Alcohol Administration. In November 1935, respondent applied for, and in December 1935, received, a basic distillers permit from the same authority, contracted for a leased run of four days a month at a Kentucky Distillery producing from 105 to 110 barrels of whiskey per day, and on February 26, 1936, respondent commenced to operate such distillery under said lease. During its four days' run that month, the respondent produced for future use approximately 420 barrels of whiskey.

Respondent's premises consist of a building sixty feet wide and half a block long, having a small office in the front on the first floor, large bottling tanks of different sizes, and the ordinary equipment necessary for the conduct of distilled spirits rectifying operations. It also has upon its premises a duly registered still, which it uses in the production of gin by a process of rectification whereby tax-paid

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alcohol, purchased, but not produced, by respondent, is redistilled over juniper berries and other aromatics. By this means respondent can produce approximately 550 gallons of gin every four hours, and the gin still has been operated daily since respondent commenced business. On the third floor, respondent has a room where it makes cordials and other products. Attached to the said building is a loading platform and back of it a large warehouse.

From March 1934 to October 8, 1935, the total gallonage handled by respondent was as follows:

Whiskey -----	10,567 gals.
Gin -----	27,930 "
Brandy -----	3,600 "
Cordials -----	11,296 "
Vermouth -----	10 "
	53,403 gals.

From the time when respondent commenced business, up to the present time, it has purchased its entire distilled spirits requirements, both whiskey and alcohol, which it has used in its rectifying business, from distillers who produced it from the raw materials.

PAR. 2. In the course and conduct of its business, it causes its said products, when sold, to be transported from its place of business in Peoria, 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 Illinois 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. 3. 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 the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. Also, there is a substantial portion of the public which does not know that most "distilled" gin is a distillate by redistillation rather than by original distillation, but thinks that it is distilled in the same manner as whiskey. Respondent's plant, premises, and operations, including the aforesaid rectification of tax-paid purchased alcohol not by it distilled (with the exception of its operations as a lessee distiller subsequent to February 26, 1936, as aforesaid), do not make or constitute respondent a distillery in the sense commonly understood by the public or by the liquor industry. Section 3247 of the Revised Statutes regulating Internal Revenue, defines the word "distiller" in the following language:

Every person who produces distilled spirits, or who brews or makes mash, wort, or wash, fit for distillation or for the production of spirits, or who, by any process of evaporation separates alcoholic spirit from any fermented substance, or who, making or keeping mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller. (U. S. Code 1934 Edition, Title 26, Section 1158 (a).)

One of the customary methods used in the production of gin by actual distilleries is shown by this record to be as follows: The grain is received in cars, ground, cooked, and turned into a mash which has yeast added to it, and the fermentation takes place by which the alcohol is produced. This fermented liquid runs through the beer still, in which the original evaporation or distillation of the alcohol from the beer takes place. Thereafter the vapor is cooled and dropped into the receiving tank, from where it goes into what is known as the "continuous unit," where it is purified by evaporation, and again the vapors are collected and the liquid drops into another receiving tank. In order to further purify that liquid, it goes through what is known as the "redistillation still," through pipes which are in place all the time, to the gin still. All of the foregoing takes place on the distillery bonded premises. While the final technical redistillation process of distillery produced gin may be exactly similar to respondent's redistillation process, the whole prior course of its manufacture from the grain up to the point where it reaches the redistillation still is a process which respondent does not use. Such a distillery has control over its gin products from the grain to the finished product, and the process is one of original and continuous distillation from mash, wort or wash. In the case of dis-

tillery-made gin, the Federal tax is computed and paid, when the manufacture of the gin is completed by the proprietor of the bonded warehouse from which the product is withdrawn and at the time of the withdrawal, whereas in the case of rectifier-made gin, the tax thereon is paid when the alcohol which the rectifier purchased to make the gin was withdrawn from the bonded warehouse of the distiller. A rectifier does not have on his rectifying premises an Internal Revenue bonded warehouse to which the alcohol may be removed in bond prior to the payment of the tax, and the tax on his gin is not paid by him, except in the price which he pays for the alcohol when withdrawn from the distiller's bonded warehouse.

PAR. 4. Rectifying, in the distilled spirits rectifying industry, means the mixing of cordials and 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 some bottled liquors, whether bottled at a distillery rectifying plant, 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) 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-224" 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.

A distiller has a maximum bond of \$100,000, and is permitted to have untaxed liquor; the average bond of the rectifier is about \$5,000; the distiller must own the fee title of the premises upon which the business is conducted, or have consent from the owner waiving the owner's interest so that the Government can have a first lien upon that property for taxes; a distillery is under constant general supervision by storekeeper-gaugers, who are always there; absolute supervision is maintained over the bonded warehouse of a distillery. The primary distinction is that one storekeeper-gauger may take care of several rectifying plants, but at the distillery he is in constant supervision, primarily to supervise the tax payments; a rectifier is not permitted to store spirits in bond; a distiller produces spirits from grains, alcohol, molasses, and fruits, but a rectifier produces no distilled spirits whatever; but must obtain them from the producer or from someone holding warehouse certificates; the requirements are considerably more detailed in the case of a distiller than in the case of a rectifier.

A distiller must have a distillery, which must be a complete building and a warehouse, a separate building; he has to have necessary weighing equipment, a grain hopper, cooker, cooking equipment, mash tubs, fermenters, sufficient distilling equipment to take care of his continuous distillation until the spirits are run through the pipe lines into the receiving tanks; at the warehouse he has to have the weighing and testing instruments for checking and many other things; a rectifier is not required to have a separate building. A rectifying plant may consist of a room within a building. He needs no bonded warehouse. If one room, it would have to be divided into three separate rooms by wire mesh partitions. The regulations for the equipment of a rectifier are not so specific as those for a distiller.

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 distiller.

PAR. 5. Respondent in the course and conduct of its business uses its name in advertising matter on its stationery, on invoices, and on

labels attached to the bottles in which it sells and ships beverages. The name is preceded by the words "Distilled By" on labels for the gin it redistills; by the words "Prepared By" on labels for some of its cordials and other beverages which it compounds; and by the words "Bottled By" or "Prepared By" on labels for whiskies. Labels for some of its cordials carried nothing but the name of the product to indicate that they were not distilled by respondent. The use of a magnifying glass is required to tell what the name is preceded by on the labels on bottles portrayed in some of its advertising matter. Its symbol of an arrow piercing a target, with the legend "A product of Arrow" is reproduced on the illustrations of some of its whiskey bottles. In a September 1935, advertisement of its Clark's Pure Rye, the corporate name is preceded by the words "Distilled and Bottled in Peoria." Respondent nearly always used the words "Peoria, Illinois," long and well known as a whiskey distilling center in plain type in conjunction with, and close juxtaposition to, its corporate name on its labels and in its advertising. In one newspaper advertisement published by respondent, one of its brands was described as follows: "Pride O'Peoria, one of the outstanding products of the whiskey center of the world."

The Commission finds that in the course and conduct of its business as aforesaid, by the use of word "Distilleries" in its corporate name, printed on its stationery, 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 said 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 nor a distillery, does not distill the said whiskies, gins, 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 redistillation 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 by 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. 6. Twenty-seven lay witnesses, representative of many different professions, trades, and occupations, such as surgeons, contractor,

civil engineer, insurance agent, etc., were called to the stand and examined to test the reaction of a representative cross-section of the general public to such terms as "distilleries" and "distillers" when used in connection with whiskey or the distilled spirits industry, and all of them testified in substance that by "distilleries" they understood the place of manufacture of spirits, whiskey, or liquors from raw materials; that by "Arrow Distilleries, Inc." they would naturally assume respondent to be engaged in such manufacturing process; and all but two or three clearly indicated that they would be influenced in the purchase of respondent's products in preference to the products of others, by reason of the word "Distilleries" being included in the respondent's trade or corporate name. These witnesses were fairly representative of the Peoria and Chicago, Ill., and Milwaukee, Wis. public. Some of these witnesses gave reasons for such preference as follows:

Would think such products came from a reputable concern;

For responsibility;

Possibly just the psychology of it;

Would just naturally take it that it was a product you could rely upon;

Would assume that the distillery would be a manufacturer who would stand behind its product from the time the thing started until it was finished;

Where you see the word "distilleries" you know it is genuine;

The testimony of many liquor tradesmen, retailers, and wholesalers was substantially to the same effect, namely, that they had observed, from their contacts in selling the public, a definite preference for distillery packaged products.

Respondent produced seventy members of the public who had no such preference for distillery bottled packages, and it is unquestionably true that there are many drinkers who, in buying liquors, are governed principally by a brand name established by advertising or by long usage, or who are governed by taste and quality which is known to them, without regard to the source of bottling. The Commission finds, however, that there is a substantial portion of the liquor purchasing public which prefers to buy spirituous liquors, including gins, which have been bottled or packaged by distilleries.

PAR. 7. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 2 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 names and on their stationery, 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 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. 8. This record contains evidence of undisputed instances where liquor dealers purchased beverages in substantial quantities from this respondent under the erroneous belief, induced by respondent's name, that respondent was the actual distiller of the grain products that it sold, and because their customers preferred to buy whiskey distilled by the firm which bottled it. The representation by respondent as set forth in paragraph 5 hereof is calculated to, 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 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 distilleries, or that they manufacture by distillation from mash, wort, or wash as aforesaid, whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 9. The Commission's complaint in this case was issued prior to the decision of the United States Supreme Court in the case of *A. L. A. Schechter Poultry Corporation, et al. vs. United States* (295 U. S. 495), and contained two counts. Count one specifically charged a violation of the Federal Trade Commission Act, and count two 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 that reason the Commission is dismissing the complaint as to count two thereof.

PAR. 10. Existing regulations promulgated under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. L. 977), which regulations became effective August 15, 1936, provide that rectifiers who redistill tax-paid purchased alcohol over juniper

berries and other aromatics may call such resulting product "distilled gin," and require that the labels shall state thereon who distilled it. For this reason the Commission has excepted from the application of its order herein gins so produced by this respondent.

CONCLUSION

The aforesaid acts and practices of the respondent Arrow 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, the answer of respondent, testimony and other evidence taken before W. W. Shepard, Joseph A. Simpson, and John W. Addison, examiners 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 John J. Keenan, Edward W. Thomserson, and PGad B. Morehouse, counsel for the Commission, and by Shurtleff and Niehaus, and Lawrence A. Jacobson, 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, Arrow 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, (except gins produced by it through a process of rectification whereby alcohols purchased, but not produced, by respondent are redistilled over juniper berries and other 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 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 spiritous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by it

Order

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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 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
SWEET CANDY COMPANY

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

Docket 2621. Complaint, Nov. 11, 1935—Decision Dec. 31, 1936

Where a corporation engaged in manufacture and sale of candy, including both "straight" or "staple" goods and "draw" or "deal" push card and punch board assortments, in one of which number of bars received in return for five-cent punch depended on chance selection of legend concealed within partially perforated disk and upon making of last sale, and in other of which chance five-cent punch from 200-hole board determined, in accordance with number punched, whether one of several sixty-cent boxes, one of a number of thirty-cent boxes, or nothing other than chance to punch, was secured by purchaser—

Sold said assortments, with cards and boards, to jobbers and to retailers, so packed and assembled, with its knowledge, that they might be used for distribution to purchasing public by lot or chance without alteration or rearrangement by retailer, by whom they were thus resold by lot or chance to public, in competition with concerns who regard such a method of sale and distribution as morally bad and one which encourages gambling and especially among children, who constitute substantial number of the consumers purchasers of the "draw" or "deal," and particularly, such push card candy, and as injurious to the industry in merchandising a chance or lottery rather than candy, and as providing retailers with the means of violating the laws of the several States, and who refuse to sell candy so packed and assembled that it can be resold to public by lot or chance;

With result of putting at a disadvantage, by reason of their said refusal to adopt such practice, said competitors, who can compete on even terms only through following same to meet demand and preference for such candy from retailers, who find "draw" or "deal" candy more salable than the "straight" or "staple" candy, sale of which showed a marked decrease, some competitors began sale and distribution of candy to public by lot or chance, public and competitors were prejudiced and injured, trade was diverted from them to it and to others employing similar methods of sale, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry, and a violation of public policy in such sale to consuming 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. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Dey, Hoppaugh, Mark & Johnson, and *Mr. F. W. James*, of Salt Lake City, Utah, 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 Sweet 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 Utah, with its principal place of business in the city of Salt Lake City, State of Utah. 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 Salt Lake City, State of Utah, 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 engage 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 designated and described by respondent as "Play Ball," and consists 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 follow:

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
Out-----	Receives 1 Candy Bar
Last Sale receives 6 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 fact as to whether a purchaser receives one candy bar, two candy bars, three candy bars, four candy bars, five candy bars or six candy bars for the price of 5¢, is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by the respondent is described as "See-Pak Assortment or Deal." This assortment consists of fifteen small packages of candy, eight larger packages of candy, a display easel and tray, together with a 200-hole punch board. The packages of candy in said assortment are distributed in the following manner:

Punches from said board are 5¢ each, and when a punch is made a number is disclosed. The board bears the statements or legends informing the customer and prospective customer as to which numbers receive one of the small packages of candy and which numbers receive one of the larger packages 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. A purchaser who does not qualify by obtaining a number calling for one of the small packages of candy or one of the larger packages of candy receives nothing for his money other than the privilege of pushing a number from the board. The fact as to whether a purchaser receives no merchandise, or receives one of the small packages of candy or one of the larger packages of candy for the price of 5¢, is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by respondent is designated and described as "Sweet's Sportsman's Delight." This assortment consists of fifteen small packages of candy, eighteen larger packages of candy, one fishing rod, one fishing basket, and one portable refrigerator, together with a device commonly called a

punch board. The said packages of candy and the other articles of merchandise are to be given as prizes to purchasers of punches from said punch board, in the following manner:

The punch board has 800 punches, and is divided into 40 sections. Punches are 5¢ each, except that the last five punches in each section are free. The numbers run from 1 to 800, but are not arranged in numerical sequence, and the numbers are effectively concealed from the purchaser until a selection has been made and the punch separated from the board. The said punch board bears legends or statements informing the purchaser and prospective purchaser that the last five numbers in each section are free, and that certain numbers receive one of the small packages of candy, certain other numbers receive one of the larger packages of candy, and that number 333 receives the fishing pole and number 666 receives the fishing basket, and that the last punch receives the portable refrigerator. Purchasers of punches who do not qualify by purchasing one of the numbers referred to on said card receive nothing for their money other than the privilege of punching a number from the board. The fact as to whether a purchaser receives one of the small packages of candy, one of the larger packages of candy, the fishing pole or the fishing basket, or receives nothing of value for his money, 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 respondents 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 additional bars 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 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 additional bars of candy or packages 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 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 11, 1935, issued and served a complaint upon the respondent, Sweet Candy Company, charging that respondent has 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 and the filing of respondent's 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, and in defense of the allegations of the complaint by Messrs. Dey, Hoppaugh, Mark & Johnson and F. W. James, attorneys for the respondent, 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. 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, and the oral arguments of the 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, Sweet Candy Company, is a corporation organized under the laws of the State of Utah, with its principal office and place of business in Salt Lake City, State of Utah. Respondent is now, and for several years last past has been engaged in the manufacture of candy in Salt Lake City and in the sale and distribution thereof to retail dealers and jobbers located in the State of Utah and other States of the United States. It causes the said candy when sold to be shipped or transported from its principal place of business in the State of Utah to purchasers thereof in Utah and in the States of the United States other than the State of Utah. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been engaged in active competi-

tion 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 are several assortments composed of a number of bars of candy of uniform size, shape and quality, together with a device commonly called a "push card," and in addition thereto, are several assortments composed of a number of packages of candy of varying size, together with a device commonly called a "punch board." In one of the last mentioned assortments, the respondent also includes several articles of merchandise other than packages of candy. The respondent manufactured and distributed several assortments with which a "push card" or "punch board" was included, involving the same lot or chance feature in the distribution to the ultimate consumer and varying only in detail.

Illustrative of the sales method involved, where a "push card" was included with the assortment, was one which the respondent designated "Play Ball." This assortment contained a number of bars of candy of uniform size, shape and quality. The "push card" included with this assortment bore legends at the top thereof stating the manner in which the bars in said assortment were to be distributed to the ultimate purchaser. These legends were as follows:

5¢ a SALE	PLAY BALL	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
Out.....	-----	Receives 1 Candy-Bar

Last Sale receives 6 Candy Bars

The "push card" also had, immediately below the legends quoted, 110 partially perforated discs and under each disc was a legend corresponding to one of the legends above. Such legend was effectively concealed from the purchaser and prospective purchaser until a purchase or selection had been made and the partially perforated 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 "pushcard." Sales were 5¢ each and by the use of said "push card," the fact as to whether a purchaser

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received more than one bar of candy contained in said assortment for the price of 5¢ was thus determined wholly by lot or chance.

Illustrative of the sales method involved, where a "punch board" was included, was an assortment which the respondent designated "See-Pak Assortment." This assortment contained a number of packages of candy which the respondent stated retailed for 60¢ each and a number of packages of candy which the respondent stated retailed at the price of 30¢ each. The "punch-board" included with this assortment bore legends at the top thereof stating the manner in which the several packages of candy in said assortment were to be distributed to the various purchasers. These legends were as follows:

5¢	SEE-PAK ASSORTMENT	5¢
Numbers 5, 10, 20, 30, 40, 50		
Receive 60¢ SEE-PAK		
Numbers 60, 70, 80, 90, 100, 110, 120, 130, 140, 150, 160, 170, 180, 190, 195		
Receive 30¢ SEE-PAK		

LAST PUNCH IN EACH SECTION RECEIVES 60¢ SEE-PAK

The "punch board" also had, immediately below the legends quoted, 200 holes in which slips of paper bearing numbers were secreted. The slips of paper and the numbers thereon were effectively concealed from the purchaser and the prospective purchaser until a punch or selection had been made and the particular slip of paper separated from the board. The packages of candy contained in said assortment were distributed to the consuming public in accordance with the legends at the top of said "punch board." Sales were 5 cents each, and by the use of said "punch board," the facts as to whether a purchaser received one of the 30¢ boxes of candy, one of the 60¢ boxes of candy or merely the privilege of punching a number from the board, for the price of 5¢ was thus determined wholly by lot or chance.

PAR. 3. The candy assortments involving the lot or chance feature as above described, are generally referred to in the candy trade or industry as "draw" or "deal" assortments. Assortments of candy without lot or chance features in connection with their resale to the public, are generally referred to in the candy trade or industry as "straight" or "staple" goods. These terms will be used hereafter in these findings to distinguish these separate types of assortments.

PAR. 4. The wholesale dealers or jobbers to whom respondent sells its assortments resell the same to retail dealers. Respondent also sells its said assortments direct to retail dealers. Numerous retail dealers purchase the assortments described in paragraph 2 above either from

respondent or from wholesale dealers or jobbers, who in turn have purchased said assortments from the respondent and such retail dealers, display said assortments for sale to the public, as packed by the respondent, and the candy contained in the majority of said assortments is sold and distributed to the consuming public by means of said "push cards" and "punch boards" in the manner shown by the legends at the top of such "push cards" and "punch boards."

PAR. 5. All sales made by respondent, whether to wholesalers and jobbers or to retail dealers, are absolute sales and respondent retains no control over said assortments after they are delivered to the wholesale dealer or jobber or retail dealer. The assortments are assembled and packed in such manner that they may be used and are used by the retail dealer for distribution to the purchasing public by lot or chance without alteration or rearrangement.

In the sale and distribution to jobbers and wholesale dealers for resale to retail dealers and to retail dealers direct of the assortments of candy, described in paragraph 2, respondent has knowledge that said candy will be resold to the purchasing public, by retail dealers by lot or chance, and it packs such candy in the way and manner described so that without alteration, addition or rearrangement thereof it may be resold to the public by lot or chance by said retail dealers.

PAR. 6. There are in the United States and in the territory served by this respondent many manufacturers of candy who do not manufacture and sell "draw" or "deal" assortments of candy and who sell their "straight" or "staple" goods in interstate commerce, in competition with the "draw" or "deal" candy and manufacturers of "straight" and "staple" goods have noted a marked decrease in the sales of their products whenever or wherever the "draw" or "deal" assortments have appeared in their markets. This decrease in the sale of "straight" or "staple" candy is due to the gambling or lottery feature indicated with the "draw" or "deal" candy.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that consumers preferred to purchase the "draw" or "deal" candy because of the gambling feature connected with its sale. The sale and distribution of "draw" or "deal" packages or assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children who comprise a substantial number of the purchasers and consumers of this type of candy, particularly the assortments of candy bars which are sold and distributed to the consumers by means of "push cards."

PAR. 7. The sale and distribution of candy by the retailers by the methods described herein, 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, because 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" or "staple" 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. 8. Respondent sells its merchandise in the States of Utah, Idaho, Nevada, Wyoming, Colorado, Washington, Oregon, New Mexico, and California. The majority of its candy is sold as "straight" merchandise, less than 10% being assortments with which a "push card" or "punch board" is furnished. While the annual volume of business of the respondent was not shown exactly, an officer for the respondent testified, and the Commission finds that the respondent's annual volume is substantial.

PAR. 9. The Commission 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 respondent, Sweet 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 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, 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 in opposition thereto, briefs filed herein and oral argument of Henry C. Lank of counsel for the Commission, and F. W. James, of 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 hereby ordered, That the respondent, Sweet Candy Company, a corporation, its officers, directors, agents, representatives, and employees, in the offering for sale, 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 may 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 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 assortments 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 com-

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only called a "push card," or a device commonly called a "punch board," for use or which may 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," or a device commonly called a "punch board" either with packages or assortments 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, Sweet Candy 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.

Syllabus

IN THE MATTER OF

STERNHEIMER BROS., INC., TRADING AS ARMY & NAVY
SUPPLY COMPANY AND ARMY GOODS STORE

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

Docket 2756. Complaint, Apr. 3, 1936—Decision, Dec. 31, 1936

Where a corporation engaged in the operation of a number of retail stores in the District of Columbia and in the State of Virginia, and maintaining also a mail order business through which it solicited and accepted orders for merchandise out of its stock from persons in the various States other than that aforementioned, and successor to a concern long theretofore engaged chiefly in the purchase of goods from the Army and Navy Departments of the United States Government and in the offer thereof for resale, and in competition, as such successor to aforesaid business, with those engaged in the marketing of goods similar to its own and who do not use words "Army" or "Navy," or either of them, in connection with their corporate or trade names or their advertisements or representations as to source or origin of merchandise sold by them—

Made use of words "Army" and "Navy" in its corporate and various trade names under which it operated its various stores and branches of its said business, and including such names as "Army Goods Store," "Army Store," "Navy Store," and "The Army and Navy Supply Company," and featured its aforesaid various names in large signs affixed to its mercantile establishments, and in trade journals, catalogs, circulars, and advertisements in daily newspapers and other periodicals, with words "Army" or "Navy" of equal prominence with other portions of the name, notwithstanding fact that a substantial portion of its inventory had been drawn from the common marts of trade, and the theretofore sales by the Army and Navy Departments of large quantities of surplus and condemned material had been so sharply curtailed that, for a number of years last past, almost no goods had been sold;

With result that various members of the purchasing public formed the conclusion or received the impression and belief from use of aforesaid words, that goods to be purchased in store in question were substantially all, if not all, procured from aforesaid departments of the Government, and were of the quality and nature used by them, and that a substantial bargain, with reference to price and quality, would be obtained in such store, and with the result that a substantial number of such members of said public were induced, by virtue of such belief or impression, to make purchases of and from it, and with capacity and tendency to, and effect of, misleading and deceiving members of purchasing public into such false impression and belief and of causing an unfair diversion of trade from competitors who offer merchandise identical with the bulk of its inventory and procured, like its own, from same source and ordinary marts of trade, without making use of such misleading and deceptive practice; to the substantial injury of competition in commerce:

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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. Charles F. Diggs*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Nelson & Nelson, of Richmond, Va., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Sternheimer Bros., Inc., trading as Army and Navy Supply Co. and Army Goods Store, 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. Said respondent, Sternheimer Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Virginia and having its principal office and place of business in the city of Richmond and State of Virginia. The respondent maintains a mercantile establishment owned and controlled by it located in the city of Washington within the District of Columbia.

The respondent has, during its entire corporate existence and for more than three years last past, maintained within the city of Richmond, State of Virginia and the city of Washington, District of Columbia a general mercantile business and has sold and caused to be sold and still causes merchandise in which it deals to be sold and transported from its place of business in the city of Richmond into and through the District of Columbia and the various States of the United States other than the State of Virginia, to purchasers of the same; has sold and caused and still causes merchandise in which it deals to be transported from its place of business in the District of Columbia into and through the various States of the United States; and has sold and caused and still causes merchandise in which it deals to be sold and transported from its place of business in the city of Washington, District of Columbia throughout the said District of Columbia, in commerce, within the intent and meaning of "commerce" appearing in the act hereinabove set forth.

In the course and conduct of its business, respondent is in competition with other individuals, copartnerships and corporations engaged in the sale and distribution of like merchandise throughout the

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

PAR. 2. In the course and conduct of the business of the respondent, it has operated continuously in the city of Richmond and State of Virginia under the trade name "Army and Navy Supply Co." and in the city of Washington under the trade name "Army Goods Store." By the implied representation of the trade names related, purchasers are led to believe that the stock of merchandise held out to the purchasing public by the respondent was made for, or purchased from the Army or Navy Departments of the United States Government but virtually none of the merchandise is purchased at any Army or Navy surplus or refuse goods sales. The small amount of such Army or Navy goods carried by the respondent, if any, is bought from jobbers, wholesalers and others who buy at such Army or Navy reject or refuse goods sales. The remainder of the respondent's stock of merchandise consists of the usual stock found generally in ordinary mercantile establishments and is procured from the common marts of trade. It is purchased from those sources from which the general merchant buys his stock of goods and is not purchased from the Army or Navy or from those who purchase merchandise at any Army or Navy surplus or refuse sales. The respondent is in no way connected with the Army or Navy and has no affiliation, association, or working agreement with such Departments.

PAR. 3. There are among the members of the purchasing public, a substantial number thereof who have a preference for the purchase of goods, wares, and merchandise actually procured from the United States Army or Navy Departments in the belief that they thereby secure goods of superior quality to those of like price and design to be procured from other sources.

There are among the competitors of said respondent, as referred to in paragraph 1 above, individuals, copartnerships, firms, and corporations engaged in the sale and distribution of like and similar merchandise within the areas wherein the respondent trades, who do not falsely misrepresent the source of origin of their merchandise by the use of a false and misleading corporate or trade name.

The above acts and practices of the respondent have and had the capacity and tendency to mislead and deceive and have misled and deceived a substantial number of the members of the purchasing public into the false belief that in purchasing from the respondent they were purchasing goods secured from the Army or Navy Departments of the United States Government and were actually securing a superior quality of goods for the price paid therefor. Such acts and practices of the respondent have diverted trade to the respondent from its com-

petitors engaged in the sale of merchandise of a similar quality and kind with that sold and offered for sale by the respondent in interstate commerce, as aforesaid, and which said competitors refrain from falsely representing that the goods so sold and offered for sale by them are derived from the Army or Navy Departments of the United States Government and who do not use a false or misleading corporate or trade name in such business.

PAR. 4. The alleged 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 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 April 3, 1936, issued, and on April 6, 1936, served, its complaint in this proceeding upon respondent, Sternheimer Bros., Inc., trading as Army and Navy Supply Company and Army Goods Store, 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, and said 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. The respondent was organized in 1868 as the "L. Rose Company" as a copartnership and was engaged chiefly in the business of purchasing goods from the Army and Navy Departments of the

United States Government and offering them for resale. Sternheimer Bros., Inc., is a Virginia corporation, successor to said company and such corporation maintains 16 retail stores scattered throughout the State of Virginia, variously operated under the trade names "Army Goods Store," "Army Store," "Navy Store." At the time of the issuance of the complaint, respondent operated two stores in the District of Columbia under the name "Army Goods Store."

PAR. 2. The respondent likewise maintains a mail-order business under the trade name "The Army and Navy Supply Company," which solicits and accepts orders for merchandise out of the stock of the respondent corporation from various firms, persons, partnerships located in the various States of the United States other than the State of Virginia. It transports or causes the commodities so ordered to be transported into and through the various States of the United States and the District of Columbia to such purchasers.

The respondent has maintained and now maintains a constant current of trade and commerce among and between the various States of the United States and the District of Columbia in said goods, wares, and merchandise.

PAR. 3. There are among the competitors of respondent in commerce, among and between the various States of the United States, persons, partnerships, firms, and individuals engaged in the marketing of like merchandise but who do not use the words "Army" or "Navy" or either of them in connection with their corporate or trade name or in connection with their advertisements or representations as to the source of origin of the merchandise which they sell.

PAR. 4. From approximately 1920 until the year 1927, the Army and Navy Department of the United States Government sold large quantities of surplus and condemned material. Subsequent to 1927, these sales have been so sharply curtailed that since the year 1932 almost no goods have been sold.

PAR. 5. Of the inventory of the respondent, a substantial portion thereof has been drawn from the common marts of trade.

PAR. 6. The respondent corporation causes its various trade names to be displayed in large signs affixed to its mercantile establishments, in trade journals, catalogues, circulars, advertisements appearing in daily newspapers and other periodicals with the words "Army" and "Navy" or either of them featured as prominently as other portions of its name.

PAR. 7. Various members of the purchasing public, upon observing the use of the words "Army" and "Navy" in connection with the corporate name of the respondent and in its circulars and advertise-

ments, as hereinabove stated, have formed the conclusion or received the impression and belief, from the use of such words, that the goods to be purchased in said store were substantially all, if not all, procured from the Army and Navy Departments of the United States Government; that the goods were of the quality and nature used by said Departments; that a substantial bargain with reference to price and quality would be obtained in such store; and a substantial number of such members of the purchasing public have been induced, by virtue of such belief or impression, to make purchases of and from the respondent.

PAR. 8. The use by the respondent of the words "Army" and "Navy" in connection with its corporate name and its various trade names in its advertisements and circulars, as above described, had and has the tendency and capacity to, and did and does, in fact, mislead and deceive members of the purchasing public into the false impression and belief as set forth in paragraph 7 hereof.

PAR. 9. The use of the words "Army" and "Navy" in connection with the corporate and trade names, circulars and advertisements of the respondent, has caused and causes an unfair diversion of trade from competitors of the respondent who offer to sell merchandise identical with the bulk of the inventory of the respondent and procured from the same source, i. e., the ordinary marts of trade, but who do not make use of such misleading and deceptive practices, and has caused and now causes substantial injury to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Sternheimer Bros., Inc., trading as Army and Navy Supply Company and Army Goods Store, 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 filed herein on December 30, 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 Com-

mission 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, Sternheimer Brothers, Inc., a corporation, also trading as Army & Navy Supply Company and Army Goods Store, or under any other trade name, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of goods, wares and merchandise in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using in connection with its corporate name or trade names the words "Army" and "Navy" or either of them.

2. Advertising or causing to be advertised in any circulars, catalogues, trade journals, daily newspapers or other periodicals the words "Army" and "Navy" or either of them, descriptive of or in connection with any merchandise sold or offered to be sold to the public unless the said merchandise has been actually procured from the Army or Navy Departments of the United States Government.

Provided, however, That for a period of three years the words "Formerly Army Goods Store," "Formerly Navy Goods Store," and "Formerly The Army & Navy Supply Company" may be used, and

Provided, however, That the terms of Section 2 hereof shall not apply to such contracts for advertising as may have been entered into prior to the issuance and service of this order.

It is further ordered, That respondent shall, within 90 days after the service upon it of a copy of this order, file with the Commission an interim report in writing setting forth in detail the manner and form in which this order has been complied with.

And it is further ordered, That respondent shall, within 36 months after the service upon it of a copy of this order, file with the Commission a final report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

IN THE MATTER OF
RETAIL FURNITURE DEALERS' ASSOCIATION OF
ST. LOUIS, ET AL.

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

Docket 2757. Complaint, Apr. 9, 1936—Decision, Dec. 31, 1936

Where the retail furniture dealers' association of St. Louis, members of which were engaged in the purchase of furniture and allied products including, usually, electric refrigerators and radios, from various manufacturers, distributors, wholesalers, jobbers, and dealers in many different States, and in reselling such furniture and merchandise at retail to various members of the consuming public in Missouri and Illinois and in other States of the trade area adjacent thereto, and some of the members of which were, during the time herein concerned, engaged in commerce between and among the different States and in trade, business, and commerce which had a direct and substantial effect upon interstate commerce in furniture and allied products, including electric refrigerators and radios, and some of the members of which, thus engaged, were in substantial competition with others similarly engaged in the purchase and sale at retail and distribution of such products; and the officers and executive board members of said association; in pursuance of objects for which created and to enhance and promote the volume of trade, business, and profits of its members, and incident to certain policies, sales methods, and trade practices which they sought to have and, which, to some extent, were put into effect by manufacturers, distributors, wholesalers, and jobbers engaged in interstate commerce and trading in area in question—

- (a) Requested such wholesalers, jobbers, and manufacturers, selling furniture and allied products in area in question, to adopt, follow and adhere to policy and practice that no sales of such products be made by them directly to ultimate consumer or to their own employees, except for latter's personal use, or to contractors, institutions, hotels, apartment-house operators, real-estate dealers, or large industrial plants, and that requests from ultimate consumers to buy merchandise from them, to be billed through some retail dealer, be refused, and such customer be required to purchase from a "regular" retailer, and that no sales or deliveries be made by them to homes of ultimate consumers and no merchandise be sold to salesmen for any furniture retailer unless sold, billed, and delivered to such dealer;
- (b) Requested such wholesalers, etc., to adopt, follow and adhere to policy and practice that no orders for merchandise be accepted by them from dealers in cities other than St. Louis, Mo., or East St. Louis, Ill., where delivery thereof was to be made in said two last-named cities, and that no merchandise at any time be donated by them or placed on consignment basis with anyone, except for short period for window or floor display only;
- (c) Requested such wholesalers, etc., to adopt, follow, and adhere to policy and practice that they do not sell merchandise to concerns who sell at retail and who, in so doing, hold themselves out to public and to their customers as contract home furnishers operating on basis similar to that of whole-

salers, and also that they do not go upon the sales floor of any retailer and talk to purchasers or prospective purchasers of line of merchandise offered for sale in particular retail store or department thereof; and

Where said association, in order to make such sales methods, policies and practices effective and require compliance therewith by all such manufacturers, etc., trading in said area, acting through its officers and executive board—

(d) Announced adoption by it of aforesaid selling methods, policies and practices in bulletins and letters distributed among its members and sent to manufacturers and distributors, and set forth, in bulletins or circulars to its members, names of manufacturers and distributors who cooperated or agreed to cooperate in enforcement of such sales methods and policies adopted by it;

(e) Acquainted manufacturers and distributors with names of those who, it asserted, were not entitled and should not be permitted to buy furniture at wholesale prices, and sought and obtained promises and assurances of cooperation by manufacturers, wholesalers and jobbers to the end that all ultimate consumers of merchandise would be refused the advantage of buying at wholesale and would be required to purchase merchandise only through regular retail stores; and

Where some of said association members, following discussion and the advocating of the adoption by the association of the policy that all members impose a carrying charge, in addition to the advertised cash price, for merchandise sold on installments or deferred payment plan, and acting without authority from the association—

(f) Interviewed certain manufacturers, distributors, jobbers, and wholesalers engaged in interstate commerce in trade area in question, in furtherance of their desire that said manufacturers, etc., adopt a policy of selling only to such retailers in said area as impose such a carrying charge, and intimated, in some cases, that they did not intend to purchase products handled by such manufacturers, etc., as later sold or continued to sell the same to those retailers who did not use or impose such charges, with capacity and tendency to instill in the minds of said manufacturers, etc., belief that it, i. e., the association, had adopted and was pursuing practices and policies above set forth and requiring all its members to impose a carrying charge on installment or deferred payment plan merchandise, as above set forth, and was attempting to compel them to desist from selling their respective lines to dealers competing with the members who did not conform in the above respects and to induce some of said manufacturers, etc., to believe that if they persisted in selling their products to such non-conforming furniture dealers, association members would cease buying said lines from them, and with tendency, as result thereof, to impel latter to refuse to sell their said lines to those furniture dealers in and around said named cities and who did not thus conform; and

With capacity and tendency, by reason of said plan, program, and undertaking, and acts and practices and selling methods and policies in pursuance thereof in trade area in and around said cities and in Missouri, Illinois, and adjoining States, to (1) monopolize in certain of said members business of dealing in and distributing furniture and allied products, including electric refrigerators and radios, (2) lessen and restrain competition in said line of products and deprive purchasing and consuming public of

advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal, unobstructed, free, and fair competition therein, (3) substantially increase cost to purchasers of such products, (4) discriminate against some business enterprises which were or had been engaged in selling and distributing same, (5) obstruct, hamper, and interfere with normal and natural flow of trade in commerce in furniture and allied products into, through, and from said trade area, and (6) prejudice and fetter the public and manufacturers, producers, distributors, and competing retailers who did not conform to their program or methods or did not desire to do so:

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

Mr. Walter B. Wooden and Mr. Allen C. Phelps, for the Commission.

Mason, Spalding & McAtee, of Washington, D. C., for Manne Brothers Furniture Co. and some thirty-four other concerns as members of said respondent association, and for Peter M. Igoe, as president of said association and for various other officers of said association, and for Benjamin Weisman and various other members of the executive board of said association (for some of which various respondents there also appeared as counsel and attorneys all but the last three, below named, who alone represented their respondent clients).

Greensfelder & Grand, of St. Louis, Mo., for Manne Brothers Furniture Co., American Furniture Co., Wellston Furniture Co., Joseph Manne, and Joseph Lasky.

Burnett, Stern & Liberman, of St. Louis, Mo., for Union-May-Stern Co. and Benjamin Weisman.

Mr. A. B. Frey, of St. Louis, Mo., for Goldman Bros., Inc., and Stanley Goldman.

Eliot, Blayney & Bedal, of St. Louis, Mo., for Lammert Furniture Co. and Martin Lammert.

Igoe, Carroll & Keefe, of St. Louis, Mo., for Hellrung & Grim House Furnishing Co., Igoe House Furnishing Co., and Peter M. Igoe.

Thompson, Mitchell, Thompson & Young, of St. Louis, Mo., for Rhodes-Burford House Furnishing Co.

Jeffries, Simpson & Plummer, of St. Louis, Mo., for Gregson Furniture Co. and Shirley D. Gregson.

Lewis, Rice, Tucker, Allen & Chubb, of St. Louis, Mo., for Dau, The House Furnisher, Inc. and Fred C. Dau, as treasurer and member of the executive board of said association.

Mr. Jerome M. Steiner, of St. Louis, Mo., for Ideal Furniture Co. and Chas. Steiner.

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Mr. Albert L. Schmidt, of St. Louis, Mo., for Mosley-Thuner Furniture Co. and James A Mosley.

Mr. George C. Foster, of St. Louis, Mo., for John Alt Furniture Co.

Mr. Max Sigoloff, of St. Louis, Mo., for J. D. Carson, Inc. Lauer Furniture Co. and National House Furnishing Co.

Mr. Maurice Schechter, of St. Louis, Mo., for Geitz House Furnishing Co.

Mr. King G. McElroy, of St. Louis, Mo., for J. C. Geitz Sewing Machine and Furniture Co.

Mr. John C. Kappel, Jr., of St. Louis, Mo., for Frank L. Schaab Stove and Furniture Co.

Mr. S. Sylvan Agatstein, of St. Louis, Mo., for Joseph Agatstein.

Mr. Karol A. Korngold, of St. Louis, Mo., for Biederman Furniture Co.

Mr. Henry H. Oberschelp, of St. Louis, Mo., for Kroemeke Furniture Co. and The Warring Furniture Co.

Mr. Edward K. Schwartz, of St. Louis, Mo., for Quality Furniture Co.

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 the respondents hereinabove designated, 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, Retail Furniture Dealers' Association of St. Louis, is a non-profit corporation organized under the laws of the State of Missouri, by virtue of a certain decree and order made and entered by the Circuit Court of the city of St. Louis, Mo., on December 17, 1923; that said corporation was organized for the expressed purpose of promoting the interest of, and to secure friendly connections between, retail furniture dealers in the city of St. Louis, State of Missouri; to promote and combine the influence and intelligence of its members; for the protection of their trade against impo-

¹ Extensive enumeration in Par. 3 of the complaint of respondents joined as members of respondent association, may, with certain exceptions set forth in the footnote to said paragraph, be found in the findings, *infra*, at page 374, and is, for said reason, omitted from the complaint as published in the interest of brevity, as are similarly omitted, as likewise included in the findings, *infra*, lists of respondent officers and of respondent members of the executive board enumerated in Par. 4 of the complaint and set forth, with two exceptions noted in the footnote to said complaint, in the findings, *infra*, at page 376.

sition, injustice, or encroachment upon their common rights and interests; to foster and interchange thoughts and ideas for their mutual benefit as a result of the experience and ability of all; to urge and encourage national, state, and city legislation for the furtherance of the interest of just laws; to secure for its members equitable treatment in all their business dealings with manufacturers of, and dealers in, furniture supplies; to recommend the abolishment of the practice of some manufacturers and wholesale furniture dealers of peddling and selling goods at retail to the detriment of the retail line of business; to disseminate knowledge and information among its members relating to and in connection with the retail furniture business; to give and hold furniture and household shows and exhibits from time to time; to do such other acts and things as do or may tend to accomplish the purpose of the said corporation and are within the laws of the State of Missouri and the United States; that the principal office and place of business of said Association is located at 926 Chemical Building, St. Louis, Mo.

PAR. 2. That for some years prior to August 1, 1933, said respondent corporation was not active, but on or about said date it was informally recognized by agreement among the respondent members hereinafter named, who theretofore had been members or who, upon said date or subsequent thereto, voluntarily became members of said Association; that on said date certain amended bylaws were adopted for the regulation of said corporation which vested the government and control thereof in the officers, and an executive board composed of the president, vice president, and representatives of six members of said Association elected by the members. The said bylaws provide that the members of said corporation shall be composed of individuals, firms, and corporations who carry a stock of furniture or kindred wares, engaged as principals in retailing the same from their own place of business in the city of St. Louis, Mo.

PAR. 3. That the following named respondents have been and are members of said respondent Association and as such have exercised the privileges of and assumed the liabilities incident to such membership, to wit:²

PAR. 4. That the following named respondents have been or are officers of said respondent Association, to wit:³

² The extended enumeration of respondents which follows in the complaint at this point, is also included in the findings, *infra*, at page 374, with certain exceptions, as to which the case was closed or dismissed, as set forth in order closing, etc., on page 385, *infra*, and is, for said reason, omitted here in the interest of brevity.

³ The various individuals named as past or present officers of said association in the complaint at this point, may be found set forth in the corresponding paragraph of the findings, *infra*, at page 376, and are accordingly omitted here in the interest of brevity.

The following named respondents have been or are members of the executive board of said respondent Association, in addition to the presidents and vice presidents above named, to wit:*

PAR. 5. That the several members of said respondent Association, in the course and conduct of their respective businesses, purchase furniture and allied products, including, in most cases, electric refrigerators and radios, from various manufacturers, distributors, wholesalers, jobbers, and dealers located in many different States of the United States, and cause said commodities so purchased to be transported from the State of origin thereof, being States other than the States of Missouri and Illinois, to, into and through various States of the United States, and into the States of Missouri and Illinois; that said respondent members resell said furniture and merchandise at retail to various members of the consuming public located in the States of Missouri and Illinois and in other States in the trade area adjacent thereto; that said commodities are ordinarily purchased at wholesale or from the manufacturer by said member respondents with the intention and for the purpose of reselling and delivering the same at retail to purchasers located in the States of Missouri and Illinois, and States adjacent thereto, such resales being made from the respective places of business of said respondents, where said goods are assembled and displayed for sale for varying periods of time; that said respondent members, upon sales at retail being made to purchasers, deliver and transport or cause to be delivered and transported said goods so shipped into the States of Missouri and Illinois to the purchasers thereof located in the States of Missouri and Illinois, and other States adjacent thereto; that said respondent members are, and have been during all the time herein mentioned, engaged in commerce between and among different States of the United States, and all of said respondents above named are and have been engaged in trade, business and commerce having a direct effect upon interstate commerce in furniture and allied products, including electric refrigerators and radios.

PAR. 6. That in the course and conduct of their said businesses, said respondent members are in substantial or potential competition with other persons, firms and corporations engaged in the sale at retail and distribution of furniture and allied products, including electric refrigerators and radios, in the States of Missouri and Illinois, and in the trade area extending into other States adjacent thereto;

*The various individuals named at this point as past or present members of the executive board of respondent association, are set forth in Par. 4 of the findings, with the exception of two individuals, as to whom case was closed, as set forth in order closing, etc., on page 385, infra, and aforesaid enumeration is accordingly not published here in the interest of brevity.

that said competitors likewise purchase their wares, at wholesale or from manufacturers, in various States of the United States, and transport them or cause them to be transported to, into and through States other than the States of Missouri and Illinois to their respective places of business in said trade area and resell and deliver the same at retail to consumers located in the States of Missouri and Illinois, and States other than the State in which said competitors' respective places of business are located; that said competitors are engaged in commerce between and among the different States of the United States and in trade, business and commerce having a direct effect upon interstate commerce in furniture and allied products, including electric refrigerators and radios.

PAR. 7. That respondents are banded and allied together in said Retail Furniture Dealers' Association of St. Louis to carry into effect the regulations, sales methods, requirements, and trade practices hereinafter described, and to enhance and promote the volume of trade, business and profits of said respondent members. And the respondents, namely, said Association, its officers, executive board, and members, during and in the period of more than three years last past have agreed, conspired, combined and confederated together and with others, and have united in and pursued a common and concerted course of action and undertaking among themselves and with others, to adopt, follow, carry out, enforce, and maintain, in a number of States comprising the trade area in and surrounding the cities of St. Louis, Mo., and East St. Louis, Ill., certain policies, sales methods and trade practices, hereafter described, which respondents attempted to or did, by coercion and compulsion, impose upon and require the adoption and observance of by retail furniture dealers in said trade area who were not members of said Association, and by manufacturers, distributors, wholesalers, and jobbers trading in said area, to the substantial or potential prejudice and injury of ultimate purchasers and consumers generally.

PAR. 8. That said policies, regulations, requirements, sales methods, and trade practices, referred to in the preceding paragraph, specifically consist of the following:

(A) As affecting retail furniture dealers in said trade area, and the purchasing public:

1. The practice and requirement that all retail furniture dealers charge as a cash price to ultimate consumers of merchandise the retail price suggested, set, or required by the manufacturer, distributor, or jobber of such merchandise.

2. The practice and requirement that in all sales of merchandise made to ultimate consumers on deferred time or installment pay-

ments there be added and imposed, by retail furniture dealers, a separate uniform carrying charge over the regular advertised retail cash price of such merchandise, for the extension of credit by a retail dealer to the customer and for the privilege extended to the purchaser of paying the purchase price in installments over an agreed period of time.

(B) As affecting manufacturers, distributors, and jobbers selling furniture and allied products in said trade area, and the purchasing public:

1. The practice and requirement that no sales of furniture or allied products be made by manufacturers, distributors, or jobbers, directly to the ultimate consumer thereof, to employees of such manufacturers, distributors, and jobbers, except for the personal use of said employees, or to contractors, institutions, hotels, apartment house operators, real estate dealers, or large industrial plants.

2. The practice and requirement that no orders for merchandise be accepted by such manufacturer, distributor, wholesaler, or jobber from dealers in cities other than St. Louis, Mo., or East St. Louis, Ill., where delivery thereof is to be made in St. Louis or East St. Louis.

3. The practice and requirement that requests from ultimate consumers to buy merchandise from such manufacturer, distributor, wholesaler, or jobber to be billed through some retail dealer be refused, and such ultimate consumer be required to purchase from a "regular" retail dealer.

4. The practice and requirement that no merchandise may at any time be donated by such manufacturers, distributors, wholesalers, or jobbers, or placed on a consignment basis with anyone, except for a short period of time for window or floor display purposes only.

5. The practice and requirement that no sales or deliveries of merchandise shall be made by such manufacturers, distributors, wholesalers, or jobbers to homes of ultimate consumers, and no merchandise shall be sold to salesmen for any retail furniture dealer unless the same is sold to, billed, and delivered to such dealer.

6. The practice and requirement that manufacturers, distributors, wholesalers, and jobbers shall not sell merchandise to concerns who sell at retail, and who in so doing hold themselves out to the public and to their retail customers as contract home furnishers operating on a basis similar to that of wholesalers.

7. The practice and requirement that no manufacturer, distributor, wholesaler, or jobber shall go upon the sales floor of any retail dealer and talk to purchasers or prospective purchasers of the line

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of merchandise offered for sale in that retail store or department thereof.

PAR. 9. That said so-called carrying charge was and is used by and imposed upon the purchasing public by respondent members, who variously designate the same as a service charge, budget charge, credit charge, time payment plan, and other like terms; but however designated, said carrying charge was and is usually represented to the public by respondent members as being an interest charge on deferred payments of the purchase price, at the rate of one-half of one percent per month, or six percent per annum. Such representations so made to the public by respondent members were and are false and misleading, since in truth and in fact the said carrying charge in no case constitutes an interest charge at said rate upon deferred payments of the purchase price. On the contrary it is either an interest charge on the entire principal amount of said deferred payments for the full installment period, in which case the purchaser is charged interest on installment payments of the principal after the same are liquidated, or it is intended to and does include items other than interest, estimated in advance as to amount, such as office and accounting expense, the expense incident to repossession of chattels in case of default by some purchasers in the payment of deferred installments, loss of or damage to chattels repossessed from defaulting purchasers, legal and collection expense and other items attributable to defaulting purchasers. The true nature and make-up of said carrying charge is not in most cases divulged to the purchaser, and the imposition by respondent members of such carrying charge upon purchasers of furniture and allied products on installment payments as above set forth, substantially prejudices and injures those members of the purchasing public who are unable to pay cash for their purchases for such products and those installment purchasers who do not default in their obligations, and unfairly and unreasonably enhances the price of such commodities to such purchasers, with a resulting discrimination against them.

PAR. 10. That for the purpose of making such sales methods, policies and requirements effective and of requiring compliance therewith by all competing retail dealers in furniture and allied products in the several states constituting the trade area adjacent to St. Louis, by manufacturers, distributors, and jobbers trading therein, and by the ultimate purchasing public located therein, said respondent Association, acting through its officers and executive board, and with the knowledge, consent, approval, and active cooperation and participation of respondent members, did the following things:

1. Issued bulletins, circulars, and other printed matter, and distributed the same among its members, and caused the same to be sent

to manufacturers, distributors, and others, in which printed matter the respondent Association announced the adoption by it on behalf of its members of the selling methods, policies, and requirements above described.

2. Issued bulletins and circulars, which it sent to its members and to manufacturers, distributors, and others, in which bulletins and circulars were set forth the names of retail furniture dealers who did not observe, or who failed or refused to follow or abide by the sales methods and policies adopted as aforesaid by the said Association.

3. Issued bulletins and circulars listing the names and products of manufacturers and distributors who did not follow, or who failed or refused to abide by its said sales methods and policies which bulletins and circulars were distributed by it among its members and others, with the result that certain of its members thereafter refused to buy, or threatened not to buy further merchandise from such offending manufacturers and distributors.

4. Issued bulletins and circulars to its said members and to others, setting forth the names of manufacturers and distributors who cooperated, or agreed to cooperate, in the enforcement of the said sales methods and policies adopted by the said Association, which bulletins suggested and proposed that the members of the Association should patronize such manufacturers and distributors who cooperated or agreed to cooperate with the said Association.

5. Appointed a committee of its members, with instructions to inform, and which committee members did inform, manufacturers and distributors that, unless such manufacturers and distributors agreed to and did cooperate with the respondent Association, then the members of the said Association would discontinue buying the line of merchandise sold by such manufacturers and distributors.

6. Acquainted manufacturers and distributors with the names of those persons or concerns engaged in competitive businesses with its members, who, so respondents asserted, were not entitled and should not be permitted to buy furniture at wholesale prices.

7. Sought and obtained promises and assurances of cooperation by manufacturers, wholesalers, and jobbers to the end that all ultimate consumers of merchandise would be refused the advantage of buying at wholesale, and would be required to purchase merchandise only through regular retail stores.

PAR. 11. The capacity, tendency, and effect of said plan, program, agreement, combination, conspiracy, confederation, and undertaking, and the said acts and practices and selling methods and policies of said respondents in pursuance thereof, hereinabove set forth, are

and have been in the trade area in and around the cities of St. Louis, Mo. and East St. Louis, Ill., the States of Missouri and Illinois, and adjoining States:

1. To monopolize in said respondent members, and "regular" dealers, the business of dealing in and distributing furniture and allied products, including electric refrigerators and radios.

2. To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the said retail furniture and allied products trade and industry, and to deprive the purchasing and consuming 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; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

3. To fix prices at which furniture and allied products, including electric refrigerators and radios, are sold at retail in said trade area.

4. To substantially increase the cost to purchasers of such furniture and allied products.

5. To suppress, eliminate and discriminate against small business enterprises which are or have been engaged in selling and distributing furniture and allied products.

6. To obstruct, hamper and interfere with the normal and natural flow of trade and commerce in furniture and allied products, into, through and from said trade area; and to injure respondents' competitors in unfairly diverting business and trade from them, depriving them thereof, and otherwise driving or "freezing" them out of business.

7. To prejudice and injure the public, and manufacturers, producers, dealers, distributors, and others who do not conform to respondents' program or methods, or who do not desire to conform to them, but are compelled to do so by the concerted action of respondents herein alleged.

PAR. 12. The above alleged acts and things done by respondents have a dangerous tendency unduly to hinder competition in the furniture and allied products trade in said trade area, and to create a monopoly thereof in the hands of respondents, and constitute unfair methods of competition in commerce within the meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 9th day of April, A. D., 1936, issued and served its complaint in this proceeding upon respondents, Retail Furniture Dealers Association of St. Louis, and its officers, executive board, and members, as hereinafter particularly designated and enumerated, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, said respondents, after having filed their answers to said complaint, filed herein a certain stipulation as to the facts to be taken as the only facts in this proceeding and in lieu of testimony which might be adduced in support of and in opposition to the complaint and answers herein, which said stipulation has been approved by the Commission. And said respondents, in said stipulation as to the facts so filed by them, consented that the Commission might proceed upon the statements of fact therein contained, including such inferences as it may draw from such facts, to make its findings and its conclusion based thereon and to enter its order disposing of the proceeding without presentation of argument or the filing of briefs. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto and 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, Retail Furniture Dealers Association of St. Louis, is a non-profit corporation organized under the laws of the State of Missouri, by virtue of a certain decree and order made and entered by the Circuit Court of the city of St. Louis, Mo., on December 17, 1923; that said corporation was organized for the following expressed purposes: Promoting the interest of, and to secure friendly connections between retail furniture dealers in the city of St. Louis, State of Missouri; to promote and combine the influence and intelligence of its members; for the protection of their trade against imposition, injustice, or encroachment upon their common rights and interests; to foster and interchange thoughts and ideas for their mutual benefits as a result of the experience and ability of all; to urge and encourage national, State, and city legislation for the

furtherance of the interest to just laws; to secure for its members equitable treatment in all their business dealings with manufacturers of, and dealers in, furniture supplies; to recommend the abolishment of the practice of some manufacturers and wholesale furniture dealers of peddling and selling goods at retail to the detriment of the retail line of business; to disseminate knowledge and information among its members relating to, and in connection with, the retail furniture business; to give and hold furniture and household shows and exhibits from time to time; to do such other acts and things as do or may tend to accomplish the purpose of the said corporation and are within the laws of the State of Missouri and the United States; that the principal office and place of business of said association is located at 926 Chemical Building, St. Louis, Mo.

PAR. 2. The membership of said respondent association is composed of individuals, firms, and corporations who carry a stock of furniture or kindred wares, and who are engaged as principals in retailing the same from their own places of business in the city of St. Louis, Mo., or the city of East St. Louis, Ill. That under the bylaws which have been regularly adopted for the regulation of said respondent association, the government and control thereof is vested in the officers, consisting of a president, a vice-president, a secretary, and a treasurer, and in an executive board composed of the president, vice-president, and representatives of six members of said respondent association elected by the members.

PAR. 3. That the following named respondents have been and are members of said respondent association, and as such have exercised the privileges of and assumed the liabilities incident to such membership, to wit:

Manne Brothers Furniture Company, a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 5613-15 Delmar Boulevard, St. Louis, Mo.

Unlon-May-Stern Company, a corporation organized under the laws of the State of Missouri, with its principal office at 1120-30 Olive Street, St. Louis, Mo.

Goldman Bros., Inc., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 1182 Olive Street, St. Louis, Mo.

Lammert Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 911-921 Washington Ave., St. Louis, Mo.

Hellrung & Grim House Furnishing Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 906 Washington Boulevard, St. Louis, Mo.

Stein Furniture Company, a copartnership, with its principal office and place of business at 900 Franklin Street, St. Louis, Mo.

American Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 708 Franklin Avenue, St. Louis, Mo.

Rhodes-Burford House Furnishing Co., a corporation organized under the laws of the State of Kentucky, with its principal office and place of business at 317 North 11th Street, St. Louis, Mo.

Gregson Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 4230 North Broadway, St. Louis, Mo.

Dau, The House Furnisher, Inc., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 2730 North Grand Avenue, St. Louis, Mo.

Ideal Furniture Co., a proprietorship with its principal office and place of business at 5955 Easton Avenue, St. Louis, Mo.

Iess-Dickman Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 2814-2818 Chippewa Avenue, St. Louis, Mo.

Mosley-Thuner Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 2122 South Broadway Street, St. Louis, Mo.

John Alt Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 1510 South Broadway Street, St. Louis, Mo.

Arnold Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 5000 Gravois Avenue, St. Louis, Mo.

Buettner Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 1007 Olive Street, St. Louis, Mo.

J. D. Carson, Inc., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 1116 Olive Street, St. Louis, Mo.

Dyer Bros., a copartnership with its principal office and place of business at 1422 North Grand Avenue, St. Louis, Mo.

Eagle Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 1001 Franklin Avenue, St. Louis, Mo.

Gausmann-Parker House Furnishing Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 8206 North Broadway, St. Louis, Mo.

Geltz House Furnishing Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 4706 Easton Avenue, St. Louis, Mo.

J. C. Geltz Sewing Machine and Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 1315 North Market Street, St. Louis, Mo.

General Furniture Company, a proprietorship with its principal office and place of business at 2000 South Jefferson Street, St. Louis, Mo.

Home Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 4203 Manchester Avenue, St. Louis, Mo.

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Hub Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 701 Washington Avenue, St. Louis, Mo.

Igoe House Furnishing Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 2741 North Grand Avenue, St. Louis, Mo.

Kassing Goesen House Furnishing Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 2607 North 14th Street, St. Louis, Mo.

Knost Bockwinkel Furniture Home, Inc., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 3211 Olive Street, St. Louis, Mo.

Kobusch & Cornwall Home Furnishers, Inc., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 3601 West Florissant Avenue, St. Louis, Mo.

Lauer Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 825 North Sixth Street, St. Louis, Mo.

National Home Furnishing Co., a corporation organized under the laws of the State of Illinois, with its principal office and place of business at 132 Collinsville Avenue, East St. Louis, Ill.

Prossers Furniture and Storage Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 3218 Olive Street, St. Louis, Mo.

Frank L. Schaab Stove and Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 2022 South Broadway, St. Louis, Mo.

Steiner-Schwartz Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 2600 North 14th Street, St. Louis, Mo.

Wellston Furniture Co., a corporation organized under the laws of the State of Missouri with its principal office and place of business at 5911 Easton Avenue, St. Louis, Mo.

Westhus Furniture Co., a corporation organized under the laws of the State of Missouri, with its principal office and place of business at 2001 South Broadway, St. Louis, Mo.

PAR. 4. That the following named respondents have been or are officers of said respondent association, to wit:

Peter M. Igoe, president, representing respondent, Igoe House Furnishing Co., 2741 North Grand Avenue, St. Louis, Mo.

Joseph Manne, president, representing respondent, Manne Brothers Furniture Company, 5613-15 Delmar Boulevard, St. Louis, Mo.

Joseph B. Hellrung, vice president and treasurer, representing respondent, Hellrung & Grimm House Furnishing Co., 906 Washington Boulevard, St. Louis, Mo.

Shirley D. Gregson, vice president, representing respondent, Gregson Furniture Co., 4230 North Broadway, St. Louis, Mo.

Fred C. Dau, treasurer, representing respondent, Dau, The Home Furnisher, Inc., 2730 North Grand Avenue, St. Louis, Mo.

Gail B. Ussery, secretary, 926 Chemical Building, St. Louis, Mo.

The following named respondents have been or are members of the executive board of said respondent association, in addition to the presidents and vice presidents above named, to wit:

Benjamin Weisman, representing respondent, Union-May-Stern Company, 1120-30 Olive Street, St. Louis, Mo.

Martin Lammert, 3rd, representing respondent, Lammert Furniture Co., 911-921 Washington Avenue, St. Louis, Mo.

Joseph B. Hellrung, representing respondent, Hellrung & Grimm House Furnishing Co., 906 Washington Boulevard, St. Louis, Mo.

Joseph Agatstein, representing respondent, Stein Furniture Company, 900 Franklin Street, St. Louis, Mo.

Joseph Lasky, representing respondent, American Furniture Co., 703 Franklin Avenue, St. Louis, Mo.

Fred C. Dau, representing respondent, Dau, The House Furnisher, Inc., 2730 North Grand Avenue, St. Louis, Mo.

Chas. Steiner, representing respondent, Ideal Furniture Co., 5955 Easton Avenue, St. Louis, Mo.

O. W. Dickman, representing respondent, Hess-Dickman Furniture Co., 2814-2818 Chippewa Avenue, St. Louis, Mo.

James A. Mosley, representing respondent, Mosley-Thuner Furniture Co., 2122 South Broadway, St. Louis, Mo.

PAR. 5. That some of the several members of said respondent association, in the course and conduct of their respective businesses, purchase furniture and allied products, including, in most cases, electric refrigerators and radios, from various manufacturers, distributors, wholesalers, jobbers, and dealers located in many different States of the United States and cause said commodities so purchased to be transported from the State of origin thereof, including States other than the States of Missouri and Illinois, to, into and through various States of the United States, and into the States of Missouri and Illinois; that some of said members resell said furniture and merchandise at retail to various members of the consuming public located in the States of Missouri and Illinois and in other States of the trade area adjacent thereto; that said commodities are ordinarily purchased at wholesale or from the manufacturer by some of said members with the intention and for the purpose of reselling and delivering the same at retail to purchasers located in the States of Missouri and Illinois, and States adjacent thereto, such resales being made from the respective places of business of said members, where said goods are assembled and displayed for sale for varying periods of time; that some of said members, upon sales at retail being made to purchasers deliver and transport or cause to be delivered and transported said goods so sold into the States of Missouri and Illinois to the purchasers thereof located in the States of Missouri and Illinois, and other States adjacent thereto; that some of said

members of said respondent association are, and have been during all the time herein mentioned, engaged in commerce between and among different States of the United States, and some of said members above named are and have been engaged in trade, business and commerce having a direct and substantial effect upon interstate commerce in furniture and allied products, including electric refrigerators and radios.

PAR. 6. That in the course and conduct of their said businesses, some of said members of said respondent association are in substantial competition with other persons, firms and corporations engaged in the sale at retail and distribution of furniture and allied products, including electric refrigerators and radios, in the States of Missouri and Illinois, and in the trade area extending into other States adjacent thereto; that said competitors likewise purchase their wares, at wholesale or from manufacturers in various States of the United States, and transport them or cause them to be transported to, into and through States other than the States of Missouri and Illinois to their respective places of business in said trade area and resell and deliver the same at retail to consumers located in the States of Missouri and Illinois, and States other than the State in which said competitors' respective places of business are located; that said competitors are engaged in commerce between and among the different States of the United States and in trade, business and commerce having a direct and substantial effect upon interstate commerce in furniture and allied products, including electric refrigerators and radios.

PAR. 7. That in pursuance of the objects for which said respondent association was incorporated, and for the purpose of enhancing and promoting the volume of trade, business and profits of its members in the course and conduct of its activities, the said Retail Furniture Dealers Association of St. Louis, acting through its officers, executive board, and agents has sought to put into effect, and has to some extent put into effect, certain policies, sales methods and trade practices hereafter described. That said respondent association has for the period from August 1, 1933 to May 27, 1935, pursued a course of action to adopt, follow, carry out, enforce, and maintain in a number of States comprising the trade area in and surrounding the cities of St. Louis, Mo. and East St. Louis, Ill., certain policies, sales methods and trade practices, hereafter described, which said respondent association attempted to or did by persuasion require the adoption and observance of by manufacturers, distributors, wholesalers, and jobbers engaged in interstate commerce and trading in said area.

PAR. 8. That said policies, requirements, sales methods, and trade practices, referred to in the preceding paragraph, specifically consist of the following:

Requests to wholesalers, jobbers, and manufacturers selling furniture and allied products in said trade area that they adopt, follow, and adhere to:

1. The policy and practice that no sales of furniture or allied products be made by manufacturers, distributors, or jobbers, directly to the ultimate consumer thereof, to employees of such manufacturers, distributors, and jobbers, except for the personal use of said employees, or to contractors, institutions, hotels, apartment house operators, real estate dealers, or large industrial plants.

2. The policy and practice that no orders for merchandise be accepted by such manufacturer, distributor, wholesaler, or jobber from dealers in cities other than St. Louis, Mo., or East St. Louis, Ill., where delivery thereof is to be made in St. Louis or East St. Louis.

3. The policy and practice that requests from ultimate consumers to buy merchandise from such manufacturer, distributor, wholesaler, or jobber to be billed through some retail dealer be refused, and such ultimate consumer be required to purchase from a "regular" retail dealer.

4. The policy and practice that no merchandise may at any time be donated by such manufacturers, distributors, wholesalers, or jobbers, or placed on a consignment basis with anyone, except for a short period of time for window or floor display purposes only.

5. The policy and practice that no sales or deliveries of merchandise shall be made by such manufacturers, distributors, wholesalers, or jobbers to homes of ultimate consumers, and no merchandise shall be sold to salesmen for any retail furniture dealer unless the same is sold to, billed and delivered to such dealer.

6. The policy and practice that manufacturers, distributors, wholesalers, and jobbers shall not sell merchandise to concerns who sell at retail, and who in so doing hold themselves out to the public and to their retail customers as contract home furnishers operating on a basis similar to that of wholesalers.

7. The policy and practice that no manufacturer, distributor, wholesaler, or jobber shall go upon the sales floor of any retail dealer and talk to purchasers or prospective purchasers of the line of merchandise offered for sale in that retail store or department thereof.

PAR. 9. That for the purpose of making such sales methods, policies and practices effective and of requiring compliance therewith by all manufacturers, distributors, and jobbers trading therein, said

respondent association, acting through its officers and executive board, did the following things:

(1) Issued bulletins and letters and distributed the same among its members, and caused the same to be sent to manufacturers and distributors, in which printed matter the respondent association announced the adoption by it of the selling methods, policies, and practices above described.

(2) Issued bulletins or circulars to its said members, setting forth the names of manufacturers and distributors who cooperated, or agreed to cooperate in the enforcement of the said sales methods and policies adopted by the said association.

(3) Acquainted manufacturers and distributors with the names of those persons or concerns who respondent association asserted were not entitled and should not be permitted to buy furniture at wholesale prices.

(4) Sought and obtained promises and assurances of cooperation by manufacturers, wholesalers, and jobbers to the end that all ultimate consumers of merchandise would be refused the advantage of buying at wholesale, and would be required to purchase merchandise only through regular retail stores.

PAR. 10. That in addition to the foregoing, some of the said members of respondent association, at association meetings, discussed and advocated the adoption by the association of the policy that all members thereof impose a carrying charge in addition to the advertised cash price for merchandise sold on installments or deferred payment plan; that without authority from such association said members interviewed certain manufacturers, distributors, jobbers, and wholesalers engaged in interstate commerce in said trade area in furtherance of their desire that manufacturers, wholesalers, and jobbers adopt a policy of selling only to retail dealers in said area who impose such a carrying charge; that in some cases during said interviews some of said members did intimate that they did not intend to purchase products handled by such manufacturer, distributor, jobber, or wholesaler if the latter sold or continued to sell such products to those retail dealers who did not use or impose such carrying charges.

PAR. 11. The Commission concludes from the foregoing that the capacity and tendency of the aforesaid activities of respondents, as set forth in paragraphs 8, 9, and 10 above, was to instill into the minds of some of said manufacturers, distributors, jobbers, and wholesalers the belief that said respondent association had adopted and was pursuing the practices and policies above set forth and was requiring all its members to impose a carrying charge in addition to

the advertised cash price for merchandise sold on installments or deferred payment plan, and the belief that respondent association was attempting to compel such manufacturers, distributors, jobbers, and wholesalers to desist from selling their respective lines of merchandise to dealers competing with respondent members, who did not conform to such practices and policies and who did not impose such carrying charges upon their customers; that the capacity and tendency of said activities was to induce some of said manufacturers, distributors, jobbers, and wholesalers to believe that if they persisted in selling their said merchandise to furniture dealers who did not conform to such policies and practices or who did not impose such carrying charges, the members of respondent association would cease buying such lines of merchandise from said manufacturers, distributors, jobbers, and wholesalers, and as a result had the tendency to impel the latter to refuse to sell their lines of merchandise to furniture dealers in and around St. Louis, Mo., and East St. Louis, Ill., who did not conform to such practices and policies and who did not impose said carrying charges upon their respective customers.

PAR. 12. The Commission further concludes that the capacity and tendency of said plan, program, and undertaking, and the said acts and practices and selling methods and policies of said respondents in pursuance thereof, are and have been in the trade area in and around the cities of St. Louis, Mo., and East St. Louis, Ill., the States of Missouri and Illinois, and adjoining States:

(1) To monopolize in certain respondent members, the business of dealing in and distributing furniture and allied products, including electric refrigerators and radios.

(2) To lessen and restrain competition in the said line of commerce, and to deprive the purchasing and consuming public of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal, unobstructed, free and fair competition in said line of commerce.

(3) To substantially increase the cost to purchasers of such furniture and allied products.

(4) To discriminate against some business enterprises which are or have been engaged in selling and distributing furniture and allied products.

(5) To obstruct, hamper and interfere with the normal and natural flow of trade and commerce in furniture and allied products, into, through, and from said trade area.

(6) To prejudice and fetter the public and manufacturers, producers, distributors and competing retail dealers who do not conform to respondents' program or methods, or who did not desire to do so.

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CONCLUSION

The aforesaid acts and practices of the respondents 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 on the complaint of the Commission, the answers of the respondents, and the stipulation as to the facts executed by the respondents, Retail Furniture Dealers' Association of St. Louis, and its officers, executive board, and members, as hereinafter designated and enumerated, said stipulation having been heretofore 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 respondent, Retail Furniture Dealers' Association of St. Louis, and its officers, executive board, members, agents, representatives, and employees, particularly the following:

Manie Brothers Furniture Company, a corporation;
Union-May-Stern Company, a corporation;
Goldman Bros., Inc., a corporation;
Lammert Furniture Co., a corporation;
Hellrung & Grimm House Furnishing Co., a corporation;
Stein Furniture Company, a co-partnership;
Americau Furniture Co., a corporation;
Rhodes-Burford House Furnishing Co., a corporation;
Gregson Furniture Co., a corporation;
Dau, The House Furnisher, Inc., a corporation;
Ideal Furniture Co., a proprietorship;
Hess Dickman Furniture Co., a corporation;
Mosley-Thuner Furniture Co., a corporation;
John Alt Furniture Co., a corporation;
Arnold Furniture Co., a corporation;
Buettner Furniture Co., a corporation;
J. D. Carson, Inc., a corporation;
Dyer Bros., a co-partnership;
Eagle Furniture Co., a corporation;
Gausmann-Parker House Furnishing Co., a corporation;
Geitz House Furnishing Co., a corporation;
J. C. Geitz Sewing Machine and Furniture Co., a corporation;
General Furniture Company, a proprietorship;

Home Furniture Co., a corporation;
 Hub Furniture Co., a corporation;
 Igoe House Furnishing Co., a corporation;
 Kassing Goesen House Furnishing Co., a corporation;
 Knost Bockwinkel Furniture Home, Inc., a corporation;
 Kobusch & Cornwall Home Furnishers, Inc., a corporation;
 Lauer Furniture Co., a corporation;
 National House Furnishing Co., a corporation;
 Prossers Furniture and Storage Co., a corporation;
 Frank L. Schaab Stove and Furniture Co., a corporation;
 Steiner-Schwarz Furniture Co., a corporation;
 Wellston Furniture Co., a corporation;
 Westhus Furniture Co., a corporation;

members of said association; and

Peter M. Igoe, Joseph Manne, Joseph B. Hellrung, Shirley D. Gregson, Fred C. Dau, Gail B. Ussery, Benjamin Weisman, Martin Lammert, 3rd, Joseph Agatstein, Joseph Lasky, Charles Steiner, O. W. Dickman, and James A. Mosley, as officers or executive board members of said association, in connection with the purchase, sale and distribution of furniture and allied products, including radios and electric refrigerators in interstate commerce in and around St. Louis, Mo., and East St. Louis, Ill., and elsewhere, in pursuance of any agreement or understanding forthwith cease and desist from:

I. Adopting, following, carrying out, enforcing, maintaining, or attempting to put into effect any of the following policies, standards, sale methods, practices, requirements, or usage, to wit:

1. The collective policy and practice that retail furniture dealers require on all sales of merchandise made to ultimate consumers on deferred time or installment payments that there be added and imposed a separate uniform carrying charge over the regular advertised retail cash price of such merchandise, for the extension of credit by such retail dealers to customers and for the privilege extended to purchasers of paying the purchase price in installments over an agreed period of time.

2. The policy and practice that no sales of furniture or allied products shall be made by manufacturers, distributors, wholesalers or jobbers directly to employees of such manufacturers, distributors, wholesalers or jobbers, except for the personal use of said employees, or to contractors, institutions, hotels, apartment house operators, real estate dealers, or large industrial plants.

3. The policy and practice that no orders for merchandise shall be accepted by such manufacturers, distributors, wholesalers, or jobbers from dealers in cities other than St. Louis, Mo., or East St. Louis, Ill., where delivery thereof is to be made in St. Louis or East St. Louis.

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4. The policy and practice that requests from ultimate consumers to buy merchandise from such manufacturers, wholesalers, distributors, or jobbers to be billed through some retail dealer be refused, and such ultimate consumer be required to purchase from a "regular" retail dealer.

5. The policy and practice that no merchandise may at any time be donated by such manufacturers, distributors, wholesalers or jobbers or placed on a consignment basis with anyone, except for a short period of time for window or floor display purposes only.

6. The policy and practice that no sales or deliveries of merchandise shall be made by such manufacturers, distributors, wholesalers or jobbers to homes of ultimate consumers, and no merchandise shall be sold to salesmen for any retail furniture dealer unless the same is sold to, billed and delivered to such dealer.

7. The policy and practice that manufacturers, distributors, wholesalers and jobbers shall not sell merchandise to concerns who sell at retail, and who in so doing hold themselves out to the public and to their retail customers as contract home furnishers operating on a basis similar to that of wholesalers.

8. The policy and practice that no manufacturer, distributor, wholesaler, or jobber shall go upon the sales floor of any retail dealer and talk to prospective purchasers of the lines of merchandise offered for sale in that retail store or a department thereof.

II. Collectively advocating, recommending, or requiring by persuasion, competitive pressure, compulsion or any other method of any description, the adoption, use or maintenance of either or any of the policies or practices set forth in Paragraph I hereof, by retail furniture dealers, or by manufacturers, jobbers, distributors, wholesalers, or dealers, to be used or put into effect in the course and conduct of their business.

III. Publishing or distributing circulars, bulletins, advertisements, or printed matter of any description announcing the adoption of or advocating the use of the policies and practices set forth in Paragraph I above.

IV. Publishing or distributing circulars, bulletins, advertisements, or printed matter of any description setting forth either the names of retail furniture dealers who have, and do, or those who have not or do not use, observe, or abide by the policies and practices set forth in paragraph I above, or listing the names and products of manufacturers and distributors who have and do, or those who have not and do not follow and use the sales methods and policies set forth in said paragraph.

V. Publishing or distributing circulars, bulletins, advertisements, or printed matter of any description setting forth the names and products of manufacturers and distributors who have cooperated or agreed to cooperate in the enforcement of the said policies and practices set forth in Paragraph I above, or suggesting or proposing that the members of the respondent Association shall patronize such manufacturers and distributors who so cooperate or agree to cooperate with said Association.

VI. Informing, manufacturers, jobbers, wholesalers, or distributors, by the use of any means whatsoever, that unless they or any of them agree to, and will adopt and use the policies and practices set forth in Paragraph I above, the members of respondent Association or any of them will discontinue buying the line of merchandise sold by such manufacturers, jobbers, wholesalers, or distributors.

VII. Informing manufacturers, jobbers, wholesalers or distributors by the use of any means whatsoever, of the names of those persons or concerns who are engaged in competitive business with members of the respondent Association who refuse to follow the policies and practices set forth in Paragraph I above, or notifying or advising any such manufacturer or distributor that any such person or concern should not be permitted to buy furniture or allied products at wholesale prices.

VIII. Seeking or obtaining promises or assurances of cooperation from manufacturers or distributors to the end that all ultimate consumers of merchandise be refused the advantage of buying at wholesale and that they be required to purchase merchandise only through regular retail stores.

It is further ordered, That said respondents named herein shall within 90 days from notice hereof file with the Commission, a report in writing, stating in detail the manner in which this order is being complied with and conformed to by them.

ORDER CLOSING PROCEEDING AS TO CERTAIN RESPONDENTS¹

This matter coming on for consideration by the Commission upon the record and upon the showing which has been made as to the pres-

¹ Proceeding was also theretofore dismissed as to respondent Biederman Furniture Co. by following order entered by Commission on April 24, 1936, namely:

This matter coming on to be heard by the Commission upon the request of counsel for respondent Biederman Furniture Company of 801 Franklin Avenue, St. Louis, Missouri, for a dismissal of the above entitled proceeding as against said named respondent, and the Commission having duly considered said request and being now fully advised in the premises;

It is ordered, That the above entitled proceeding, as against respondent Biederman Furniture Company and as the same affects said respondent only, be and the same hereby is dismissed, without prejudice, however, to the right of the Commission to reinstate should conditions warrant.

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ent status of certain of the respondents in the above entitled matter, and it appearing to the Commission that respondent Bly-Moss Furniture Company, a corporation, is no longer engaged in business, and that respondents, Stanley Goldman and H. R. Mains are no longer residents of St. Louis, Mo., or officers of said respondent Association; and it further appearing to the Commission that respondents, Quality Furniture Company, a corporation, Warring Furniture Company, a corporation, Kroemke Furniture Company, a proprietorship, and Luxemberg Furniture Company, a proprietorship, are not actively engaged in furthering the policies and practices of said respondent Association; and the Commission having duly considered said matters and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on the 9th day of April, A. D., 1936, be, and the same hereby is closed as to respondents hereinabove named only 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.

Syllabus

IN THE MATTER OF
GIACOMO LAGUARDIA TRADING AS HERBA MEDICINAL LABORATORY

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

Docket 2878. Complaint, July 15, 1936—Decision, Jan. 5, 1937

Where an individual engaged in the sale of various liquids, compounds, solutions, and other matter represented by him as derived from, compiled of, or concocted from, herbs of various kinds—

Represented, in advertisements in periodicals of interstate circulation and in advertising literature circulated throughout the various States and in other ways, that he was a great specialist on herbs, and that the commodities or various medicaments, liquids, etc., prepared by him under various trade names, such as "Stomatic Tea," "Rheumatic Tea," "Renal Tea," "Pile-Aid," and "Vegetoliva Liniment," constituted competent treatments or effective remedies for stomach and digestive disorders, and numerous ailments and conditions, including excess weight, skin ailments, pains in arms, etc., and that only at his store would herbs be found that were adapted for such various maladies, etc.;

Facts being he was not a great specialist in herbs, and herbs of like nature to those blended by him could readily be procured, and curative or therapeutic value of his various liquids, compounds, etc., was not as efficacious as represented by him, either in treatment, relief, or cure of such various ailments or diseases, and such various liquids, etc., would not reduce weight, clear skin of impurities, etc., or cure diseases of the stomach or intestines, and were not a competent or effective treatment for any diseases, etc., for which named;

With result that various members of the purchasing public throughout the various States were misled and deceived by such statements into the false belief that the same were true, and that his said various preparations had a definite curative and therapeutic effect in treatment of maladies and diseases of the body, as represented by him, and were induced to use his course of treatment rather than that of a pathologist or other physician, and of thereby causing a substantial and unfair diversion of trade to him from competitors, among whom there are those engaged in the preparation, sale and transportation in commerce of compounds and toxins and solutions for treatment, cure and remedy of diseases and ailments similar to or identical with those listed by said individual, and who do not falsely represent or exaggerate the curative or therapeutic value 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. Alden S. Bradley for the Commission.

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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 Giacomo LaGuardia, trading as Herba Medicinal Laboratory, 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 is an individual doing business under the name of Herba Medicinal Laboratory, and maintains his office and principal place of business at 537 Broadway, in the city of New York, State of New York.

PAR. 2. Respondent is now and for more than five years last past has been engaged in the sale and distribution of various liquids, compounds, solutions, and other matter represented by him to be derived from, compiled of, or concocted from, herbs of various kinds and nature, and represented to have a medicinal and therapeutic value, and respondent causes said commodities, when sold, to be transported from its place of business in the city and 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.

PAR. 3. In the course and conduct of his business respondent is in competition with other persons, firms, copartnerships, and corporations selling herb remedies and drugs, liquids, compounds, solutions, and medicaments for like use and purpose, and who likewise sell and transport the same to purchasers thereof into and through the various States of the United States other than the State in which such persons, firms, copartnerships, and corporations are located.

PAR. 4. In the course and conduct of the business of the respondent he has, without regard to underlying causes, represented by advertisements published in various articles having interstate circulation, by advertising literature circulated throughout the various States of the United States, by radio broadcasts, and in other manners that:

(a) LaGuardia's Herbs are a competent treatment or an effective remedy for—

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| (1) Stomach acid, | (15) Cough, |
| (2) Swollen or painful stomach, | (16) Bronchitis, |

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| (3) Indigestion, | (18) Pains, |
| (4) Inflammation of the liver, | (19) Swellings, |
| (5) Headache, | (20) Bad digestion, |
| (6) Coated tongue, | (21) Constipation, |
| (7) Tiredness, | (22) Inflammation of the kidneys, |
| (8) Nervous disturbances, | (23) Kidney trouble, |
| (9) Backaches, | (24) Intestinal catarrh, |
| (10) Rheumatism, | (25) Head pains, |
| (11) Purification of blood, | (26) Sleepiness, |
| (12) Eczema, | (27) Bad breath, or |
| (13) Asthma, | (28) "Any of the ailments concern- |
| (14) Hay fever, | ing the digestive system; |
| (17) Colds, | |

(b) That the respondent is "a great specialist" in herbs;

(c) That only at respondent's store will herbs be found adapted for anyone of your troubles;

(d) That respondent's Rejuvenatic Tea or Rejuvenating Tea is an effective treatment for the above-named ailments, or that it will enable persons to get thin or to reduce weight, or that it corrects the cause of excessive weight acquired by indiscretions in eating, by lack of exercise, or by any other means;

(e) That respondent's Clear Skin Tea is a competent treatment for all diseases of the skin, or that it effectively combats disorders of the skin, irritations, small boils, pimples or other eruptions caused by irregular eliminations or otherwise;

(f) That respondent's Scol Diuretic Renal Tea would be of value in eliminating residues or that it absorbs the minor irritations of the urethral and vesical canals;

(g) That respondent's Pile-Aid is a competent treatment or an efficacious remedy for the various forms of hemorrhoids or that it completely dries up hemorrhoids or eradicates burns, pruritus, loss of blood or inflammations; or that these conditions will disappear as if by magic;

(h) That respondent's Vegetolina Liniment is a proper remedy for pains in the arms, legs, back or shoulders caused by intemperance, or that a single application when applied to affected joints would cause the pains to disappear as if by magic;

and many other statements of like nature and effect.

PAR. 5. Respondent sells the commodities prepared by him under various trade names, such as:

Stomatic Tea and Tonic,
Rheumatic Tea,
Renal Tea,
Pile-Aid,
Vegetolina Liniment,

and various other names applied to commodities vended by him.

PAR. 6. In truth and in fact the compounds, solutions, and concoctions of the respondent are not so efficacious as represented by him, either in the treatment, relief, or cure of the various symptoms, ailments, or diseases listed under number (1) through (28) of paragraph

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4 of this complaint, and the same do not have the therapeutic or medical value as represented by respondent in reducing the weight of the person taking the same, clearing the skin of impurities, of small boils, pimples, and other eruptions; will not cure diseases of the stomach and intestines, is no competent or effective treatment for acid regurgitation, gas, swelling of the stomach, vertigo, headache, coated tongue, constipation, kidney or liver disorders, or any other ailments and diseases above set forth. Respondent is not a great specialist in herbs and herbs of like nature can be procured at places other than the respondent's store. The preparations concocted and compounded by the respondent are not an effective cure for "any of the ailments concerning the digestive system."

Customers and potential customers throughout the various States of the United States have been deceived and misled by the statements of the respondent as above related into the false beliefs that the statements of the respondent were and are true, and that, as represented by the respondent, the preparations concocted by him as above stated had and have a definite and valuable therapeutic effect in the treatment of the maladies and diseases of the human body as represented by him. The said statements and representations also had and have a tendency and capacity to and do cause members of the consuming public, in reliance upon the erroneous beliefs as above set forth, to purchase and use the course of treatment of respondent instead of purchasing and using the remedies and products of competitors of the respondent for the treatment of the maladies, diseases and pathological conditions of the human body, including those set forth in the statements of the respondent and in other statements by the respondent as being conditions for which the use of one or more of respondent's products have a curative value.

PAR. 7. There are among the competitors of respondent persons, firms, copartnerships, and corporations engaged in the preparation, sale, and transportation in interstate commerce of compounds, concoctions, and solutions for the treatment, cure, and remedy of diseases and ailments similar to or identical with those listed in paragraph 4 of this complaint and who do not falsely represent or exaggerate the curative or therapeutic values of the same.

PAR. 8. The acts and practices of the respondent in representing the curative and therapeutic claims of the commodities prepared and sold by him, serve as inducements to purchasers and prospective purchasers to purchase substantial quantities of the commodity or commodities prepared 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 to respondent, with the result that sub-

stantial injury was and is done by respondent to substantial competition in commerce as hereinabove set out.

PAR. 9. The above acts and practices of the respondent are all to the injury and prejudice of the public and a substantial number of competitors of the 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 July 15, 1936, issued and served its complaint in this proceeding upon respondent, Giacomo LaGuardia, trading as Herba Medicinal Laboratory, 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, 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 an individual, doing business under the name of Herba Medicinal Laboratory, at 537 Broadway, New York, N. Y. He is now and for more than five years last past has been engaged in the sale of various liquids, compounds, solutions, and other matter represented by him to be derived from, compiled of, or concocted from, herbs of various kinds, and represented to have a medicinal and therapeutic value. The respondent causes such commodities, when sold, to be transported from his place of business

in the city and State of New York to the purchasers thereof located in States of the United States other than the State of New York and maintains a constant current of trade and commerce in said product among and between the various States of the United States.

PAR. 2. The respondent is in competition with other persons, firms, copartnerships, and corporations selling herb remedies and drugs, liquids, compounds, solutions, and medicaments for like or similar use and purpose, and who likewise sell, transport or cause to be transported their respective commodities into and through the various States of the United States other than the State wherein they are located.

PAR. 3. Respondent represents and has represented by advertisements published in various periodicals having an interstate circulation, by advertising literature circulated throughout the various States of the United States, and in other manners; (1) that his various liquids, compounds, solutions, and medicaments constitute competent treatments or effective remedies for stomach acid, swollen or painful stomach, indigestion, inflammation of the liver, headache, coated tongue, tiredness, nervous disturbances, backaches, rheumatism, purification of blood, eczema, asthma, hay fever, cough, bronchitis, colds, pains, bad digestion, swellings, constipation, inflammation of the kidneys, kidney trouble, intestinal catarrh, head pains, sleepiness, bad breath, and "any of the ailments concerning the digestive system"; (2) that the respondent is "a great specialist" in herbs; (3) that only at respondent's store will herbs be found that are adapted for the various maladies, ills, and conditions of the human body above named; (4) that respondent's Rejuvenatic Tea or Rejuvenating Tea is an effective treatment for the above named ailments, and that it will enable persons to get thin or to reduce weight, and that it corrects the cause of excessive weight acquired by indiscretions in eating, by lack of exercise, or by any other means; (5) that respondent's Clear Skin Tea is a competent treatment for all diseases of the skin, and that it effectively combats disorders of the skin, irritations, small boils, pimples, or other eruptions caused by irregular elimination or otherwise; (6) that respondent's Scol Diuretic Renal Tea is of value in eliminating residues and that it absorbs the minor irritations of the urethral and vesical canals; (7) that respondent's Pile-Aid is a competent treatment and efficacious remedy for the various forms of hemorrhoids and that it completely dries up hemorrhoids or eradicates burns, pruritus, loss of blood or inflammations; and that these conditions will disappear as if by magic; (8) that respondent's Vegetolina Liniment is a proper and competent remedy for pains in the arms, legs, back, or shoulders caused by

intemperance, and that a single application when applied to affected joints will cause the pains to disappear as if by magic; and respondent has made many other statements and representations of like nature and effect.

PAR. 4. Respondent sells the commodities prepared by him under various trade names, such as:

Stomatic Tea and Tonic,
Rheumatic Tea,
Renal Tea,
Pile-Aid,
Vegetolina Liniment,

and various other names applied to commodities vended by him.

PAR. 5. The curative or therapeutic value of the various liquids, compounds, concoctions, and solutions of the respondent are not so efficacious as represented by him, either in the treatment, relief, or cure of the various ailments or diseases named hereinabove. They will not reduce weight, clear the skin of impurities, or small boils, pimples, and other eruptions, will not cure diseases of the stomach and intestines, and they are not a competent or effective treatment for any of the diseases, maladies, or conditions of the body above named. Respondent is not a great specialist in herbs, and herbs of like nature to those vended by respondent can be readily procured.

PAR. 6. Various members of the purchasing public throughout the various States of the United States have been misled and deceived by the statements of the respondent as above related into the false belief that such statements were and are true, and that the preparations concocted by respondent, as herein stated, had and have a definite curative and therapeutic effect in the treatment of maladies and diseases of the human body as represented by him. Various members of the purchasing public likewise have been induced to use the course of treatment of the respondent rather than a course of treatment of a pathologist or other physician, thereby causing a substantial diversion of trade to the respondent from competitors in commerce among and between the various States of the United States.

PAR. 7. Among the competitors of the respondent are persons, firms, partnerships, and corporations engaged in the preparations, sale, and transportation in commerce, as herein set out, of compounds, concoctions, and solutions for the treatment, cure, and remedy of diseases and ailments similar to or identical with those listed herein in paragraph 3 and who do not falsely represent or exaggerate the curative or therapeutic value of said products.

The acts and practices of the respondent in misrepresenting the curative and therapeutic claims of the commodities prepared and sold

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by him, serve as inducements to purchasers and prospective purchasers to purchase substantial quantities of the commodity or commodities prepared and sold by the respondent, and have a tendency and capacity to and do unfairly divert a substantial volume of trade from such competitors of the respondent to respondent, with the result that substantial injury was and is done by respondent to competition in commerce as hereinabove set out.

CONCLUSION

The aforesaid acts and practices of the respondent, Giacomo LaGuardia, trading as Herba Medicinal Laboratory, 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 December 31, 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, Giacomo LaGuardia, trading as Herba Medicinal Laboratory or under any other trade name, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of medicinal products designated by him as Stomach Tea and Tonic Rheumatic Tea, Renal Tea, Pile-Aid, and Vegetolina Liniment or of any other products of substantially the same composition and ingredients sold under the same or any other names, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing or causing to be represented:

(a) That the said products have an effective, curative, or remedial value in the cure or treatments of the diseases and ailments of the human body, such as stomach acid, swollen or painful stomach, indigestion, inflammation of the liver, headache, coated tongue, tiredness, nervous disturbances, backaches, rheumatism, purification of blood.

eczema, asthma, hay fever, cough, bronchitis, colds, pains, bad digestion, swellings, constipation, inflammation of the kidneys, kidney trouble, intestinal catarrh, head pains, sleepiness, bad breath, or "any of the ailments concerning the digestive system";

(b) That Stomatic Tea and Tonic, Rheumatic Tea, Renal Tea, Pile-Aid and Vegetolina Liniment or other products of the same or substantially the same ingredients, have any effective therapeutic value for the treatment of diseases of the skin, acid regurgitation, gas, swelling of the stomach, vertigo, headache, constipation, and like diseases;

(c) That respondent is a great specialist in the diagnosis or treatment of ailments, maladies, or conditions of the human 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.

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IN THE MATTER OF
JACOB NEEDLE AND RAY NEEDLE, TRADING AS THE
ELDEEN SPICE COMPANY

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

Docket 2902. Complaint, Aug. 19, 1936—Decision, Jan. 6, 1937

Where two partners engaged in jobbing food stuffs—

Sold a large variety of flavoring extracts, upon the bottle labels of which there were set forth an apparent depiction of an Italian coat of arms and various Italian words indicating and implying to members of purchasing public that said extracts were prepared, compounded and packaged by the National Chemical Laboratory at Milan, Italy, and were imported into the United States, and that they had been awarded first prize at certain expositions in Milan and Florence in competition with other flavoring extracts there exhibited, facts being said extracts were compounded and packaged in the State of New York by an American manufacturer, and said various representations were false;

With effect of misleading and deceiving purchasing public and large number of Italian-Americans included therein, who preferred, as superior to those produced in this country, goods produced abroad, and particularly so in the case of extracts and the like, into the belief that such extracts, thus labeled, were prepared, compounded and packaged abroad and imported into the United States, and of inducing such public, thus composed, misled into believing, by said acts and practices, that they were buying imported extracts of superior merit to domestic product, into purchasing their said products in aforesaid erroneous belief, and of thereby diverting trade to them from their competitors who rightfully and truthfully represent 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. W. W. Sheppard*, trial examiner.

Mr. Astor Hogg for the Commission.

Caputi & Caputi, 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 Jacob Needle and Ray Needle, copartners, trading and doing business as the Eldeen Spice Company, 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 the

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said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said respondents, Jacob Needle and Ray Needle are copartners trading and doing business as the Eldeen Spice Company, with their office and principal place of business at 336 Delancey Street, city of New York and State of New York. Respondents are now, and for more than one year last past, have been engaged in the business of a jobber of foodstuffs, including a variety of flavoring extracts. Respondents sell and distribute said products in commerce between and among the various States of the United States and the District of Columbia; causing said products, when sold, to be shipped from their 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.

PAR. 2. In the course and conduct of their business aforesaid, respondents are now, and for more than one year last past have been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of selling and distributing foodstuffs and flavoring extracts in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of their business, as aforesaid, the respondents sell a large variety of flavoring extracts. To the bottles which contain said flavoring extract are affixed labels, containing a reproduction of what appears to be an Italian coat of arms and the following wording:

Brevetto no. C135—Registration 352
 Estratti-Bertola
 Insuperabili
 Premiati-alle Esposizioni
 Milano e Firenze—1903
 ROSOLIO ROSA
 Laboratorio—Chimico
 Nazionale
 Milano
 Italia
PRODOTTI IMPORTATI
 Agenti Generali
 Paramount Sales Co.
 N. Y. U. S. A.
 ½ Oz.

The translation for the foregoing Italian wording is as follows:

Diploma No. C-135—Registration 352
BERTOLA EXTRACT
 Incomparable

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First Prize at the Ex-
positions in Milan and
Florence—1903

ROSOLIO ROSA

National Chemical Laboratory

Milan Italy

Imported Products

General Agents

Paramount Sales Co.

N. Y. U. S. A.

½ Oz.

Said representations made upon the labels, as aforesaid, indicate and imply to the members of the purchasing public that the said flavoring extracts are prepared, compounded, and packaged by the National Chemical Laboratory at Milan, in Italy, and are imported into the United States. Said language further implies that the said product was awarded first prize at certain expositions in the cities of Milan and Florence, Italy, in competition with other flavoring extracts there exhibited. In truth and in fact, said flavoring extracts are not prepared, compounded and packaged by a National Chemical Laboratory in Milan, Italy, and are not imported into the United States; they were not exhibited at any Italian exposition, and were awarded no medals or other prizes; but, on the contrary, said flavoring extracts are prepared, compounded and packaged in the State of New York by an American manufacturer.

There is a large number of Italian-Americans among the purchasing public who show a preference for goods produced abroad, under the belief that they are superior to those produced in this country, said belief prevailing particularly in extracts and the like. These purchasers are led to believe, because of the statements contained on the label and the fact that said label is printed in the Italian language, that they are buying an imported extract of superior merit to the domestic product. There are among respondents' competitors many who sell both the domestic and imported products, and who, in the course and conduct of their business, honestly and truthfully represent their merchandise.

PAR. 4. The above and foregoing representations, as shown by the labels used by respondents, as described in paragraph 3, have the capacity and tendency to, and do mislead and deceive the purchasing public into the belief that the said flavoring extracts so labeled are prepared, compounded and packaged abroad, and imported into the United States, and have the capacity and tendency to, and do induce the said purchasing public, acting in such erroneous belief, to purchase respondents' product, thereby diverting trade to the respondent.

from those of their competitors who do not misrepresent and falsely label their products; and in this manner respondents do substantial injury to competition in interstate commerce.

PAR. 5. The above acts and things done or caused to be done by the respondents, were and are each and all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "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 August 1936, issued and served its complaint in this proceeding upon respondents Jacob Needle and Ray Needle, trading as the Eldeen Spice Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 31, 1936, the respondents filed their answer, in which answer they 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 the 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. Respondents Jacob Needle and Ray Needle are co-partners trading and doing business as the Eldeen Spice Company, with their office and principal place of business located at 336 Delancey Street, city of New York and State of New York. Respondents are now and for more than one year last past have been engaged in the business of jobbing foodstuffs, including a variety of flavoring extracts. They sell and distribute said products in commerce between and among the various States of the United States

and the District of Columbia, causing said products when sold to be shipped from their 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 their business as aforesaid respondents are now and for more than one year last past have been in substantial competition with other partnerships and with corporations, firms, and individuals engaged in the business of selling and distributing foodstuffs and flavoring extracts in commerce between and among the various States of the United States and in the District of Columbia. There is now and for more than one year last past has been a constant current of trade in commerce between and among the various States of the United States and in the District of Columbia in said products sold by respondents.

PAR. 2. In the course and conduct of their business as aforesaid, respondents sell a large variety of flavoring extracts. To the bottles which contain said flavoring extracts are affixed labels containing a reproduction of what appears to be an Italian coat of arms and the following wording:

Brevetto No. C135—Registration 352
 Estratti-Bertola
 Insuperabili
 Premiati-alle Esposizioni
 Milano e Firenze—1903
 ROSOLIO ROSA
 Laboratorio—Chimico
 Nazionale
 Milano
 Italia
 PRODOTTI IMPORTATI
 Agenti Generali
 Paramount Sales Co.
 N. Y. U. S. A
 ½ Oz.

The translation of the above and foregoing Italian wording is as follows:

Diploma No. C135—Registration 352
 BERTOLA EXTRACT
 Incomparable
 First Prize at the
 Expositions in Milan
 and Florence—1903.
 ROSOLIO ROSA
 National Chemical Laboratory
 Milan Italy
 Imported Products

Findings

General Agents
Paramount Sales Co.,
N. Y. U. S. A.
½ Oz.

PAR. 3. The representations made upon the labels as set forth in paragraph 2 hereof indicate and imply to the members of the purchasing public that the said flavoring extracts are prepared, compounded, and packaged by the National Chemical Laboratory at Milan, Italy, and are imported into the United States. Said language further implies that the said products were awarded first prize at certain exhibitions in the cities of Milan and Florence, Italy, in competition with other flavoring extracts there exhibited. In truth and in fact said flavoring extracts are not and were not prepared, compounded or packaged by a National Chemical Laboratory in Milan, Italy, and are not and were not imported into the United States. They were not exhibited at any Italian exposition and were awarded no medals or other prizes; but on the contrary said flavoring extracts are and were prepared, compounded and packaged in the State of New York by an American manufacturer.

PAR. 4. There are a large number of Italian-Americans among the purchasing public who show a preference for goods produced abroad, under the belief that they are superior to those produced in this country, said belief prevailing particularly in extracts and the like. These purchasers are led to believe, because of the statements contained on the label and the fact that said label is printed in the Italian language, that they are buying imported extract of superior merit to the domestic product. There are among the competitors of respondents, as mentioned in paragraph 1 hereof, many who sell and distribute in commerce flavoring extracts, and who do not misrepresent the origin or place of manufacture of such products.

PAR. 5. The above and foregoing representations, as shown by the labels used by respondents as described in paragraph 2 hereof, have the capacity and tendency to and do mislead and deceive the purchasing public into the belief that the said flavoring extracts so labeled are prepared, compounded and packaged abroad, and imported into the United States; and have the capacity and tendency to and do induce the said purchasing public, acting in such erroneous belief, to purchase respondents' products, thereby diverting trade to the respondents from their competitors, who rightfully and truthfully represent their products; and in this manner respondents do substantial injury to competition in interstate commerce among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of the respondents, Jacob Needle and Ray Needle, copartners trading as the Eldeen Spice 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 filed herein on December 31, 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 respondents, Jacob Needle and Ray Needle, individually and as copartners trading as the Eldeen Spice Company, their representatives, agents, servants, and employees, in connection with the offering for sale, sale, and distribution of flavoring extracts or compounds in interstate commerce or in the District of Columbia, do cease and desist

1. From directly or indirectly advertising, designating, or representing, through the use of words of any foreign language, or symbols or picturizations, or through any other means or in any manner, that flavoring extracts or compounds manufactured or compounded in the United States are manufactured or produced in Italy or in any other foreign country and imported into the United States.

It is further ordered, That the respondent 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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The Commission, as of Jan. 7, 1937, made similar findings and orders to cease and desist in three other cases, in which complaints issued as of Aug. 19, 1936, and in which the respondents, with principal places

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of business in New York City in the first two cases, and in Brooklyn, N. Y., in the third case, were as follows:

SOLOMON HORNICK AND FANNIE HORNICK, TRADING AS ITALIAN-AMERICAN SPICE COMPANY, Docket 2903;

TRIESTE IMPORTING COMPANY, Docket 2904; and

SAUL COHEN AND DAVID JAWETZ, TRADING AS EAGLE SPICE COMPANY, Docket 2905.

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

Mr. Astor Hogg for the Commission.

Caputi & Caputi, of New York City, for respondents.

IN THE MATTER OF
BERNHART P. HOLST, DOING BUSINESS AS HOLST
PUBLISHING 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 2652. Complaint, Dec. 10, 1935.—Decision Jan. 12, 1937

Where an individual engaged in the publication of an encyclopedia or reference work designated as "The Progressive Reference Library," and theretofore sold under different names, since its original publication about 1895 as "Teachers' and Pupils' Cyclopedias," and in the sale thereof to purchasers in various states; an individual engaged as agent and manager for said publisher in the transaction and operation of the latter's business; and two individuals engaged, in California, as agents for and under arrangements with said publisher, in the sale of said "Reference Library" and extension service from their places of business in the two California cities involved, and through their own personal solicitation and that of the agents, subagents, or salesmen employed by them, and selling said reference work and service on an installment contract basis; in substantial competition with others who do not represent that they are giving their respective sets free to purchasers of an extension service, or to purchasers of any other service or books, and do not represent that their respective books have been revised, enlarged, and brought up to date, or make other untrue representations similar to those hereinbelow set forth, but accurately and truthfully represent the nature and character of their respective books and the various services rendered by them in connection with the sale thereof—

- (a) Represented, in soliciting and selling such books and service as hereinbefore described, that the purchaser or prospective purchaser was on a preferred list and would be given a ten volume set of said "Library" free, for the reason, ostensibly, that such purchaser or prospective purchaser had exceptional ability in his or her chosen trade, profession, or avocation, and that, in order to take advantage of such pretended free offer, it was only necessary that the particular person approached write the publisher a letter of commendation, after opportunity to study the books, and subscribe to a ten year loose leaf extension service to keep said "Library" current and up-to-date as represented, and at a cost of \$49.50, for the payment of which sum, in monthly or other payments, purchaser obligated himself by signed contract; facts being there was no such selection, purchase price of said "Reference Library" was included in the amount purportedly charged for the ten-year extension service, same offer was made to all prospective purchasers alike, without regard to any ability exhibited by them in any particular trade or profession, and aforesaid representations were made solely to induce purchase of said "Progressive Reference Library";
- (b) Represented, as aforesaid, that said "Library," as thus published and sold by them, had been revised, enlarged, and brought down to date, facts being that, while it might contain some slight enlargements and revisions, to all intents and purposes it had not been materially revised and enlarged since its original publication in or about 1895; and

- (c) Made use of the name of the individual hereinbefore referred to, who constituted said publisher's business manager and agent, to advise dissatisfied purchasers complaining of aforesaid and other defects in said encyclopedia to the particular individual making sale, that contract of particular dissatisfied purchaser was in hands of said first-named individual, and that he constituted an innocent purchaser for value without notice and insisted on payment and threatened such purchaser with legal action and forced payment therefor;

With effect of misleading and deceiving members of the purchasing public into the erroneous and mistaken belief that aforesaid misrepresentations were true and into the purchase of said "Progressive Reference Library" and extension service on account of such belief and their reliance on the truthfulness thereof, and with the result that many sales were made by them to purchasers thereof who, induced by aforesaid representations, believed that in purchasing said service for its regular price of \$49.50, they were, as members of a limited or selected class, receiving free of charge said set, represented as above set forth, as an enlarged, revised and up-to-date reference work, and trade thereby was unfairly diverted to all and each of them from those competitors who do not make use of same or similar misrepresentations in offer for sale or sale of their respective encyclopedias and reference works:

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. Hilldrop for the Commission.

Mr. C. O. Switzer and *Mr. Fred P. Risser* of *Chatterton & Switzer*, of Des Moines, Iowa, for *Bernhart P. Holst*, doing business as *Holst Publishing Co.*, and for *Bertram P. Holst*; *Mr. L. W. Jaycox*, of Los Angeles, Calif., for *Charles U. Branch*, doing business as *National Press Service*.

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 *Bernhart P. Holst*, an individual trading under the name and style of *Holst Publishing Company*; *Bertram P. Holst*, manager for and agent of *Bernhart P. Holst*; *C. M. Sellards*, an individual trading under the name and style of *Progressive Research Service* and agent for respondent *Bernhart P. Holst*; *Charles U. Branch*, an individual trading under the name and style of *National Press Service* and as agent of respondent *Bernhart P. Holst*; and *S. R. Melching*, an individual trading under the name and style of *International Press Service* and as agent for respondent, *Bernhart P. Holst*, hereinafter designated 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 Commis-

sion 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 Bernhart P. Holst is an individual trading under the name and style of Holst Publishing Company, with his office and principal place of business in Boone, Iowa, and is engaged in the business of publishing and selling a certain encyclopedia known and designated as "The Progressive Reference Library" to purchasers thereof in various States of the United States of America other than Iowa, and when said encyclopedias are sold by respondent, Bernhart P. Holst, he ships and causes them to be shipped from his place of business at Boone, Iowa, into and through the various States of the United States other than Iowa to the purchasers thereof located in said other States and in the District of Columbia. Respondent Bertram P. Holst is likewise an individual residing and doing business in Boone, Iowa, and is an agent of and manager for respondent Bernhart P. Holst in the transaction of the business of said Bernhart P. Holst as hereinafter set out. Respondent C. M. Sellards is an individual with his place of business at 365 Twenty-fifth Avenue, San Francisco, Calif., and trades and does business under the name and style of Progressive Research Service, and in the conduct of the business as hereinafter set out, said respondent C. M. Sellards is an agent of respondent Bernhart P. Holst. Respondent Charles U. Branch is an individual trading and doing business under the name and style of National Press Service, with his place of business at Room 516, Douglas Building, 257 South Spring Street, Los Angeles, Calif., and said respondent Charles U. Branch is also, in the conduct of the business hereinafter set out, an agent for respondent, Bernhart P. Holst. Respondent S. R. Melching is an individual trading under the name and style of International Press Service, with his place of business at Boone, Iowa, and in the conduct of the business hereinafter set out, said respondent S. R. Melching is likewise the agent for respondent Bernhart P. Holst.

PAR. 2. Respondent Bernhart P. Holst is the publisher of a certain ten-volume encyclopedia which is sold and distributed to the public from the place of business of respondent, Bernhart P. Holst of Boone, Iowa, in and through the various States of the United States of America other than Iowa, under the name of "The Progressive Reference Library." This encyclopedia was originally published in or about the year 1895 as "Teachers' and Pupils' Cyclopedias," and thereafter it was published and sold respectively as "New Teachers' and Pupils' Cyclopedias" and as "International Reference Work," but is now being sold, as aforesaid, as "The Progressive Reference Library." The Com-

mission is advised, believes to be true, and consequently charges that although there have been *some revisions and enlargements of the said encyclopedia*, yet it is substantially the same as when first issued in or about the year 1895.

PAR. 3. Respondent Bertram P. Holst resides in Boone, Iowa, and in the sale and distribution of the said Progressive Reference Library in interstate commerce, acts in the capacity of business manager and agent for respondent Bernhart P. Holst, publisher of said encyclopedia as aforesaid. Respondent C. M. Sellards, trading under the name and style of Progressive Research Service, has his office and place of business in the City of San Francisco, Calif., and is engaged in the sale and distribution of the encyclopedia known and designated, as aforesaid, as "The Progressive Reference Library," in the State of California and in various States of the United States other than California, and when said encyclopedias are by said respondent C. M. Sellards sold, he ships and causes them to be shipped from his place of business in San Francisco, Calif., into and through other States of the United States than California, to the purchasers thereof located in States other than the State of California.

Respondent Charles U. Branch is an individual with his office and place of business in the city of Los Angeles, Calif., and is engaged in the selling and delivering in commerce of the said "Progressive Reference Library" under the name and style of National Press Service, in the State of California and in divers other States of the United States other than California, causing said encyclopedia when sold to be transported into and through said other States of the United States than California, to the purchasers thereof located in States other than the State of California. Respondent S. R. Melching is an individual trading and doing business in Boone, Iowa, under the name and style of International Press Service, and he likewise is engaged in the sale and distribution of said "Progressive Reference Library" in the State of Iowa, and causes said "Progressive Reference Library" when sold to be transported and delivered into and through various States of the United States other than Iowa to the purchasers thereof located in States other than the State of California.

In the conduct of the said business of selling and distributing the said encyclopedia known and designated, as aforesaid, as "The Progressive Reference Library," the said respondent Bernhart P. Holst, being as aforesaid the publisher thereof at Boone, Iowa, furnishes to co-respondents C. M. Sellards, Charles U. Branch, and S. R. Melching the said encyclopedia, which said respondents Sellards, Branch, and

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Melching, by personal solicitation and through salesmen and sub-agents, sell to the public. For this encyclopedia respondent Bernhart P. Holst receives from his co-respondents Sellards, Branch, and Melching, \$12.50 per set, and respondents Sellards, Branch, and Melching in turn sell said encyclopedia to the buying public at \$49.50 per set, in manner and form as hereinafter set out.

The respondents Sellards, Branch, and Melching sell said encyclopedia to the public on monthly payments, and the purchaser executes a contract promising to pay the full sum of \$49.50 to the different respondents herein making the sale on monthly payments, and such contracts when signed and executed by the purchaser are sent and transmitted by respondents Sellards, Branch, and Melching to respondent Bernhart P. Holst at Boone, Iowa, and the Commission is advised, believes to be true, and consequently charges that these contracts are by respondents Sellards, Branch, and Melching assigned to respondent Bernhart P. Holst. Respondent Bernhart P. Holst, on receipt of such contracts, advances to respondents Sellards, Branch, and Melching 60 percent of the face value thereof, taking from said Sellards, Branch, and Melching their promissory notes. Therefore and in this behalf, the Commission is advised, believes to be true, and charges that the contracts of purchase by the various purchasers are assigned as collateral security for the loan of 60 percent of the face value of such contracts. If default is made by the purchaser in the payments due under said contracts, the said respondent Bernhart P. Holst personally and through respondent Bertram P. Holst, manager and agent of the aforesaid Bernhart P. Holst, and through his attorneys undertakes to collect the amount due from such defaulted purchases under the claim and pretext that he, respondent Bernhart Holst, is an innocent purchaser for value in due course thereof, and that the purchaser cannot interpose any defenses to the said contract in his hands as such innocent purchaser for value without notice and in due course.

The Commission, acting on information and belief, is advised, believes to be true, and consequently charges that this elaborate and ostensible arrangement existing between and among respondents Bernhart P. Holst, Bertram P. Holst, C. M. Sellards, Charles U. Branch, and S. R. Melching, is a sham and a subterfuge, and that in truth and in fact respondents, Bertram P. Holst, C. M. Sellards, Charles U. Branch, and S. R. Melching are agents for the principal respondent, Bernhart P. Holst, in the sale and distribution in commerce of the said encyclopedia known and designated as "The Progressive Reference Library," and that respondent Bertram P. Holst is resident agent and manager at Boone, Iowa, for his principal, re-

spondent Bernhart P. Holst, and that as principal and agent they are engaged in the acts of unfair competition in commerce hereinafter set out; but in the alternative, should they not occupy to each other the relation of principal and agent, charges and alleges that these respondents are by agreement and conspiracy engaged in a joint enterprise and in acts of unfair competition in commerce, and are properly joined herein as co-respondents.

The method by which respondents sell and offer for sale the said encyclopedia is as follows: The respondents, either in person or by duly constituted and appointed agents, subagents, or salesmen, represent to the purchaser or prospective purchaser that he or she is on a preferred list, and that he or she will be given a ten-volume set of the said encyclopedia free, and this free offer is made to the purchaser or prospective purchaser on the ostensible ground that the purchaser or prospective purchaser has exceptional ability in his or her chosen trade, profession or avocation, such as teacher, preacher, lawyer, etc. The purchasers or prospective purchasers are then told that in order to avail themselves of this alleged free offer it is only necessary that they, (1) write the publisher a letter of commendation after they have had an opportunity to study the books, and (2) subscribed to a ten-year loose leaf extension service, which it is represented will keep the reference library current, at a cost to the purchaser of \$49.50, for the payment of which sum the purchaser signs a contract in writing agreeing to pay by monthly or other payments, and said contracts in writing are then sent and delivered to respondent Bernhart P. Holst, as hereinbefore set out in paragraph 3 hereof. These representations and inducements are false and misleading, as the purchaser does not receive a ten-volume set of the said encyclopedia free, but the sum of \$49.50 above mentioned is a full, fair and sufficient price for the said encyclopedia and for the ten-year loose leaf extension service, and these statements and representations are made by respondents, their agents and salesmen for the purpose of effectuating the sale of the said encyclopedia.

The respondents in person and through their agents, subagents, and salesmen, represent to purchasers and prospective purchasers that the said encyclopedia, published and sold as aforesaid by respondents, has been revised, enlarged, and brought down to date, when in truth and in fact, while said encyclopedia may contain some slight enlargements and revisions, yet to all intents and purposes it has not been materially revised and enlarged since it was originally published in or about the year 1895. When dissatisfied purchasers complain of this and other defects in said encyclopedia to the respondent making the sale, such dissatisfied purchaser is advised that his or her con-

tract is in the hands of respondent Bernhart P. Holst, an innocent purchaser for value without notice, and payment is insisted on and the dissatisfied purchaser is threatened with legal action and is forced to pay therefor.

In the publication and sale of the said encyclopedia, the respondents, all and each of them, are in competition with other individuals, firms, and corporations and associations engaged in a similar and like business, who do not represent themselves as giving an encyclopedia free and who properly and truthfully represent their commodity, and whose encyclopedia is actually revised, enlarged, and brought down to date.

PAR. 4. By reason of the foregoing acts, exaggerations, misrepresentations, statements, and inducements as above set forth, the said respondents have sold and are now selling their said encyclopedia, including the extension service, to various members of the public throughout the United States who have a right to and do rely on these said statements, representations, and inducements of the respondents and who are induced to purchase said encyclopedia from respondents under the belief that they are actually being presented free with an encyclopedia which is revised, enlarged, and brought down to date, and are only paying for the ten-year extension service, when in truth and in fact they are buying and paying a full price for an encyclopedia and extension service and are not receiving one free, nor one revised, enlarged, and brought down to date.

PAR. 5. All the aforesaid false, deceptive, and misleading statements and representations used by respondents, their agents, subagents, and salesmen are calculated to and do have the tendency and capacity to unfairly divert trade to respondents from competitors who do not use such false, deceptive, and misleading representations in the sale of their publications and to induce the public to purchase said encyclopedias under and because of a mistaken belief that said representations are true.

PAR. 6. 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 10th day of December, A. D., 1935, issued and served its complaint in this proceeding upon respondents, Bernhart P. Holst, an individual trading under the name and style of Holst Publishing Company; Bertram P. Holst, manager for and agent of Bernhart P. Holst; C. M. Sellards, an individual trading under the name and style of Progressive Research Service, and as agent for respondent, Bernhart P. Holst; Charles U. Branch, an individual trading under the name and style of National Press Service and as agent of respondent, Bernhart P. Holst; S. R. Melching, an individual trading under the name and style of International Press Service and as agent of respondent, Bernhart P. Holst; 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 John W. Hildrop, attorney for the Commission, before W. W. Sheppard, an examiner for the Commission theretofore duly designated by it, and in opposition to the allegations of the Complaint by C. O. Switzer, attorney for respondents, Bernhart P. Holst, an individual trading under the name and style of Holst Publishing Company, and Bertram P. Holst; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the said Commission on the complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and briefs in opposition thereto by respondents, Bernhart P. Holst and Bertram P. Holst, and the oral arguments of John W. Hildrop, counsel for the Commission and Fred P. Risser, appearing and arguing the case for respondents Bernhart P. Holst, and Bertram P. Holst; 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 Bernhart P. Holst is an individual trading under the name and style of Holst Publishing Company, with his office and principal place of business located in Boone, Iowa. He is engaged in the business of publishing and selling a certain encyclopedia or reference work known and designated as "The Progressive Reference Library," including a loose-leaf extension service, to purchasers thereof located in various States of the United States other than Iowa. When said encyclopedias are sold by respondent, Bern-

hart P. Holst, he ships and causes them to be shipped from his place of business at Boone, Iowa, into and through the various States of the United States other than Iowa to the purchasers thereof located in said other States and in the District of Columbia.

Respondent Bertram P. Holst is likewise an individual residing and doing business in Boone, Iowa. He is an agent of, and manager for, respondent Bernhart P. Holst in the transaction and operation of the business of said Bernhardt P. Holst as hereinafter set out.

Respondent C. M. Sellards is an individual having his place of business at 365 Twenty-fifth Avenue, San Francisco, Calif. He trades and does business under the name and style of Progressive Research Service, and the conduct of the business as hereinafter set out, said respondent C. M. Sellards is an agent of respondent Bernhart P. Holst.

Respondent Charles U. Branch is an individual trading and doing business under the name and style of National Press Service, with his place of business at Room 516, Douglas Building, 257 South Spring Street, Los Angeles, Calif., and is also, in the conduct of the business hereinafter set out, an agent for respondent, Bernhart P. Holst.

Respondent S. R. Melching is an individual trading under the name and style of International Press Service, with his place of business located at Boone, Iowa, and in the conduct of the business hereinafter set out, he is likewise the agent for respondent Bernhart P. Holst.

PAR. 2. Respondent Barnhart P. Holst is the publisher of a certain ten-volume encyclopedia which is sold and distributed to the public from the place of business of respondent Bernhardt P. Holst at Boone, Iowa, into and through the various States of the United States of America other than Iowa, under the name of "The Progressive Reference Library." This encyclopedia was originally published in or about the year 1895 under the name "Teachers' and Pupils' Cyclopedia," and thereafter it was published and sold respectively under the name "New Teachers' and Pupils' Cyclopedia" and under the name "International Reference Work," but is now being sold, as aforesaid, as "The Progressive Reference Library." Although there have been some revisions and enlargement of the said reference work from time to time, it is substantially the same as when first issued, in or about the year 1895.

PAR. 3. Respondent Bertram P. Holst resides in Boone, Iowa, and in the sale and distribution of the said Progressive Reference Library in commerce among and between the various States of the United States acts in the capacity of business manager and agent for respondent Bernhart P. Holst, publisher of said Progressive Reference

Library. Respondent C. M. Sellards, trading under the name and style of Progressive Research Service, has his office and place of business in the city of San Francisco, Calif., and is engaged in the sale and distribution of the encyclopedia known and designated as "The Progressive Reference Library," in the State of California and in various States of the United States other than California. When said Progressive Reference Libraries are sold by said respondent C. M. Sellards, he ships and causes them to be shipped from his place of business in San Francisco, Calif., into and through States of the United States other than California, to the purchasers thereof located in such other States.

Respondent Charles U. Branch trading under the name and style of National Press Service has his office and place of business in the city of Los Angeles, Calif., and is engaged in the sale and distribution of the said "Progressive Reference Library" in the State of California and in divers States of the United States other than California. When said "Progressive Reference Libraries" are sold by said respondent Charles U. Branch, he ships and causes them to be shipped from his place of business in Los Angeles, Calif., into and through States of the United States other than California to the purchasers thereof located in such other States.

In the conduct of the said business of selling and distributing the said encyclopedia and reference work known and designated as "Progressive Reference Library," including the aforesaid extension service, the said respondent Bernhart P. Holst, being the publisher thereof at Boone, Iowa, furnished to the respondents C. M. Sellards and Charles U. Branch, the said "Progressive Reference Library," which they sell to the public by personal solicitation and through salesmen and sub-agents. For this "Progressive Reference Library" respondent Bernhart P. Holst receives from his co-respondents Sellards and Branch, \$12.50 per set, and respondents Sellards and Branch in turn sell said encyclopedia to the buying public at \$49.50 per set, in manner and form as hereinafter set out.

The respondents Sellards and Branch sell said "Progressive Reference Library" to the public through installment contracts and the purchaser executes a contract promising to pay the full sum of \$49.50 in monthly payments to the respective respondent making the sale. Such contracts, when signed and executed by the purchasers, are sent and transmitted by respondents Sellards and Branch to respondent Bernhart P. Holst at Boone, Iowa, and are by respondents Sellards and Branch assigned to respondent Bernhart P. Holst. Respondent Bernhart P. Holst, on receipt of such contracts, advances to respondents Sellards and Branch 60% of the face value of said

contracts and promissory notes. The contracts of purchase executed by the various purchasers are assigned as collateral security for the loan of 60% of the face value of such contracts. Whenever default is made by purchasers in the payments due under said contracts, the said respondent Bernhart P. Holst, personally and through respondent Bertram P. Holst, his manager and agent and through his attorneys, undertakes to collect the amount due from such defaulted purchasers under the claim and pretext that he, Bernhart P. Holst, is an innocent purchaser of said contracts for value in due course and without notice of any possible defenses to the said contracts.

This elaborate arrangement existing between and among respondents Bernhart P. Holst, Bertram P. Holst, C. M. Sellards, and Charles U. Branch, is a sham and a subterfuge, and in truth and in fact, respondents Bertram P. Holst, C. M. Sellards, and Charles U. Branch are agents for the principal respondent Bernhart P. Holst, in the sale and distribution in commerce, as herein set out, of the said "Progressive Reference Library"; respondent Bertram P. Holst is resident agent and manager at Boone, Iowa, for his principal, respondent Bernhart P. Holst; and they are all engaged as principal and agent in the hereinafter described acts of unfair competition in commerce as herein set out.

The method by which the respondents sell and offer for sale the said "Progressive Reference Library" is as follows: The respondents, either in person or by duly constituted and appointed agents, sub-agents, or salesmen, represent to the purchaser or prospective purchaser that he or she is on a preferred list, and that he or she will be given a ten-volume set of the said "Progressive Reference Library" free, and that this free offer is made to the purchaser or prospective purchaser on the ostensible ground that the purchaser or prospective purchaser has exceptional ability in his or her chosen trade, profession or avocation. It is then represented to said purchasers or prospective purchasers that in order to avail themselves of this alleged free offer, it is only necessary that they (1) write the publisher a letter of commendation after they have had an opportunity to study the books, and (2) subscribe to a ten-year loose-leaf extension service at a cost to the purchaser of \$49.50, which it is represented will keep the reference library current and up to date, for the payment of which sum the purchaser signs a contract in writing agreeing to pay by monthly or other payments.

The aforesaid representations and inducements are false and misleading as the respective purchasers do not receive the ten-volume set of "Progressive Reference Library" free and at no cost when they purchase the ten-year extension service and execute the contract in con-

nection therewith, and the respective purchasers were not selected for the offer of said "Progressive Reference Library" for the reason that they had exhibited exceptional ability in their chosen trade or profession or for any other similar reason. The aforesaid representations are made solely for the purpose of inducing the purchase of the said "Progressive Reference Library." In truth and in fact, the purchase price of said "Progressive Reference Library" is included in the amount purportedly charged for the ten-year extension service and the same offer is made to all prospective purchasers alike without regard to their having exhibited any particular ability in any particular trade or profession.

The respondents, in person and through their agents, subagents and salesmen, represent to purchasers and prospective purchasers that the said "Progressive Reference Library," published and sold as aforesaid by respondents, has been revised, enlarged, and brought down to date. In truth and in fact, while said "Progressive Reference Library" may contain some slight enlargements and revisions, yet to all intents and purposes it has not been materially revised and enlarged since it was originally published in or about the year 1895. When dissatisfied purchasers complain of this and other defects in said encyclopedia to the respondent making the sale, such dissatisfied purchaser is advised that his or her contract is in the hands of respondent Bernhart P. Holst, an innocent purchaser for value without notice, and payment is insisted on and the dissatisfied purchaser is threatened with legal action and is forced to pay therefor.

In the publication and sale of said "Progressive Reference Library" in commerce as herein described, the respondents, and each of them, are engaged in substantial competition with other individuals and with corporations, firms, partnerships, and associations who sell and distribute other encyclopedia and reference books in commerce as herein described and who do not represent that they are giving their respective sets of books free to the purchasers of an extension service or to the purchasers of any other service or books and who do not represent that their respective books have been revised, enlarged and brought up to date and who do not make other representations similar to those described herein when said representations are not true in fact but who accurately and truthfully represent the nature and character of their respective books and of the various services rendered by them in connection with the sale of said books.

PAR. 4. The acts and practices including the aforesaid misrepresentations and inducements of the respondents, and each of them, as detailed herein, have the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and

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mistaken belief that the misrepresentations above described and referred to were true and into the purchase of "Progressive Reference Library" and the extension service on account of such belief and on account of their reliance in the truthfulness of said representations. Many sales have been made by the respondents to purchasers who, induced by the representations herein described believed that in purchasing said extension service for the price of \$49.50 they were, as members of a limited or selected class, receiving free of charge the set of books "Progressive Reference Library" which was represented to be an enlarged, revised and up-to-date reference work. As a result thereof, trade has been unfairly diverted to all and each of the respondents from those competitors who do not make use of the same or similar misrepresentations in the offering for sale or sale of their respective encyclopedias and reference works.

There is no testimony or other evidence in this proceeding connecting respondent S. R. Melching with the acts of unfair competition in commerce alleged in the complaint.

CONCLUSION

The aforesaid acts and practices of the respondents, Bernhart P. Holst, an individual trading under the name and style of Holst Publishing Company; Bertram P. Holst, manager for and agent of Bernhart P. Holst; C. M. Sellards, an individual trading under the name and style of Progressive Research Service, and as agent for respondent, Bernhart P. Holst; and Charles U. Branch, an individual trading under the name and style of National Press Service and as agent of respondent, Bernhart P. Holst 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. Shepard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the said complaint and in opposition thereto, briefs filed herein, and oral arguments by John W. Hilldrop, counsel for the Commission, and by Fred Risser, counsel for respondents Bernhart P. Holst and Bertram P. Holst, and the Com-

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mission 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, Bernhart P. Holst, as an individual, and trading under the name and style of Holst Publishing Company; Bertram P. Holst, manager for and agent of Bernhart P. Holst; C. M. Sellards, an individual, and trading under the name and style of Progressive Research Service, and as agent for respondent Bernhart P. Holst; Charles U. Branch, an individual trading under the name and style of National Press Service and as agent of respondent Bernhart P. Holst; and said individuals trading under any other name or through any other means or any corporate device; their joint or respective representatives, agents and employees, in connection with the offering for sale, sale, and distribution of certain books or reference work now designated and sold under the name "Progressive Reference Library," together with a loose-leaf extension service, or substantially the same books or reference work designated and sold under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

(a) That the purchaser or prospective purchaser is being given or will be given a set of the said reference work now designated as "Progressive Reference Library" free by reason of the exceptional ability of the purchaser or prospective purchaser in his or her chosen trade, profession or avocation and standing in his or her community, or for any other reason;

(b) That any purchaser or prospective purchaser is on a preferred list to receive a ten-volume set of the said reference work now designated as "Progressive Reference Library" free;

(c) That the purchaser or prospective purchaser is being given or will be given a set of the reference work now designated as "Progressive Reference Library" free, on condition that such purchaser or prospective purchaser writes respondent a letter of commendation concerning the said reference work now designated as "Progressive Reference Library," after such purchaser or prospective purchaser has had an opportunity to study the same;

(d) That any purchaser or prospective purchaser is being given or will be given a set of the reference work now designated as "Progressive Reference Library" free, on condition that such purchaser or prospective purchaser subscribes to a ten-year loose-leaf extension service or any extension service covering any period of time;

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(e) That any purchaser or prospective purchaser is receiving, or will receive, any benefit, discount or concession, in any manner or form, or by any pretense; and that any purchaser or prospective purchaser, in paying the sum of \$49.50, is paying other than the usual selling price of said reference work now designated as "Progressive Reference Library";

(f) That the reference work now designated as "Progressive Reference Library" has been revised, enlarged and brought down to date, until and unless said reference work has in truth and in fact been substantially revised, enlarged and brought down to date;

(g) That Bernhart P. Holst, or any other of said respondents, or any other person, firm or corporation, is a bona-fide purchaser for value without notice of the contracts executed by purchasers in connection with the purchase of said reference work now designated as "Progressive Reference Library" and the accompanying extension service, when such is not the fact;•

(h) That the purchaser or prospective purchaser of said reference work now designated as "Progressive Reference Library" is only buying or paying for an extension service intended to keep the set of books up to date.

It is ordered, That the case growing out of the complaint hereinbefore issued on the 10th day of December, A. D., 1935, as to said respondent S. R. Melching be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same should the facts so warrant.

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.

Complaint

IN THE MATTER OF
IMPERIAL DISTILLERS 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 2395.—Complaint, May 17, 1935—Order, Jan. 14, 1937

Consent order requiring respondent corporation, its agents, etc., in connection with sale or offer in interstate commerce of whiskies, gins, and all other alcoholic beverages, but excepting gins produced by it through process of rectification of alcohol purchased, but not produced, by it, as specified, to cease and desist from representing, through use of word "Distillers" in its corporate name and on its stationery, advertising, etc., or in any other way, that it is a distiller of whiskies, gins, or other alcoholic beverages, or that said whiskies, etc., were by it made through process of distillation, or that it owns, operates, or controls a place where such products are thus made, unless and until it shall own, operate, or control 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 manufacture thereof is completed; and, Ordered further, That Count II of complaint as to violation of National Industrial Recovery Act be dismissed.

Mr. PGad B. Morehouse for the Commission.

Mr. Fred A. Caskey and *Mr. Briggs C. Simpich*, of Washington, D. C. and *Schmalzriedt, Frye, Granse & Frye*, 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 Imperial Distillers 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 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 Michigan, with its office

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

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and principal place of business in the city of Detroit in said State. It is now, and has been since its organization in 1934, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, cordials, 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 Detroit 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 Michigan, 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, 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, cordials 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 the use of the word "Distillers" in its corporate name, printed on its stationery, 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 said whiskies, gins, cordials, 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, cordials, 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 redistillation 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, 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, 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 rectifying, blending, and bottling whiskies, cordials, 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, cordials, 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

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capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the whiskies, cordials, 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, cordials, 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 Michigan, with its office and principal place of business in the city of Detroit in said State. It is now, and has been since its organization in 1934, engaged in the business of purchasing rectifying, blending, and bottling whiskies, gins, cordials, 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 Detroit 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 Michigan, 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, 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, cordials,

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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 allegations thereof were separately, by like numbered paragraphs, set out at length herein, and 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 of this count and are hereby charged as fully and as completely as though the several averments of each of the said paragraphs of count 1 were here 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 con-

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sumption 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.

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 Imperial Distillers Company, a corporation, respondent herein and

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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 the 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 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, Imperial Distillers Company, a corporation, its agents, salesmen, and employees, in connection with whiskies, gins, and all other alcoholic beverages by it in interstate commerce hereafter sold or offered for sale (except gins produced by it through a process of rectification whereby alcohols purchased but not produced by respondent are 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 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, 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 manufactured by the process of distillation, unless and until the said respondent shall own, operate or control a place of 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.

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.

IN THE MATTER OF
VONEIFF-DRAYER COMPANY¹

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

Docket 1724. Complaint, Nov. 21, 1929—Decision, Jan. 15, 1937

Where a corporation engaged in manufacture and sale of "straight" goods candy and of so-called "break and take" assortments, principal trade demand for which comes from the small retailers with stores, in many instances, near schools and patronized by school children, and sale and distribution of which, or of candy giving, with sale thereof to public, opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, largest class by far and principal consumers or purchasers of such type of 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 selling of which in the market of the other, i. e., the "straight" goods, has been followed by marked decrease in sales of such "straight" candy, due to gambling or lottery feature connected with so-called "break and take" merchandise—
Sold to wholesalers assortments composed of a number of penny pieces of chocolate covered candy of uniform size and shape, of which the centers of a relatively few were chocolate instead of white, and which the centers of a still smaller number, relatively were pink, together with a number of larger pieces and also a number of still larger pieces, to be given free of charge to those selecting, by chance, chocolate centers or pink centers, as the case might be, and together with explanatory display cards for retailers' use in offering same to public; so assembled and packed that such assortments were and might be displayed and sold by numerous retail dealer purchasers thereof, in accordance with above described plan and display cards, in practically all types of stores where candy is sold, and with knowledge and intent that such assortments might thus be displayed and sold by lot or chance to public by retail dealers as above set forth, 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 through resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with a means of violating laws of the several States, and some of whom, for such reasons, refuse to sell candy so packed and assembled that it can be resold to public by lot or chance;
With result that retailers, finding such candy more salable, purchased its products and those of others employing similar methods, some competitors began sale and distribution of candy for resale to public by lot or chance, "straight" goods sales of such refusing competitors, who can compete on even terms only by giving same or similar devices to retail dealers, showed a continued decrease in their unwillingness to do so, public and

¹ Original findings and order in this matter on April 3, 1934 (18 F. T. C. 280), were vacated and set aside on October 16, 1935. See footnote in 21 F. T. C. 745.

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competitors were prejudiced and injured, and trade was diverted to it from said competitors, and there was a restraint upon and detriment to the freedom of fair and legitimate competition in the industry concerned:

Held, That such acts and practices 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

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

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Maryland, with its principal office and place of business in the city of Baltimore in said State. It is engaged in the manufacture of candies and the sale thereof to wholesale dealers located at points in various States of the United States. It causes its said products when so sold to be transported from its said principal place of business in the city of Baltimore, Md., into and through other States of the United States to said vendees at their respective points of location. In the course and conduct of said business, respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture of candies and the sale and transportation thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business, respondent sells to aforesaid wholesale dealers certain packages or assortments of candies named and dominated by respondent "Vee-Dee." Said packages or assortments of candies are composed of three assortments, called respectively, "Bar Assortment," "Package Assortment," and "Blank Assortment." Each of said assortments of candies are composed of a number of chocolate covered pieces of candy, of uniform size and shape, which are sold at retail at the uniform price of one cent each, together with a number of larger pieces of candy known as "Bars" or "Patties," which are to be given as prizes to purchasers of said chocolate covered candies, in the following manner:

Among aforesaid chocolate covered candies are a number having colored centers, and when said packages of candies are displayed for

sale to the consuming public every purchaser of aforesaid chocolate covered candies at the price of one cent each who procures one of said candies having a colored center is entitled to receive, and is to be given free of charge, one of the "Bars" or "Patties" heretofore referred to. Also included in the assortments known as "Bar Assortment" and "Package Assortment" is a larger piece of candy known as a "Bar" or "Patty," and a 4-ounce box of chocolates, respectively. The purchaser of the last piece of aforesaid chocolate covered candies at the price of one cent each in each of said assortments of candies, respectively, is entitled to receive, and is to be given free of charge, said "Bar" or "Patty," or said 4-ounce box of chocolates. Aforesaid purchasers of said candies who procure candies having a colored center, or who purchase the last piece of candy in each of said assortments, are thus to procure one of said larger pieces of candy, or a box of 4-ounce chocolates, wholly by lot or chance.

The package or assortment of candies known as "Blank Assortment" contains a number of pieces having a colored center, as in the other two assortments aforesaid, but the larger pieces of candy which are to be given as prizes to purchasers of the candy having colored centers, are not supplied by respondent but are supplied to the retailer by the wholesale dealer to whom respondent sells the assortment, and such larger pieces of candy or prizes are wholly within the discretion of said wholesale dealer.

Respondent furnishes with each of said packages or assortments of candies called "Bar Assortment" and "Package Assortment," a display card to be used by the retailer in offering said candies for sale, which display card bears a legend and statement informing the reader that persons purchasing said candies having a colored center, and purchasing the last piece of candy in each of said assortments, will receive one of said larger pieces of candy free of charge.

PAR. 3. Aforesaid wholesale dealers of respondent resell said "Vee-Dee" Assortments to retail dealers in various States of the United States, and said retail dealers expose said assortments for sale in connection with aforesaid explanatory card and sell said candies to the purchasing public according to aforesaid plan, whereby the purchaser of said candies having colored centers and the purchaser of the last piece of candy in said assortments procure and receive free of charge one of said larger pieces of candy, or a 4-ounce box of chocolates, hereinbefore referred to. Respondent thus supplies to and places in the hands of others the means of conducting a lottery wherein said larger pieces of candy and 4-ounce boxes of chocolates are distributed and given to the purchasing public wholly by lot or chance.

PAR. 4. Among the purchasers of respondent referred to in paragraph 1 hereof, are many who sell chocolate and other candies at wholesale at reasonable wholesale prices, and who do not offer and place in the hands of others any additional candy or other merchandise to be given to purchasers by chance or otherwise. Respondent's aforesaid practices thus tend to and do induce many of the consuming public to purchase respondent's said candies in preference to the candies of respondent's said competitors, because of the chance of obtaining certain pieces of candy free of charge.

PAR. 5. For more than two years last past respondent has engaged in the acts and practices under the conditions and circumstances and with the results all hereinbefore set out.

PAR. 6. The above alleged acts and practices of respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in 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 21, 1929, issued and served its complaint in this proceeding upon the respondent, Voneiff-Drayer Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent filed answer thereto on December 26, 1929, and thereafter on March 28, 1934, filed a substitute answer dated February 28, 1934, consenting that the Commission might make, enter, issue and serve upon it an order to cease and desist from the practices complained of, after first having obtained leave to withdraw its answer filed on December 26, 1929. Subsequent thereto, on April 3, 1934, the Commission entered an order against respondent to cease and desist from the practices complained of in said complaint.

On October 16, 1935, the Commission entered and served its order vacating and setting aside the aforesaid order to cease and desist entered on April 3, 1934. 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. Respondent was not represented by counsel and

offered no testimony or other evidence in opposition to the charges of the complaint. Said testimony and other 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, answer of the respondent, the testimony and other evidence duly recorded and filed in the office of the Commission, respondent having indicated that it did not desire to file any brief nor to orally argue the matter, 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. Respondent, Voneiff-Drayer Company, is a corporation organized under the laws of the State of Maryland, with its principal office and place of business located in the city of Baltimore in said State. 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 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 the State of Maryland to purchasers thereof in Maryland and 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 are several assortments known and designated by respondent as "Vee-Dee." 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 number of still larger pieces of candy. These larger pieces of candy are given as prizes to purchasers of said chocolate covered candy of uniform size and shape in the following manner:

The majority of the said pieces of chocolate covered candy in said assortments have white centers, but a small number of said pieces of chocolate covered candy have chocolate centers and a still smaller number of said chocolate covered candy have pink centers. 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 pieces of candy

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having a chocolate center are entitled to receive, and to be given free of charge, one of the said larger pieces of candy heretofore referred to, and the purchasers who procure one of the said pieces of candy having a pink center are entitled to receive, and are to be given free of charge, one of the still larger pieces of candy heretofore referred to. The color of the center of 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 piece of candy selected broken open. The aforesaid purchasers of said candy, who procure a chocolate or a pink center, thus procure one of the said larger pieces of candy or one of the still larger pieces of candy wholly by lot or chance.

Respondent furnishes to said wholesale 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 legends informing the prospective purchaser that the said assortment is being distributed in accordance with the above described sales plan.

PAR. 3. The candy assortments involving the lot or chance feature, as described in paragraph 2 above, are generally referred to in the candy trade or industry as "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. 4. Numerous retail dealers purchase and have purchased the said assortments described in paragraph 2 above 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 in accordance with the above described sales plan and in accordance with the legends printed on the display card.

PAR. 5. The respondent sells its merchandise to wholesale dealers and jobbers in the various states of the United States. Respondent's assortments, both "straight" and "break and take," are resold in practically all types of stores where candy is sold.

PAR. 6. All sales made by respondent are absolute sales and respondent retains no control in any way over the goods after they are delivered to the wholesale dealer or jobber. The assortments are assembled and packed in such manner that they are and may be displayed by the retail dealer for sale and distribution to the purchasing public in accordance with the above described sales plan.

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 it may and can be resold to the public by retail dealers in the manner described.

PAR. 7. The sale and distribution of candy by the retail dealers by the method herein described is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact, that many competitors regard such 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. The retailers, finding that they can dispose of more candy by the "break and take" method, buy from respondent and others employing the same methods of sale and thereby trade is diverted to respondent and others using similar methods from said competitors. Said competitors can compete on even terms only by giving the same or similar device to retail dealers. This they are unwilling to do, and their sales of "straight" candy show a continued decrease.

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 its competitors and has resulted in the diversion of trade to respondent from said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 8. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments and who sell their "straight" candy in interstate commerce in competition with the "break and take" assortments of respondent and other manufacturers of similar candy. The sale of candy without a lottery or gaming feature in connection therewith is adversely affected by the sale of "break and take" candy, and manufacturers of the former

type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their market. This decrease in the sales of "straight" candy is principally due to the gambling or lottery feature connected with the "break and take" candy.

PAR. 9. The principal demand in the trade for the "break and take" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of school children. The consumers or purchasers of the lottery or prize assortments are principally children, and because of the lottery or gambling feature connected with the "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" 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 their sale. The sale and distribution of "break and take" 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. An officer of the respondent testified, and the Commission finds, that the gross annual sales of the respondent are approximately \$650,000. The evidence does not disclose how much of this annual business is "break and take" assortments nor how much is "straight" candy, but the evidence shows, and the Commission finds, that the "break and take" business of the respondent is and has been a substantial part of its total volume.

PAR. 11. The Commission further finds that the sale and distribution in interstate commerce of assortments 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, Voneiff-Drayer 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 complaint of the Commission, answer of the respondent, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, no testimony or other evidence 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 the respondent, Voneiff-Drayer Company, a corporation, its officers, representatives, agents, and employees, in the offering for sale, sale, and distribution in interstate commerce of candy, 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 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 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 assortment of candy for sale to the public at retail pieces of candy of uniform size and shape having centers of different color, together with larger pieces of candy, which said larger pieces of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

4. Furnishing to wholesale dealers and jobbers display cards, either with assortments of candy or separately, bearing a legend or legends 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 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
BANNER DISTILLING 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 2397. Complaint, May 18, 1935—Decision, Jan. 15, 1937

Where a corporation engaged as rectifier and wholesaler of spirituous liquors, in purchasing and bottling whiskies and gins and other spirituous beverages, including different grades of cordials made by it through combining fruit and fruit flavors with neutral spirits or whiskey, and purchasing, incident to its aforesaid business, its entire distilled spirits requirements of both whiskey and alcohol from distillers who produced same from the raw materials, and in selling its aforesaid various products at wholesale in constant course of trade and commerce among the various States and in the District of Columbia, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in selling same as aforesaid, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and in similarly selling same, and including among said competitors those who as manufacturers and distillers of whiskies, gins, and other spirituous beverages sold by them from mash, wort or wash as above set forth, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery, advertising, and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth—

Represented, through use of 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, together with the words "Bottled by" on some of its labels, "Produced in California and Bottled by" on others, "Prepared and Bottled by" on others, and "Made and Bottled by" on still others, and words "Rectifiers and Blenders" on its stationery, invoices and advertising matter, and through other ways to its customers, and furnished same with the means of representing to their vendees, both retailers and ultimate consuming public, 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 said whiskies, gins and other spirituous beverages, thus bottled, labeled, sold, and transported by it, by process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from word "Distilling" in liquor industry in the trade and by the ultimate purchasing public, and did not rectify, purify, or refine distilled spirits or wines by such process, and was not a distiller, for the purchase

¹ Count 2 of the complaint, under the National Industrial Recovery Act, dismissed by reason of decision in *A. L. A. Schechler Poultry Corp. v. U. S.*, 205 U. S. 495.

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of the bottled or packaged liquors of which, including gins, there is a preference on the part of a substantial portion of both liquor purchasing public and trade;

With effect of misleading and deceiving dealers and purchasing public into the belief 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 with capacity and tendency to induce such dealers and public, acting in such belief, to buy its said whiskies, etc., rectified, blended, and bottled by it, and thereby divert trade to it from its competitors who do not, by their corporate name or in any other manner, misrepresent that they are distilleries or that they manufacture, by distillation from mash, etc., as above set forth, whiskies, gins, 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. Addison*, trial examiner.

Mr. John J. Keenan and *Mr. PGad B. Morehouse* for the Commission.

Mr. Lawrence A. Jacobson, 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 Banner Distilling 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 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 Illinois, with its office and principal place of business in the city of Chicago, in said State. It is now, and has been since its organization in February 1934, 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

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its place of business 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 Illinois 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 "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 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 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 "Distilling" 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 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 word "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 product.

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

PARAGRAPHS 1. Respondent is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its office and principal place of business in the city of Chicago, in said State. It is now, and has been since its organization in February 1934, en-

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gaged 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 other States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Illinois 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.

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 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 Execu-

tive 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 "Distilling" 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 18, 1935, issued and served its complaint on Banner Distilling 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 respondents answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John J. Keenan and PGad B. Morehouse, attorneys 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 Lawrence A. Jacobson, 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 of counsel for the Commission in support of the complaint, (respondent's brief in opposition thereto having been waived) 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 February 5, 1934, existing under the laws of the State of Illinois with its principal office and place of business at 2100 South Morgan Street in the city of Chicago in said State. It is now and has been since its commencement of business shortly after its organization, operating as a rectifier and wholesaler of spirituous liquors, purchasing and bottling whiskies and 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. It engages in that business under basic permit No. R-422 issued by the Federal Alcohol Administration.

Respondent's premises consist of two floors and a basement of a four-story building at the above address. It has the usual filter percolators and whiskey tanks constituting the ordinary equipment of a rectifier of spirituous liquors, but has no stills. It combines fruit and fruit flavors with neutral spirits or whiskey for the purpose of making different grades of cordials and also handles whiskey made by different distilleries. Its aggregate business is approximately fifty-five thousand dollars a month in sales. It employs no salesmen but circularizes its customers with direct advertising matter. From the time when respondent commenced its business up to the present time it has purchased its entire distilled spirits requirements of both whiskey and alcohol from distillers who produced it from the raw materials.

PAR. 2. 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 other States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of Illinois 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. 3. 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 manufacture of spirituous 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. Respondent's plant premises and operations do not make or constitute it a distilling company in the sense commonly understood by the public or by the liquor industry. Section 3244 (Second) of the Revised Statutes of the United States (U. S. C. A., Title 26, Sec. 1398-f) defines a rectifier in the following language:

Every person who rectifies, purifies, or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort, or wash, through continuous closed vessels and pipes, until the manufacture thereof is complete, and every wholesale or retail liquor dealer who has in his possession any still or leach tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits, and every person who, without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine, or other liquor with any material, manufacture any spurious, imitation, or compound liquors for sale, under the name of whisky, brandy, gin, rum, wine, spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and as being engaged in the business of rectifying.

Respondent does not now and never has rectified, purified, or refined distilled spirits or wines by a process of original and continuous distillation from mash, wort, or wash through continuous closed vessels and pipes until the manufacture thereof is complete, and is a rectifier and wholesaler only.

PAR. 4. 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 some bottled liquors, whether bottled at a distillery rectifying plant, 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) 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-422" 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.

A distiller has a maximum bond of \$100,000, and is permitted to have untaxed liquor whereas the average bond of the rectifier is about \$5,000. A distiller is required either to own the free title of the premises upon which his business is conducted, or have a waiver of the owner's interest so that the Government can have a first lien upon that property for taxes. A distillery is under constant general supervision by storekeeper gaugers, who are always there and absolute supervision is maintained over the bonded warehouse of a distillery. Another difference is that one storekeeper gauger may take care of several rectifying plants, but at a distillery one is in constant supervision, primarily to supervise the tax payments. A rectifier is not permitted to store spirits in bond. A distiller produces spirits from grains, alcohol, molasses, and fruits, but a rectifier, producing no distilled spirits whatever, must obtain them from the producer or from someone holding warehouse receipts. In short, all requirements are considerably more detailed in the case of a distiller than in the case of a rectifier, viz:

A distiller must have a distillery, which must be a complete building and a warehouse, a separate building. He has to have necessary weighing equipment, a grain hopper, cooker, cooking equipment, mash tubs, fermenters, and sufficient distilling equipment to take

care of his continuous distillation until the spirits are run through the pipe lines into the receiving tanks. At the warehouse he has to have the weighing and testing instruments for checking and many other things. A rectifier is not required to have a separate building but his plant may consist of a room within a building. If one room, it would have to be divided into three separate rooms by partitions. The regulations for the equipment of a rectifier are not so specific as those for a distiller.

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.

PAR. 5. Respondent in the course and conduct of its business uses its name on labels attached to bottles in which it sells and ships its beverages and on stationery, invoices, and advertising matter. The name is preceded by the words "Bottled By" on some of its labels; "Produced in California and Bottled by" on others; "Prepared And Bottled By" on others; and "Made and Bottled By" on still others. On its stationery, invoices and advertising matter the name is preceded or followed by the words "Rectifiers And Blenders".

The Commission finds that 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, 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 said 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, not a distillery, does not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported in interstate commerce.

PAR. 6. Seventeen lay witnesses, representative of many different professions, trades, and occupations, such as surgeon, contractor, civil engineer, insurance agent, etc., were called to the stand and examined to test the reaction of a representative cross-section of the general public to such terms as "distilling," "distilleries," and "distillers" when used in connection with whiskey or the distilled spirits industry, and

all of them testified in substance that by "distilling" they understood the manufacture of spirits, whiskey, or liquors from raw materials; and by "Banner Distilling Company" they would naturally assume respondent to be engaged in such manufacturing process. All but two of them indicated that they would be influenced to purchase respondent's product by reason of the word "distilling" being included in its corporate name. The testimony of many liquor tradesmen, retailers, and wholesalers was substantially to the same effect, namely, that they had observed, from their contacts in selling the public, a definite preference for distillery packaged products. It is unquestionably true that there are many drinkers who, in buying liquors, are governed principally by a brand name established by advertising or by long usage, or who are governed by taste and quality which is known to them, without regard to the source of bottling. The Commission finds, however, that there is a substantial portion of the liquor purchasing public which prefers to buy spirituous liquors, including gins, which have been bottled or packaged by distilleries.

The Commission also finds that a substantial portion of the trade as well as the public has a preference for handling liquors bottled by distillers or distilling companies notwithstanding the fact that sufficient time has now elapsed since repeal for a more widespread knowledge on the part of both retailers and wholesalers as to the exact status of the concerns from whom they buy their bottled goods for resale and such customers and prospective customers of respondent are not likely to be misled by respondent's corporate name alone.

PAR. 7. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 2 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 names and on their stationery, 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 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. 8. The representations by respondent as set forth in paragraph 5 hereof have the capacity and tendency to, and by necessary inference do mislead and deceive dealers and the purchasing public into the

belief that the whiskies, gins, and other spirituous beverages sold by the respondent are distilled by it from mash, wort, and wash as aforesaid and have the capacity and tendency to induce such dealers and the purchasing public acting in such belief to purchase the whiskies, 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 distilleries, or that they manufacture by distillation from mash, wort, or wash as aforesaid, whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 9. The Commission's complaint in this case was issued prior to 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), 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 that reason the Commission is dismissing the complaint as to count 2 thereof.

CONCLUSION

The aforesaid acts and practices of the respondent Banner Distilling 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 John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief of counsel for the Commission filed herein, (brief on behalf of respondent having been waived), and oral arguments by P. B. Morehouse, counsel for the Commission, and by Lawrence A. Jacobson, 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

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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 Banner Distilling Company, a corporation, 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 "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 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 manufacturer 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.

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IN THE MATTER OF
A. O. LEONARD, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2855. Complaint, June 27, 1936—Decision, Jan. 15, 1937

Where a corporation engaged in manufacture, sale, and distribution of a product sold by it under trade name "Leonard Ear Oil" or "Leonard's Ear Oil"—Represented, through pamphlets, booklets, labels, statements on safety match box containers, and otherwise, that its said product was an ear oil and possessed such therapeutic properties as to relieve deafness, facts being it did not, used as directed or otherwise, accomplish such result and was not an ear oil;

With capacity and tendency to mislead and deceive purchasers of its products into the belief that in buying same they would obtain such oil and a product that possessed such therapeutic value as to relieve deafness, and with effect of causing a substantial number of the purchasing public to buy its said product on account of the mistaken and erroneous belief induced by its representation, and of unfairly diverting trade to it from many competitors engaged in manufacture and distribution of products designed for similar usage, and who do not misrepresent the capacities or effects thereof; to the substantial injury and prejudice 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. William C. Reeves*, trial examiner.

Mr. T. H. Kennedy for the Commission.

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 A. O. Leonard, 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 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. O. Leonard, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, and at all times herein referred to has maintained and now maintains its principal place of business at 70 Fifth Avenue, New York, N. Y. Respondent is, and for more than two years last past has been.

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engaged in the manufacture of a preparation composed of an emulsion of mineral oil, soft soap, glycerine, and eucalyptol, and has been engaged in the sale of said preparation under the trade name of "Leonard Ear Oil" between and among the various States of the United States and in the District of Columbia. During all of said time it has caused, and still causes, said product, when sold by it, to be transported from its place of business in New York, or other places within the United States, to purchasers thereof, some located in the State of New York and others located in the various States of the United States other than the State of origin of the shipment, and in the District of Columbia. In the course and conduct of its said business respondent is now, and for more than two years last past has been, in constant competition with other corporations, persons, firms, and partnerships engaged in the sale of products having properties, capacities, or effects claimed for the said "Leonard Ear Oil" by the respondent, as herein set forth, 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, described herein, respondent for more than two years last past has, by means of advertisements, testimonials, pamphlets, booklets, labels, statements on safety matchbox containers, and otherwise, represented, and still represents, that its said product is an ear oil and that its said product has such therapeutic properties as to relieve deafness.

Respondent has distributed said advertising matter, testimonials, pamphlets, booklets, labels, and statements on safety matchbox containers among its prospective customers and placed the same in the hands of its agents and distributors in various States of the United States for use by them in advertising its said product.

Said representations have been and are made by respondent in such a way that purchasers and prospective purchasers of respondent's product are led to believe that respondent's product is an ear oil and possesses such therapeutic properties as to relieve deafness.

In truth and in fact said representations have been and are untrue, and respondent's said product is not, nor has it ever been an ear oil, nor does respondent's said product have, nor has it ever had such therapeutic properties as to relieve deafness.

There is a preference by a substantial number of retail dealers in products having properties, capacities, and effects claimed by respondent for its product, as hereinabove described, and by a substantial part of the purchasing public for products that have the properties, capacities, or effects claimed by respondent for its product, as hereinabove set forth.

The aforesaid representations of respondent have had, and still have, a capacity and tendency to mislead and deceive, and have misled and deceived, and still mislead and deceive, retailers and the purchasing public into the erroneous belief that said product of respondent has all the properties, capacities, or effects claimed for it by the respondent, as aforesaid, and the use of said misrepresentations by the respondent causes them to purchase respondent's product in such erroneous belief. The aforesaid misrepresentations by the respondent have placed, and still place, in the hands of retailers of the product of respondent hereinabove described, the means of deceiving and misleading the purchasing public.

PAR. 3. There are among the competitors of respondent manufacturers and distributors of products having properties, capacities, or effects similar to those claimed by the respondent for its product, who truthfully represent the properties, capacities, or effects of their said products; and there are also among the competitors of respondent manufacturers and distributors who do not misrepresent the properties, capacities, or effects of their said products.

By the representations made by the respondent, as set out hereinabove, trade has been, and still is, unfairly diverted to the respondent from such competitors, and thereby substantial injury has been done and still is being done by respondent to competitors in interstate commerce.

PAR. 4. The above acts and things done by the respondent are all to the injury and prejudice of the public and 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 June 27, 1936, issued and on July 1, 1936 served its complaint in this proceeding upon the respondent A. O. Leonard, 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, 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 mate-

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rial allegations of the complaint to be true and waiving the taking of further evidence and all 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. For more than two years last past the respondent, A. O. Leonard, Inc., a corporation, has been organized and existing as a corporation under the laws of the State of New York, and has maintained during all of said time, and now maintains, its principal place of business at 70 Fifth Avenue, New York, N. Y.

PAR. 2. For more than two years last past the respondent has been engaged in the manufacture, sale, and distribution of a product sold by it under the trade name "Leonard Ear Oil," or "Leonard's Ear Oil." This product has been sold by the respondent to various firms, persons, associations, or corporations located not only in the State of New York, but in other States of United States, and after sales have been consummated the respondent has shipped the purchased goods, or caused them to be shipped from respondent's place of business in New York, or from other States, to purchasers thereof located in States other than the State of New York, or other than the State of origin of the shipment. The respondent has maintained a constant current of trade and commerce between and among various States of the United States and in the District of Columbia in the sale and distribution of its said product during all of the time referred to herein.

PAR. 3. The respondent, during all of the time herein referred to, has represented that its product, "Leonard Ear Oil," or "Leonard's Ear Oil," is an ear oil and possesses such therapeutic properties as to relieve deafness.

PAR. 4. There are other corporations, individuals, associations, and partnerships engaged in similar business to that of the respondent, to wit: the sale and distribution of products which will relieve deafness. Said other corporations, individuals, associations, and partnerships have been and are engaged in commerce among and between the various States of the United States in said business.

The respondent during all of the aforesaid time, was, and still is, in competition in such commerce in the sale of the said "Leonard Ear Oil," or "Leonard's Ear Oil" with such other corporations, individuals, associations, and partnerships likewise engaged in the sale and distribution of products having an efficacy similar to that claimed by the respondent for "Leonard Ear Oil," or "Leonard's Ear Oil."

PAR. 5. In soliciting the sale of its product respondent has continuously, during all of the aforesaid time, represented by pamphlets, booklets, labels, statements on safety-match box containers and otherwise, that its product is an ear oil and that said product possesses such therapeutic properties as to relieve deafness. These representations have been made through advertising mediums and otherwise, and have been caused by respondent to be circulated to customers and prospective customers residing in the various States.

PAR. 6. As a matter of fact, respondent's said product, "Leonard Ear Oil," or "Leonard's Ear Oil" when used as directed by the respondent or in any other manner does not relieve deafness, nor is said product an ear oil.

PAR. 7. There is a preference among members of the purchasing public, located in various States of the United States for an ear oil and for a product that possesses such therapeutic properties as to relieve deafness and the foregoing representations by the respondent describe a product that members of the public desire to purchase. The representations made by the respondent above referred to have the capacity and tendency to mislead and deceive the purchasers of its product into believing that when they purchase said product they will obtain an ear oil and a product that possesses such therapeutic properties as to relieve deafness.

PAR. 8. The representations of the respondent as aforesaid have had, and do have, the tendency and capacity and effect of causing a substantial number of the purchasing public to buy respondent's product on account of the mistaken and erroneous belief induced by respondent's representations.

PAR. 9. There are many of the competitors of respondent who manufacture and distribute products designed for similar usage to that sold and distributed by the respondent in various States of the United States, who do not misrepresent the capacities or effects of their products.

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 competition in commerce among and between the various States of the United States.

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CONCLUSION

The aforesaid acts and practices of the respondent, A. O. Leonard, 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 January 11, 1937, 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 A. O. Leonard, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a product designated as "Leonard Ear Oil," or "Leonard's Ear Oil" or any product of substantially the same composition and ingredients as that now sold by the respondent under the name of "Leonard Ear Oil," or "Leonard's Ear Oil" or under any other name in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that said product is an ear oil or that said product has such therapeutic properties as to relieve deafness or from making representations of similar import and effect.

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

CALIFORNIA ALFALFA PRODUCTS COMPANY, TRADING
AS ALVITA PRODUCTS COMPANY, AND GLENN B.
WILLIS, TRADING AS ALVITA PRODUCTS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2067. Complaint, Nov. 9, 1936¹—Decision, Jan. 19, 1937*

Where a corporation and an individual engaged in sale of various food products in which alfalfa was principal ingredient and which was sold under trade name "Alvita," and included among which was product described as "Alvita Tea"—

Represented, in extensive advertisements of their said last-named product, in various periodicals of interstate circulation, that said tea would supply possible nutritional deficiencies of the user and that it stood at the head of the vegetable list in mineral and vitamin potency, and that use thereof would supply proper alkaline nutrition to help build up vitality, and that thousands of satisfied customers had learned the secret how to revitalize nature's way with "Alvita Tea," which built up vitality and aided digestion and appetite and made the user strong and robust, and that it constituted a reliable and valuable food product composed of ingredients of great therapeutic value, use of which would accomplish results above indicated, and result in great healthful and therapeutic value and effect, the facts being principal ingredient thereof had no beneficial therapeutic value or effect, and use of the product would not accomplish the various results claimed therefor, as above indicated;

With effect of misleading and deceiving public into erroneous belief that said tea was, in truth and in fact, a valuable health food and that through use thereof healthful and therapeutic value and effect would be obtained, and of inducing the consuming public, acting in such erroneous belief, and especially that portion thereof which purchases health foods, to buy said tea in preference to other health products offered by manufacturers, retailers, and distributors, and of unfairly diverting thereby trade to such corporation and individual from such manufacturers, retailers, or distributors who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof:

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

Before *Mr. William C. Reeves*, trial examiner.
Mr. E. J. Hornibrook, *Mr. Everett F. Haycraft* and *Mr. Reuben J. Martin* for the Commission.

¹ Second amended and supplemental complaint.

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AMENDED AND SUPPLEMENTAL COMPLAINT¹

Whereas, the Federal Trade Commission did, to wit, on October 21, 1936, issue its amended and supplemental complaint herein charging and alleging that California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company was guilty of unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914; and

Whereas it now appears that Glenn B. Willis, an individual, is trading under the name and style of Alvita Products Company; and

Whereas this Commission having reason to believe that California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, and Glenn B. Willis, an individual trading under the name and style of Alvita Products Company, are and have 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:

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 California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, and Glenn B. Willis, an individual trading under the name and style of Alvita Products Company, have been and now are 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. The respondent, California Alfalfa Products Company, trading under the name and style of Alvita Products Company, is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business located in the city of Pasadena within the State of California. The respondent, Glenn B. Willis, is an individual trading under the name and style of Alvita Products Company with his principal office and place of business located in the city of Pasadena within the State of California. Said respondents are now and for more than two years last past have been engaged in the sale of vari-

¹ Extended quotation of representations, allegedly made by respondents in their advertisements with respect to their product, in Par. 3, may also be found in the findings, *infra*, at page 460, and is accordingly omitted from the complaint as published here in the interest of brevity.

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ous food products under the trade name of "Alvita," among which is "Alvita Tea," and in which said products alfalfa is the principal ingredient. Said respondents claim that their food product "Alvita Tea" has healthful and therapeutic value and effect. Said respondents are also engaged in the distribution of their said food product "Alvita Tea" in commerce between and among the various States of the United States. Said respondents cause said "Alvita Tea," when sold, to be transported to purchasers thereof located in the State of California and in various States of the United States other than the State of California. There is now and has been for a long time, to wit, more than two years last past, a constant current of trade and commerce by respondents in said food product "Alvita Tea" between and among the various States of the United States.

In the course and conduct of their said business, said respondents are now and for a long time, to wit, more than two years last past, have been in substantial competition in commerce between and among the various States of the United States with sundry other corporations, partnerships, firms, and individuals engaged in the interstate sale and distribution of other food products which it is claimed have healthful and therapeutic value and effect.

PAR. 2. The preparation "Alvita Tea" is manufactured for the said respondents and respondents' activities in connection therewith are restricted to packaging the said product "Alvita Tea" at their own plant and then distributing said product to retailers located in the various States of the United States.

PAR. 3. Said respondents, in the course and conduct of their said business, as hereinbefore set out in paragraphs 1 and 2, have been and now are engaged in extensive advertisements of their said food product "Alvita Tea" as a means of furthering and aiding in the interstate sale and distribution of said food product, and as media of such advertising they have been and now are using various magazines of interstate circulation. Said respondents also issue booklets and circulars describing their said food product "Alvita Tea" and the various alleged benefits to be derived from the use of the said "Alvita Tea."

Among the statements which said respondents have used and are now using in their advertisements in magazines and in their booklets and circulars distributed by them, are the following:¹

¹ Extended quotation of respondents' representations, as alleged, in advertisements, etc., calculated to create the false and erroneous belief that their said preparation is a reliable and valuable food product composed of ingredients of great therapeutic value, etc., and which follows at this point, is also set forth in the findings, *infra*, at page 460, and is accordingly omitted from the complaint as published in the interest of brevity.

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Said statements and representations used by said respondents in their said advertisements as hereinabove set out, and many other statements and representations of like import and tenor, which are not set out herein but have been used and are now being used by said respondents, have had and do now have the tendency to, and have and do now create upon the public the false impression and erroneous belief that "Alvita Tea" is a reliable and valuable food product composed of ingredients of great therapeutic value, the use of which will build up vitality, aid digestion, cause the user to become strong and robust, and will result in great healthful and therapeutic value and effect, whereas in truth and in fact it is not a reliable and valuable food product, composed of ingredients of great therapeutic value, and the use of it will not build up vitality, aid digestion, cause the user to become strong and robust and will not result in great healthful and therapeutic value and effect.

PAR. 4. The use by the said respondents, California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, and Glenn B. Willis, an individual trading under the name and style of Alvita Products Company, of the foregoing false, deceptive, and misleading representations has had and does now have the capacity and tendency to and does mislead and deceive the public into the erroneous and untrue belief that "Alvita Tea" is in truth and in fact a valuable health food and that by using the same, healthful and therapeutic value and effect will be obtained. Acting in such erroneous belief, the consuming public, and especially that portion of the public which purchases health foods, have been induced and are now induced to purchase "Alvita Tea" in preference to other health foods offered for sale by manufacturers, retail dealers and distributors. As a result of such false, deceptive, and misleading representations on the part of said respondents, trade is unfairly diverted to respondents from such manufacturers, retail dealers, or distributors of other health foods who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof.

PAR. 5. Said false, deceptive, and misleading representations of said respondents contained in their advertisements have resulted in injury to respondents' competitors and to retail dealers and in prejudice to the buying public and constitutes 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."

Findings

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 9, 1936, issued and on November 30, 1936, served its amended and supplemental complaint in this proceeding upon the respondent, California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, and upon the respondent Glenn B. Willis, an individual trading under the name and style of Alvita Products Company, charging said respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint an answer was duly filed by said respondents in the office of the Commission on December 11, 1936, which said answer admitted all the material allegations of the complaint to be true and waived 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 said 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 California Alfalfa Products Company, trading under the name and style of Alvita Products Company, is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office and place of business located in the city of Pasadena, within the State of California. The respondent Glenn B. Willis is an individual trading under the name and style of Alvita Products Company, with his principal office and place of business located in the city of Pasadena, within the State of California. Said respondents are now and for more than two years last past have been engaged in the sale of various food products under the trade name of "Alvita," among which is "Alvita Tea," and in which said products alfalfa is the principal ingredient. Said respondents claim that their food product "Alvita Tea" has healthful and therapeutic value and effect. Said respondents are also engaged in the distribution of their said food product "Alvita Tea" in commerce between and among the various States of the United States. Said respondents cause said "Alvita

Tea," when sold, to be transported to the purchasers thereof located in the State of California and in various States of the United States other than the State of California. There is now and has been for a long time, to wit, more than two years last past, a constant current of trade and commerce by respondents in said food product "Alvita Tea" between and among the various States of the United States.

In the course and conduct of their said business, said respondents are now and for a long time, to wit, more than two years last past, have been in substantial competition in commerce between and among the various states of the United States with sundry other corporations, partnerships, firms, and individuals engaged in the interstate sale and distribution of other food products which have healthful and therapeutic value and effect.

PAR. 2. The preparation "Alvita Tea" is manufactured for the said respondents and respondents' activities in connection therewith are restricted to packaging the said product "Alvita Tea" at their own plant and then distributing said product to retailers located in the various States of the United States.

PAR. 3. Said respondents, in the course and conduct of their said business, as hereinbefore set out in paragraphs 1 and 2, have been and are now engaged in extensive advertisements of their said food product "Alvita Tea" as a means of furthering and aiding in the interstate sale and distribution of said food product, and as a media of such advertising they have been and now are using various magazines of interstate circulation. Said respondents also issue booklets and circulars describing their said food product "Alvita Tea" and the various alleged benefits to be derived from the use of said "Alvita Tea."

Among the statements which said respondents have used and are now using in their advertisements in magazines and in their booklets and circulars distributed by them, are the following:

IS: Nutritional Deficiencies the cause of your ill Health?

If so, why deprive yourself of needed benefits?

Thousands of satisfied customers have learned the secret how to Re-vitalize Nature's way with "Alvita Tea". You, too, may have the privilege.

We got some alfalfa and ground it into flour and made some bread, using whole wheat and white flour with the alfalfa. One woman, a popular screen actress of the city, came back next day for another loaf of the bread, saying it was good for her constipation. Dickinson also made a fine candy using the extract of the alfalfa for the flavoring and it seemed to make the candy different, that is more easy to digest.

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I gave a quantity of the tea to a boarding house lady to try on her unsuspecting boarders. They drank it without comment, noticing no difference in the taste of the new tea from the old, but in a few days the boarders began to eat. My, how the appetites began to increase. * * *

My attorney friend, Arthur Helliwell, was advised by five doctors in a consultation over his case, to quit his practice and retire to his farm. He might live a year they said. I gave him the tea and the third night he continued his practice in the city.

In St. Paul I met a young newspaper man. He volunteered to have his wife, an expectant mother, use the tea to see what effect it would have on the unborn child. For four months, the mother drank copiously of the tea. A baby was born and it was a wonder child. Its bones were strong, with a large frame, and there was a perfectly normal delivery on the part of the mother. As long as the baby nursed, the mother continued to drink the tea and she had a great abundance of rich milk upon which the child thrived without the usual troublesome times of nursing babies.

There are also several alkaline salts in this alfalfa ash, which, when combined, make a wonderful neutralizant for any condition of the body. They are necessary for growth and are prescribed for many ailments of mankind.

The alfalfa plant also contains a large percentage of the Enzymes or digestive ferments which aid digestion. These ferments join forces with the Vitamins so as to greatly aid in the assimilation of foods and increase the vitality of both man and beast.

The soil, climate and different cuttings bring out a variety of flavors and difference in food and medicinal values.

Nature intends that men, women and children should be strong, robust and enjoy life. Consequently Nature provides in abundance all the elements needed in Natural Foods.

Alvita Tea, comparatively speaking, stands at the head of the Vegetable List in Mineral and Vitamin Potency.

This "Alvita" book has been prepared so that you may know to what extent we have developed the therapeutic value of the Alfalfa Plant.

Already thousands of satisfied customers have learned the secret of insuring proper alkaline nutrition to help build Vitality.

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Protein is the only material that can build living cells of the body and as cells wear out, they can be restored only by protein.

Comparative Protein Table Alfalfa With Some of our Other Foods

	<i>Protein</i>
Alfalfa.....	19.90
Milk.....	3.30
Whole Wheat.....	13.80
Beef.....	16.50
Eggs.....	13.10
Corn Meal.....	9.20

With a strong alkaline reserve you have one of the best Body Builders.

A Few Alkaline Forming Foods

Alvita Tea.....	130.42
Beans, Dried.....	18.00
Carrots.....	10.82

and others.

Said statements and representations used by said respondents in their said advertisements as hereinabove set out, and many other statements and representations of like import and tenor, which are not set out herein but have been used and are now being used by said respondents, have had and do now have the tendency to, and have and do now create upon a portion of the public the false impression and erroneous belief that "Alvita Tea" is a reliable and valuable food product composed of ingredients of great therapeutic value, the use of which will build up vitality, aid digestion, cause the user to become strong and robust, and will result in great healthful and therapeutic value and effect. In truth and in fact said product is not a reliable and valuable food product, composed of ingredients of great therapeutic value. The use of said product, "Alvita Tea," will not build up vitality, aid digestion, or cause the user to become strong and robust and will not result in great healthful and therapeutic value and effect. Alfalfa, the principal ingredient of said product, has no beneficial therapeutic value or effect.

PAR. 4. The use by the said respondents, California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, and Glenn B. Willis, an individual trading under the name and style of Alvita Products Company, of the foregoing false, deceptive and misleading representations has had and does now have the capacity and tendency to and does mislead and deceive the public into the erroneous belief that "Alvita Tea"

Order

is in truth and in fact a valuable health food and that by using the same, healthful and therapeutic value and effect will be obtained. Acting in such erroneous belief, the consuming public, and especially that portion of the public which purchases health foods, have been induced and are now induced to purchase "Alvita Tea" in preference to other health foods offered for sale by manufacturers, retail dealers and distributors. As a result of such false, deceptive and misleading representations on the part of said respondents, trade is unfairly diverted to respondents from such manufacturers, retail dealers or distributors of other health foods who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof.

CONCLUSION

The aforesaid acts and practices of the respondent California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, and of the respondent Glenn B. Willis, an individual trading under the name and style of Alvita Products, 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 amended and supplemental complaint of the Commission and the answer filed herein on December 11, 1936, by the 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 California Alfalfa Products Company, a corporation trading under the name and style of Alvita Products Company, its officers, representatives, agents and employees, and the respondent Glenn B. Willis, an individual trading under the name and style of Alvita Products Company, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of the product called "Alvita Tea," or of any other

product of substantially the same ingredients, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That respondents' said product is a reliable and valuable food product composed of ingredients of great therapeutic value;
2. That the use of respondents' said product will build up vitality;
3. That the use of respondents' said product will aid digestion;
4. That the use of respondents' said product will cause the user to become strong and robust;
5. That the use of respondents' said product will result in great healthful and therapeutic value and effect;
6. That the respondents' said product will supply nutritional deficiencies;
7. That thousands of customers have learned the secret how to revitalize Nature's way with the respondents' said product;
8. That the use of respondents' said product will increase the appetite;
9. That the respondents' said product stands at the head of the vegetable list in mineral and vitamin potency;
10. That the use of respondents' said product will supply the proper alkaline nutrition to help build up vitality;
11. That respondents' said product forms a competent and satisfactory cure or remedy or has beneficial therapeutic effects in the treatment of any ills, diseases, maladies, or conditions of the human body; and
12. 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 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

NEET, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2716. Complaint, Feb. 7, 1936—Decision, Jun. 19, 1937*

Where a corporation engaged in manufacture, distribution, and sale of a depilatory known as "Neet", in widely advertising its said product in newspapers and periodicals of general circulation and in display cards, advertising folders, and literature printed and circulated by it throughout the several States to customers and prospective customers—

- (a) Represented that by careful laboratory control its alkalescence had been so regulated that it never approached causticity, facts being that, while not generally caustic when applied according to its directions, to those portions of the body recommended for treatment with said product for removal of superfluous hair, there are a number of persons whose skin is more susceptible to irritation than that of others and in case of whom it might have caustic effect, as it might also, not applied as directed;
- (b) Represented that use of said product discouraged growth of hair and delayed its appearance for a material length of time, and that hair was much slower in returning and regrowing than when shaved, facts being hair regrowing after use thereof is no slower in returning, etc., than after shaving, allowance made for action of preparation in removing hair farther below surface of skin than razor, and consequent greater delay in reappearance;
- (c) Represented that shaving stimulates hair growth, and that hair returning or regrowing after use of its said product is softer and less than that returning or regrowing after shaving, facts being former is no softer or less coarse than latter, though regrowth with rounded end and less coarse feeling may result from dissolving process thereof;
- (d) Represented that its said product gave results unlike other methods of hair removal, and that it was not an ordinary hair remover, and ended enlarged pores which shaving tended to cause, and would permanently eradicate hair, facts being shaving does not cause such enlarged pores, nor does use of its said product end same, and aforesaid various representations were false; and
- (e) Falsely represented that its said product was used by surgeons to remove hair before operating;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into the erroneous belief that all said representations were true, and into purchase of a substantial volume of its said product on account of such beliefs, and with result that trade was diverted to it from those engaged in manufacturing, distributing, and selling depilatories or other products designed, intended and sold for purpose of removing superfluous hair, and who truthfully advertised same and effectiveness thereof; to the 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. John J. Keenan*, trial examiner.

Mr. J. T. Welch for the Commission.

Mr. Edward S. Rogers and *Mr. H. H. Ramsay*, of New York City, and *Rogers, Woodson & Rogers*, 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 Neet, 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, Neet, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located in the city of Chicago, State of Illinois. 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 depilatory known as "Neet."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said depilatory, when sold, to be transported from its office and principal place of business in the State of Illinois to purchasers thereof located in various points in other States of the United States and in the District of Columbia and there is now, and has been at all times since the organization of respondent corporation, a constant current of trade and commerce in said depilatory 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 its said business, respondent is now, and has been, in substantial competition with other corporations, firms, and individuals likewise engaged in the business of manufacturing, distributing and selling depilatories or other products designed, intended, and sold for the purpose of removing superfluous hair, 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 individuals, firms, and corporations to purchase said depilatory, respondent has caused advertisements to be inserted

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in newspapers and magazines of general circulation throughout the United States and has printed and circulated throughout the several States to customers and prospective customers, through the United States mails and otherwise, display cards, advertising folders, and literature, in all of which advertisements respondent has caused its corporate name to be prominently and conspicuously displayed, together with the following statements:

Its job is to remove hair and to delay its reappearance indefinitely and to relieve women of the highly stimulated growth of hair bristles, following shaving, that thousands of women are suffering today.

It gives results unlike any other method known to the scientific world in hair removal.

Not an ordinary hair remover.

The hair that regrows after using "Neet" is many times softer and less coarse than the hair that comes back after shaving and the hair itself is much slower in returning.

"Neet" ends, too, the disfigurement of enlarged pores.

By careful laboratory control, the alkalescence of "Neet" is regulated so that its pH never approaches causticity.

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 its advertising literature, respondent represents, through statements and representations herein set out and other statements of similar import and effect, that (1) its product is not caustic; (2) that its product discourages growth of hair, delays its reappearance for a material length of time and that the hair is much slower in returning or regrowing than when the hair is shaved; (3) that shaving stimulates hair growth; (4) that the hair returning or regrowing after using "Neet" is softer and less coarse than the hair returning or regrowing after shaving; (5) that its product gives results unlike other methods of hair removal and that its product is not an ordinary hair remover; (6) that its product ends enlarged pores and that shaving tends to cause enlarged pores; (7) that its product will permanently eradicate hair and (8) that many surgeons use its product to remove hair from patients before operating.

PAR. 5. The representations made by the 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, the product is caustic, particularly when the product is introduced into the eye; it does not discourage the growth of hair or delay its reappearance for any material length of time and the hair is not appreciably slower in returning or regrowing than it is following

shaving or following the use of other methods of hair removal. Shaving does not stimulate hair growth and the hair that returns after using "Neet" is not softer and less coarse than the hair that regrows following shaving. The product known as "Neet" does not give results unlike other methods of hair removal but the results given are similar to those given by many other depilatories and respondent's product is an ordinary hair remover. Shaving does not cause enlarged pores and the use of respondent's product does not end enlarged pores, nor will it permanently eradicate hair. Surgeons do not use respondent's product for the purpose of removing hair from patients before operating.

PAR. 6. There are among respondent's competitors many who manufacture, distribute and sell depilatories or other products designed, intended, and sold for the purpose of removing superfluous hair and who do not in any way misrepresent the quality or character of their respective product or its effectiveness in removing said hair growth.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designating or describing its product and the effectiveness of said product for removing hair, as hereinabove set out, in its advertising in newspapers, magazines, booklets, pamphlets, display cards, and other advertising literature, in offering for sale and selling its 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 substantial number of the consuming public has purchased a substantial volume of respondent's depilatory with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of manufacturing, distributing, and selling depilatories or other products designed, intended, and sold for the purpose of removing superfluous hair, and who truthfully advertise 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 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 February 7, 1936, issued and served its complaint in this proceeding upon respondent Neet, 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 J. T. Welch, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by James H. Rogers, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent's counsel, Rogers, Woodson & Rogers and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as facts in this proceeding in addition to the testimony theretofore taken and that the said Commission may proceed upon said statement of facts and upon the testimony and evidence taken 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, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence and said stipulation as to the facts, said stipulation having been approved and accepted by the Commission, 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, Neet, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey. Its principal office and place of business is lo-

cated in the city of Chicago, State of Illinois. For some years the respondent has been engaged in the business of manufacturing, distributing, and selling a certain depilatory known as "Neet." When orders are received for said depilatory, respondent ships said product so purchased from its principal place of business in the State of Illinois to the respective purchasers thereof located at various points in other States of the United States and in the District of Columbia. Respondent, has, at all times, maintained a constant current of trade in commerce in said depilatory manufactured, distributed, and sold by it between and among the various States of the United States and in the District of Columbia. There are likewise other corporations, firms, and individuals engaged in the business of manufacturing, distributing, and selling depilatories or other products designed, intended, and sold for the purpose of removing superfluous hair, in commerce among and between the various States of the United States and in the District of Columbia. Respondent, Neet, Inc., is in substantial competition in the sale of its product "Neet" with said other corporations, firms, and individuals in the sale of their respective products.

PAR. 2. For the purpose of inducing the purchase of its depilatory, respondent has widely advertised said product in advertisements inserted in newspapers and magazines of general circulation throughout the United States. It has also printed and circulated throughout the several States, to customers and prospective customers, display cards, advertising folders, and literature. In all of the advertisements and advertising matter hereinabove mentioned, respondent has caused its corporate name to be prominently and conspicuously displayed, together with such statements as the following:

Its job is to remove hair and to delay its reappearance indefinitely and to relieve women of the highly stimulated growth of hair bristles, following shaving, that thousands of women are suffering today.

It gives results unlike any other method known to the scientific world in hair removal.

Not an ordinary hair remover.

The hair that regrows after using "Neet" is many times softer and less coarse than the hair that comes back after shaving and the hair itself is much slower in returning.

"Neet" ends, too, the disfigurement of enlarged pores.

By careful laboratory control, the alkalescence of "Neet" is regulated so that its pH never approaches causticity.

The statements above set out, together with many similar statements appearing in respondent's advertising literature, purport to be descriptive of its product. Through these statements and other similar statements of similar import and effect, the respondent represents that (1) its product is not caustic; (2) that its product discourages

growth of hair, delays its reappearance for a material length of time and that the hair is much slower in returning or regrowing than when the hair is shaved; (3) that shaving stimulates hair growth; (4) that the hair returning or regrowing after using "Neet" is softer and less coarse than the hair returning or regrowing after shaving; (5) that its product gives results unlike other methods of hair removal and that its product is not an ordinary hair remover; (6) that its product ends enlarged pores and that shaving tends to cause enlarged pores; (7) that its product will permanently eradicate hair and (8) that many surgeons use its product to remove hair from patients before operating.

PAR. 3. In truth and in fact, the product designated as "Neet" is not generally caustic when applied according to respondent's directions to those portions of the body recommended to be treated with said product for the removal of superfluous hair. There are a number of persons whose skin is more susceptible to irritation than that of others. The product "Neet" might have a caustic effect when applied to the skin of such persons. It might, also, have a caustic effect when not applied in accordance with the respondent's directions.

The product is caustic to such sensitive portions of the body as the eyes, but is not normally applied to the eyes and is introduced into them only in cases of misapplication. In many cases, the product may produce a sufficient dermatitis to result in a redness of the skin in the area treated, but this dermatitis is not generally of such a character as to be considered a caustic burn.

"Neet" does not discourage the growth of hair and does not delay its reappearance for any material length of time. The hair regrowing after the use of said product is no slower in returning and regrowing than when the hair has been shaved, except that when the hair is removed by the use of said product, it is generally taken off farther below the plane of the surface of the skin than when the hair is removed with a razor. In shaving the hair, the stalk of the hair is generally cut off at a point in line with the plane of the skin surface. In the removal of hair by the respondent's process or any process similar thereto, the product, to some extent, goes down into the pores and dissolves the stalk of the hair below the plane of the skin surface. To the extent that the product goes below the plane of the skin surface in dissolving the hair stalk, the hair will be delayed in reappearing above the plane of the skin surface.

There is no scientific basis for the statement or representation that shaving stimulates the hair growth or causes the regrowing hair to

come in faster or coarser. In fact, the shaving of superfluous hair has no effect whatever on the texture or rate of growth of the regrowing hair.

The hair returning or regrowing after the use of "Neet" is no softer or less coarse than the hair returning or regrowing after shaving. By reason of the process by which respondent's product dissolves the hair stalk rather than chopping it off, the hair regrowing or returning after the use of said product may have a rounded end with the result that the returning or regrowing hair feels less coarse.

The use of respondent's said product does not give results unlike other methods of hair removal. On the contrary, the use of the product gives results similar to the results given by other methods of hair removal and respondent's product is an ordinary hair remover.

Shaving does not cause enlarged pores in the skin and the use of respondent's product does not end enlarged pores. In fact, the use of respondent's product will have no effect whatever on the size or character of the pores of the skin.

Respondent's product will not permanently eradicate hair and its use has no effect whatever on the roots of the hair.

Surgeons do not, in fact, use respondent's said product to remove hair from patients before operating on said patients.

PAR. 4. There are among respondent's competitors many who manufacture, distribute and sell depilatories or other products designed, intended and sold for the purpose of removing superfluous hair and who do not in any way misrepresent the quality or character of their respective product or its effectiveness in removing said hair growth.

PAR. 5. The various statements and representations made by the respondent in describing its product and the effectiveness of said product in use had, and now have, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and into the purchase of a substantial volume of respondent's depilatory on account of such beliefs induced by respondent's representations contained in its various advertisements. As a result thereof, trade has been diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of manufacturing, distributing and selling depilatories or other products designed, intended, and sold for the purpose of removing superfluous hair, and who truthfully advertise their products and the effectiveness of said products when used. As a consequence thereof, injury has been, and is now being, done by respondent to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Neet, 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 respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto and upon a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, Chief Counsel for the Commission, 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, Neet, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a depilatory product now known and designated as "Neet," or of a product of substantially the same composition and ingredients sold under the name "Neet" or under any other name, in interstate commerce or in the District of Columbia do forthwith cease and desist from representing:

1. That its product is not caustic, provided that the respondent is not hereby prohibited from representing the said product is not generally caustic;

2. That the use of said product discourages the growth of hair and delays its appearance for a material length of time and that the hair is much slower in returning and regrowing than when it is shaved, provided that the respondent is not hereby prohibited from representing that the hair returns more slowly when removed by respondent's product than when removed by a razor to whatever extent said product penetrates into the pores below the plane of the surface of the skin and dissolves the hair stalk;

3. That shaving stimulates hair growth;

4. That the hair returning or regrowing after using its product is softer and less coarse than the hair returning or regrowing after

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shaving, provided that the respondent is not hereby prohibited from representing that the hair returning or regrowing after using its product feels less coarse on account of the rounded end thereof;

5. That its product gives results unlike other methods of hair removal and that its product is not an ordinary hair remover;

6. That its product ends enlarged pores or that shaving tends to cause enlarged pores;

7. That its product will permanently eradicate hair;

8. That its product is used by surgeons to remove hair before operating.

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
RALADAM COMPANY

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

Docket 2406. Complaint, July 15, 1935¹—Decision, Jan. 21, 1937

Where corporation engaged in offer and sale of weight reducing preparation "Marmola," in substantial competition with others engaged in sale and distribution of medicines, preparations, systems, methods, books of instruction, and other commodities, articles, and means, designed, intended, and used for aforesaid purpose; in promoting sale of said product, active reducing ingredient of which was desiccated thyroid, through advertisements in newspapers and periodicals of general circulation, radio broadcasts, booklets and printed matter and other means—

- (a) Represented that thyroid deficiency was a common cause or the usual cause of obesity or excess fat, and that if a person was overweight it was an indication of such deficiency, and that thyroid should be taken for reducing purposes, facts being most cases of obesity or excess fat are caused by incorrect habits of eating, and only a very small percentage of the total number of cases of obesity are endogenous obesity, in which are included cases resulting from thyroid deficiency, only one qualified by training and experience can determine with any degree of certainty whether case of obesity is result of aforesaid deficiency, and, if so, whether physiological condition of patient is such as to make advisable use of desiccated thyroid, and dosage, and patient taking such substance should be observed and examined at regular intervals by one trained and experienced in such work to determine effects of such procedure, and whether symptoms are apparent indicating possible harmful results or if treatment should be continued further;
- (b) Represented that all modern physicians use such reducing ingredient in its said preparation for treatment of obesity, and that if a prospective purchaser of said preparation were to consult a specialist in obesity he would probably prescribe said ingredient, and that such medication in treating obesity generally is supported by opinions of physicians and scientists the world over, and that physician of prospective purchaser would probably employ same medication, facts being that while, generally speaking, desiccated thyroid is indicated in treatment of obesity occasioned by thyroid deficiency, it is usually only one feature of treatment in such cases, and, while used by many physicians in treatment of such cases, it is not used in others by reason of various pathological conditions which may inhibit administration of such preparation;
- (c) Represented and indicated that its said preparation, or desiccated thyroid, active ingredient thereof, was remedy indicated in and best suited for treatment of obesity or reduction of excess fat in great multitude of such cases, and in average case, and for all persons who are overweight or who wish to reduce, and that such preparation or active ingredient thereof feeds and

¹ Amended.

stimulates the thyroid gland, taken internally, and restores it to normal condition and thus removes cause of obesity or excess fat, facts being that desiccated thyroid is suitable to be taken for reducing purposes only in small proportion of cases and only then under conditions and limitations, not explained and set forth by it, as hereinbefore noted, and said substance does not, as thus represented, feed thyroid gland, etc., but merely acts as a supplement to secretion supplied thereby;

- (d) Represented and implied that certain tables of weights of persons of heights and ages therein indicated, and which it published and circulated, indicated for prospective purchaser of its said preparation his or her correct weight, which should be attained by taking its said preparation, and that any weight in excess thereof was due to abnormal excess fat, and that such table should be used as guide, facts being said tables were not of correct or normal weights, but merely of average weights, and could not be depended upon by average lay person as safe and accurate guide as to his or her weight at a given height and age, many persons whose weights are correct and normal for them vary in weight from such aforesaid figures, many who are overweight by such comparison do not have surplus or excess fat in their physical makeup, and preparation in such cases should not and could not be used without danger of injury to health; and
- (e) Represented and implied that it made a complete and true disclosure of all material facts respecting said preparation and its properties and effects, as well as those of the ingredients thereof, notwithstanding fact it failed to disclose that desiccated thyroid constitutes a powerful and dangerous drug or product, used internally for reducing, and one which attacks and oxidizes or burns not only fatty, but all, body tissues, small proportion of cases of obesity are caused by thyroid deficiency, many people are so constituted that they may not use such preparation safely for physical health, and numerous other facts hereinbefore indicated with respect to true nature and functioning of said preparation and very limited need thereof and necessity for its use and administration under competent medical supervision and observation;

With tendency and capacity to mislead and deceive public and prospective purchasers of said preparation and purchasers and users thereof into erroneous beliefs that such statements and representations were true, facts hereinbefore referred to as not disclosed by it were not true or nonexistent, all cases of obesity were caused by thyroid deficiency, and "Marmola" was indicated as treatment in all such cases and might be used therein without fear of harm, and that it, or desiccated thyroid, its effective reducing medium, was prescribed and used by all modern physicians, etc., in such cases regardless of cause or origin, etc., and that its said preparation was superior to all other remedies, systems, etc., offered and sold for effecting reduction of weight, and to confuse, mislead, and deceive members of public in aforesaid respects, and induce them to purchase and use its said preparation or medicine for reducing purposes because of such erroneous beliefs thus engendered, in preference to and to the exclusion of the products of competitors, and to divert trade to it from competitors engaged in sale in interstate commerce of medicines, preparations, systems, etc., for reducing, and including among their number those who do not make same or similar misleading representations in regard to their products, or otherwise misrepre-

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sent the same, and with effect of diverting business to it from its said 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. John W. Norwood*, trial examiner.

Mr. E. J. Hornibrook and *Mr. Harry D. Michael* for the Commission.

Butzel, Eaman, Long, Gust & Bills, of Detroit, Mich., for respondent.

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 the Raladam Company, a corporation, 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Raladam Company, is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its office and principal place of business in the city of Detroit, in the State of Michigan.

PAR. 2. Respondent is engaged in offering for sale and selling a certain medical preparation, which it offers for sale and sells under the name and designation of "Marmola." Marmola is put up in tablet form and is to be sold to, and taken orally by, human beings who are afflicted with obesity, or whose bodies carry abnormal excessive fat, or whose bodies are, or are believed by them to be, over-weight as compared with their correct, natural, or normal weight, or who for any reason desire to reduce the weight of their bodies and to rid their bodies of some portion of the bodily tissues and weight which such bodies have or carry.

Respondent sells Marmola to wholesalers and jobbers of drugs located in the several States of the United States, who sell the same to retail druggists, who in turn sell the same to the consuming public which is made up of members of the laity. Respondent, when Marmola is so sold by it, causes the same to be transported from said city of Detroit, in the State of Michigan, into and through the several States of the United States and the District of Columbia to said purchasers thereof at their respective places of business located in said several States and in the District of Columbia.

PAR. 3. 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, or other means of treatment for obesity, abnormal excessive fat, body weight in excess of that which is correct, natural or normal, or of ridding human bodies of some portion of the fat, other bodily tissues and weight which such bodies have or carry. Said other persons, partnerships, associations, and corporations have been and are engaged in so offering for sale and selling their said products in said commerce in competition with respondent's said Marmola. Respondent has been and is in substantial competition with them all in so offering for sale and selling Marmola in said commerce as above alleged.

PAR. 4. Since April 17, 1929, respondent, in aid of so offering for sale and selling Marmola in said commerce between and among the several States of the United States and the District of Columbia, has advertised the same in newspapers, magazines, and periodicals of general circulation, by means of radio broadcasts and 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 the boxes in which said Marmola is packed 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 implication made, and makes, each and all of the statements and representations hereinafter set forth and alleged.

PAR. 5. Marmola is a product made up of several ingredients, the formula thereof being printed by respondent in circulars, booklets, and other advertising media above enumerated. The active principle incorporated in said product and the ingredient thereof that is powerful and is effective in ridding human bodies of portions of the fat, other bodily tissues and weight which they have, or carry, is dessicated thyroid. The reducing effect produced by the use of Marmola as a treatment to be taken orally is substantially the effect of, and that produced by, dessicated thyroid, which is hereinafter referred to as thyroid.

Dessicated thyroid is made from the thyroid glands of animals such as the sheep, cow, pig, and goat. It is a powerful and dangerous drug. When given to a patient, it increases the burning within the body of the fat, other tissues, and the food. By speeding up the

oxidizing and burning processes of the body, dessicated thyroid, when taken, tends to cause a loss of fat. The thyroid gland in the human body controls the combustion of food in the body. It turns portions of food into fuel and energy. Dessicated thyroid taken into the body performs the like function and increases such combustion, turning food into fuel and energy. The use of thyroid taken as an internal remedy always increases within the body the burning up or consumption of food and bodily tissues, excessive fat burning more easily than other tissues of the body. Other bodily tissues are burned and consumed by the use of such thyroid, especially when excessive fat has been consumed, or in a body in which there is no abnormal, excessive fat.

PAR. 6. Some persons have deficient thyroid glands, to wit: thyroid glands which are sub-normally active and which perform their normal functions imperfectly and partially only, turning less than the normal proportion of food into fuel and energy, and permitting more than the normal proportion of food to be deposited in, or added to, the body in the form of fatty or other tissues.

This is the cause of excessive fatty or other tissues in the body of a person whose thyroid gland is deficient as above indicated. Thyroid taken by such a person does not feed or stimulate his thyroid gland, or increase its activity; nor does it tend to restore his thyroid gland to normality and thereby to remove the cause of abnormal excessive fatty or other tissues, or of overweight, in his body. Thyroid taken by such person performs the function ordinarily performed by a normal thyroid gland, duplicates or supplements any such function as is being performed by such deficient thyroid gland, or performs a substitute function, whereby the normal proportion of his food is turned to fuel and energy and the fatty or other tissues, and the weight, of his body tend to be reduced to normality.

PAR. 7. There are persons whose bodies in their natural and normal state are so constituted that such persons may not take or use thyroid without harmful results to their bodies. As to any person the only way in which it may be ascertained whether or not such person may take or use thyroid, without harmful results to his body, is by an examination made by a competent physician, or by experimental use of thyroid by such person under competent medical advice and supervision, or by both such methods combined. Only by the same means may it be ascertained as to any person in how large quantities thyroid may be taken or used by such person without harmful results.

PAR. 8. There are certain conditions of the human body which make it harmful for such persons to take or use thyroid. Among these

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is pregnancy. Other such conditions are defects or abnormalities of the heart or kidneys. Any defect or abnormality of body is liable to make the taking or use of thyroid harmful to the user.

Only by an examination made by a competent physician may it be ascertained of any person whether or not the body of such person has any such condition, defect or abnormality by which it is made harmful for such person to take or use thyroid.

PAR. 9. Obesity, abnormal excess fat, may be the result of more than one cause. One of the causes is a deficient or abnormally inactive thyroid gland. Deficiency of thyroid glands causes obesity or abnormal excess fat in only the rare and exceptional cases, to wit: in a small minority of the total number of such cases. In a large majority of the total number of such cases the persons affected do not have deficient thyroid glands, and such obesity or abnormal excess fat is the result of a cause or of causes other than deficient thyroid glands.

In the case of any person it can be ascertained whether or not his thyroid gland is deficient, and whether or not obesity or abnormal excess fat is the result of thyroid deficiency, only by an examination made by a competent physician.

PAR. 10. In, by and through its advertising media above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that modern medical science has discovered that thyroid deficiency is a common cause of obesity or abnormal, excessive fat, that if a prospective purchaser or other person is abnormal in weight that person's thyroid gland is abnormal, that people who are over-fat generally have an under-active thyroid gland, and that the cause of obesity or abnormal excess fat usually lies in an under-active thyroid gland.

In truth and in fact, as hereinabove alleged, deficiency of the thyroid gland exists only in rare and exceptional cases and is the cause of obesity or abnormal excessive fat in only a small minority of the total number of cases.

PAR. 11. In, by and through its advertising media above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that all modern physicians use thyroid in the treatment of obesity, that, if a prospective purchaser of Marmola were to consult a specialist in obesity, he would probably prescribe about the factors the prospective purchaser is getting in Marmola, that such is the opinion of physicians the world over, and that the prospective purchaser's own physician would probably employ the Marmola factors, now recognized by science the world over.

In truth and in fact, competent physicians prescribe and use thyroid only in the rare and exceptional cases in which obesity, or abnormal

excess fat, is caused by deficiency of the thyroid gland, and do not prescribe it in any case unless and until they have ascertained by examination of the patient, that his obesity or abnormal excess fat has been caused by deficiency of the thyroid gland, and also that no bodily conditions, defects or abnormalities exist in his case which are likely to make the taking or using of thyroid harmful to the patient. Competent physicians, after such examination and precautions, prescribe the use of thyroid only under medical advice and observation. In fact and in truth, respondent's preparation, to wit: Marmola, is one which cannot be used generally with safety to physical health, except under medical direction and advice.

PAR. 12. In, by and through its advertising media above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that the use of Marmola as indicated in certain directions printed by respondent upon said labels, pamphlets, and advertising media is best suited to the needs of the multitude, or of the average person, of the normal person, in the average case and in the normal case.

In truth and in fact, Marmola is suited to the needs of only such persons as have obesity or abnormal excess fat caused by deficiency of the thyroid gland. Such persons are rare and exceptional, as above alleged. They are not the multitude or average persons or normal persons nor are theirs average cases, or normal cases within the intent and meaning of said representation.

PAR. 13. In, by and through its advertising media as above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that the object of the use of Marmola is to feed and stimulate the patient's thyroid gland, to restore such gland to normality and thus and thereby to remove the cause of the patient's obesity or abnormal excess fat.

In truth and in fact, as hereinabove alleged, the use of thyroid does not feed or stimulate the patient's thyroid gland, nor does it tend to restore such gland to normality, and thus remove the cause of the patient's obesity or abnormal excess fat.

PAR. 14. In, by and through its advertising media as above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that a certain table of weights of persons respectively of the heights and ages severally indicated in said table indicates for each such prospective purchaser his correct or normal weight, that any weight in excess thereof is abnormal excess fat, and that such prospective purchaser ought to take and use Marmola until his weight has been reduced to said so-called correct or normal weight.

In truth and in fact, said table is not a table of correct or normal weights, but is a table of average weights. By reason of racial or family or individual characteristics or tendencies, the bodies of many persons who have no abnormal or excessive fatty or other tissues weigh substantially more than said so-called correct or normal weight, no part of which may safely be removed from their bodies by the use of Marmola.

PAR. 15. There are many persons in and throughout the several States of the United States and the District of Columbia who are seeking some safe and dependable means whereby they may quickly, easily, certainly, and permanently remove from their bodies obesity, or abnormal excess fat, or overweight of flesh, or some portion of the bodily tissues or weight which such bodies have or carry.

Such persons are unskilled in medical science and depend for their information as to what treatment or remedy or preparation or method or system they may safely purchase, take and use, largely upon statements and representations made by the makers and sellers thereof.

PAR. 16. In, by and through its advertising media as above alleged, respondent prints for the information of the public and prospective purchasers, a statement of its purpose in the printing and distributing its said advertisements, in these words: "We feel a responsibility to those who buy Marmola and wish them to know all the facts at our command," then and thereby giving to the public and to prospective purchasers of Marmola the assurance that in its said advertising media it has published to the public and to all prospective purchasers of Marmola a complete and true disclosure of all material facts relative to Marmola, its properties and therapeutic effects.

In its said advertising media respondent does not disclose any or all of the following facts hereinabove alleged.

1. That dessicated thyroid is a powerful and dangerous drug.
2. That the one effect of such thyroid is to increase the burning within the human body of food and tissues.
3. That by speeding up the oxidizing and burning processes of the body, dessicated thyroid, when taken, tends to cause a loss of fat.
4. That cases in which obesity or abnormal excess fat is caused by deficiency of the thyroid gland are rare and exceptional, constituting only a small minority of the total number of such cases.
5. That medical science and physicians justify the use of thyroid as a treatment for obesity or abnormal excess fat only in cases in which obesity or abnormal excess fat is caused by deficiency of the thyroid gland; and that competent physicians prescribe its use only in such cases.
6. That in cases of obesity or abnormal excess fat not caused by deficiency of the thyroid gland the use of thyroid is not by medical

science indicated as proper treatment; and its use therein is harmful to the health of the user.

7. That many persons are so constituted that they may not use Marmola with safety to physical health. That many bodily conditions, defects and abnormalities make the use of Marmola harmful to the health of the user. That in respect of any person it can be ascertained whether or not such person may safely take or use Marmola only by an examination by a competent physician, sometimes to be supplemented by experimental use thereof under medical advice and observation; and that physicians prescribe the use of thyroid only after such examination and other precautionary safeguards.

8. That respondent's preparation, to wit: Marmola, is one which cannot be used generally with safety to physical health, except under medical direction and advice.

9. That the use of thyroid by a patient who has a deficient thyroid gland does not feed or stimulate such deficient gland, does not increase its activity, does not tend to restore such deficient gland to normality, and does not thereby tend to remove the cause of his obesity or abnormal excess fat.

PAR. 17. Said statements and representations so made by respondent, and respondent's said failure to disclose any or all of the facts set forth and referred to in paragraph 16 of this complaint, 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 so made by respondent are true.

2. That the facts which respondent is alleged in paragraph 16 of this complaint to have failed to disclose, do not exist.

3. That all cases of obesity or abnormal excess fat are caused by deficiency of thyroid glands.

4. That Marmola is a scientific and safe remedy for all such cases.

5. That Marmola is prescribed and used by all modern physicians in all such cases.

6. That Marmola is superior to all other remedies being offered for sale or sold to the public for use in all such cases.

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 Marmola in preference to and to the exclusion of, any and all identical or like or otherwise competitive products, to wit; preparations, systems, methods, 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 injury of such competitors, and to the deception and injury of the public.

PAR. 18. The above alleged acts and practices are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on July 15, 1935, issued and served its amended complaint in this proceeding upon respondent, Raladam 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Edward J. Hornibrook and Harry D. Michael, attorneys 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 Rockwell T. Gust, 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 amended complaint, the answer thereto, testimony and other evidence, and brief in support of complaint, counsel for respondent having failed to file a brief, although given an opportunity so to do, and having failed to appear at the time and place set for oral argument after due notice thereof; 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, Raladam Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located in the city of Detroit in said State.

PAR. 2. Respondent is now and has been engaged for more than five years last past in offering for sale and selling a certain medical preparation designated and described as "Marmola," which respondent has sold, during the time aforesaid, and now sells to various purchasers thereof located in the several States of the United States. In the course and conduct of said business, respondent causes its said preparation to be shipped from its place of business in the State of Michigan, or from the place of business of the company that compounds the same, to the purchasers thereof located in several States of the United States other than Michigan as well as in the District of Columbia. Respondent's usual course of business is to sell its said preparation to wholesale druggists and jobbers who in turn sell it to retail druggists through whom it is sold to the consuming public. Said preparation, "Marmola," is sold by respondent and is bought and used by the consuming public for the purpose of effecting reduction in weight.

PAR. 3. During the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of medicines, preparations, systems, methods, books of instruction and other commodities, articles, and means designed, intended and used for the purpose of effecting weight reduction. Such other individuals, firms, and corporations have caused and do now cause their said medicines, preparations, systems, methods, books of instruction, and other articles and means when sold by them to be transported from various States of the United States to, into and through States other than the State of origin of the shipment thereof. Respondent has been, during the aforesaid time in substantial competition, in the sale of Marmola, with such other individuals, firms, and corporations. Some of such competing products are sold direct to the consuming public while others are sold to wholesale and retail dealers through whom they are in turn sold to members of the public for their use.

Respondent's preparation is in competition with all medical preparations sold and used for reducing purposes regardless of whether such preparations are of the so-called "patent medicine" type or are pharmaceutical preparations which may be bought by members of the consuming public on their own initiative or on the prescription of a physician. Competing products include also, the following: medical preparations which are used as adjuvants in the treatment of obesity, such as laxative salts; preparations sold and used for the purpose of effecting the lessening of the consumption of fat producing foods; and books of instruction on the subjects of diet or exercise, or both, intended and used for the purpose of effecting reduction by one

or both of these means; in general all those preparations, products and articles sold to and used by the consuming public for effecting weight reduction. Among such preparations, products and articles so sold and used are the following:

"Diet and Health with Key to the Calories" by Dr. Lulu Hunt Peters, a book on diet published by Reilly and Lee Co., Chicago, Ill.

"Weight Control" by Dr. William Howard Hay, a book on diet published by The Hay System, Inc., New York City.

"New Health Era" by Dr. William Howard Hay, a book on diet published by The Hay System, Inc., New York City.

"No More Alibis" by Madame Sylvia of Hollywood (Madame Sylvia Leitner), a book on reducing by means of exercise and diet published by McFadden Publishing Co., New York City.

"The Secret of Keeping Fit" by Artie McGovern, a book containing instructions for reducing by diet and exercise, published by Simon & Schuster, New York City.

"Jad Salts" manufactured and sold by Wyeth Chemical Co., Detroit, Mich.

"Welch's Grape Juice," sold and used for reducing purposes by reason of its effect on the consumption of fat-producing foods, prepared and sold by Welch Grape Juice Co., Westfield, N. Y.

"Desiccated Thyroid", a pharmaceutical preparation, prepared and sold by Armour and Company, Chicago, Ill.

"Tabloid Thyroid Gland," a pharmaceutical preparation made and sold by Burroughs-Wellcome Company (U. S. A.) Inc., New York City.

"Thyrovarium," a pharmaceutical preparation made and sold by Burroughs-Wellcome Company (U. S. A.) Inc., New York City

"Tabloid Mixed Glands Number 1," a pharmaceutical preparation made and sold by Burroughs-Wellcome Company (U. S. A.), Inc., New York City.

"Tabloid Mixed Glands Number 2" a pharmaceutical preparation made and sold by Burroughs-Wellcome Company (U. S. A.) Inc., New York City.

"Thyroxin", a pharmaceutical preparation made and sold by E. R. Squibb and Sons, New York City.

"U. S. P. Thyroid," a pharmaceutical preparation made and sold by G. W. Carnrick and Company, Newark, N. J.

"Kellogg Rational Treatment for Obesity," a preparation sold by F. J. Kellogg Company, Battle Creek, Mich.

"C. C. N. T." a preparation sold by F. J. Kellogg Company, Battle Creek, Mich.

"Dr. McCasky's R. X. Tablets," sold by Dispensary Supply Company, New York City.

"Reducoids," sold by Scientific Laboratories of America, Inc., San Francisco, Calif.

"Slendrets," sold by Scientific Medical Product Co., Inc., San Francisco, Calif.

"Van Nay Tablets" sold by Bio-Medico, Inc., New York City.

"Germania Herb Tea Number 14", sold by the Drug Trade Products, Inc., Chicago, Ill.

"Stardom's Hollywood Dietade Number 1," sold by The Hollywood Diet Corporation, Chicago, Ill.

"Eskay's Dextrets," sold by Smith, Klein and French Company, Philadelphia, Pa.

"Dietene," sold by The Dietene Company, Minneapolis, Minn.

"Retardo", sold by The American Clinical Laboratories, Inc., Flushing, Long Island, N. Y.

"Eliphath", sold by Eliphath Laboratories, Detroit, Mich.

Respondent in its advertising matter, recognizes that competing products are not confined to those preparations or products of the same general character as Marmola by specifically advising and urging the use of Marmola for reducing, instead of the use of diet, exercise, purgatives, cathartics, salts, laxatives, and other methods used for effecting reduction.

PAR. 4. Marmola is put up in tablet form and is taken orally. The qualitative and quantitative formula per tablet is as follows:

1 gr.	—Extract Bladderwrack.
½ gr.	—Extract Phytolacca.
¼ gr.	—Extract Cascara Sagrada—RX 87 Spec.
½ gr.	—Desiccated Thyroid.
10/1000 min.	—Oleoresin Ginger.
	Po. Saccharum Special.
3 gr.	—Calcium Carbonate Precipitated.
½ ₂₄ min.	—Methyl Salicylate.
½ ₂₄ min.	—Oil Anise.
½ ₂₄ min.	—Oil Sassafras.
	Talc Brown.
	Ivory Black.
	Aqua for Extracts.
	Po. Burnt Umber.
	Red Oxide of Iron.
	Syrupus Simplex.
	Lubricating Solution.
	Aqua for Granulating.
	Liquid Petroleum—Colorless.

Directions for taking said preparation, as given by respondent for the purpose of effecting reduction are as follows:

Take one tablet after each meal and at bedtime with enough water to swallow easily.

It is further directed by respondent that the taking of the tablets as above stated be continued until the desired reduction is attained, or until "weight comes down to normal," or for "60 to 90 days—unless your weight has approached normal before that time."

The active ingredient in said preparation which effects reduction is desiccated thyroid. Certain other ingredients produce a laxative effect while others have little or no therapeutic effect. Desiccated thyroid is made from the thyroid glands of certain food animals. When taken orally, its effect is the same as that produced by an increase of the secretion of the patient's thyroid gland. This effect is to increase the processes of metabolism or, in other words, the

oxidation or burning of the tissues. Dessicated thyroid, when taken internally, acts upon the body tissues generally. Its action is not confined to fatty tissue. When this oxidation or burning up of the tissues exceeds that furnished and restored by the food that is eaten and assimilated, loss of weight results.

The taking of desiccated thyroid does not result in stimulating the patient's thyroid gland so that its secretion is increased. It merely supplements such secretion. It does not restore an inactive or under-active thyroid gland.

PAR. 5. Most cases of obesity or excess fat are caused by incorrect eating habits, such as over-eating, poor selection of foods and improper combinations of fat-producing foods. In some instances, excess fat and obesity result from thyroid deficiency. There are also other indocrine types of obesity as well as other cases due to pathological conditions. All such cases are described as endogenous obesity. However, such cases of endogenous obesity are only a very small percentage of the total number of cases of obesity. Authoritative medical opinion fixes this percentage at less than five percent. It is impossible for the ordinary layman suffering from obesity to determine whether such condition is caused by thyroid deficiency. Generally speaking, desiccated thyroid is indicated in the treatment of obesity occasioned by thyroid deficiency, but it is usually only one feature of the treatment in such cases. Many physicians use desiccated thyroid in the treatment of some such cases, but in other cases of the kind they may not do so and do not do so on account of various pathological conditions that may exist which inhibit the administration of such a preparation. Only one qualified by training and experience can determine with any degree of certainty whether a case of obesity is the result of thyroid deficiency, and if so, whether the physiological condition of the patient is such as to make it advisable for desiccated thyroid to be administered. Likewise, only such a trained person can determine the dosage to be given. A patient taking desiccated thyroid in any case should be observed and examined at regular intervals by one trained and experienced in such work to determine its effects and whether symptoms are apparent indicating possible harmful results or that the treatment should not be continued further. The ordinary layman treating himself or herself is not competent to judge when resulting symptoms indicate harm or to determine whether they indicate that the treatment should cease. Among the bodily conditions where desiccated thyroid is inhibited, are various heart defects as well as kidney diseases, pregnancy and various abnormal and diseased conditions of the the organs of the body.

PAR. 6. Respondent in its published advertising matter circulated to and among the purchasing public in the various States of the United States, makes many statements which represent or imply that thyroid deficiency is a common cause or the usual cause of obesity or excess fat and that if a person is overweight, it is an indication of thyroid deficiency and that thyroid should be taken for reduction purposes. Examples of such statements are the following:

* * * Science has found that a great cause of obesity lies in a defective gland. That gland's secretion has much to do with nutrition. Its main purpose seems to be to change food into fuel and energy.

When that gland is weak, the secretion small, too much food goes to fat. Then the right way of reduction—the doctor's way—is to supply that substance from a sheep gland * * *.

* * * Fat people, it was found, generally suffered from an under-active thyroid * * *.

* * * A common cause of excess fat is an under-active gland * * *.

* * * A great cause of excess fat has been found in a weakened gland * * * Now Doctors, the world over, feed that lacking factor * * *.

* * * Modern medical science has discovered a great cause of excess fat. It lies in a scanty gland secretion * * *.

* * * Many years ago medical science discovered that obesity—when an abnormal condition—is caused by the lack of an important element which the body normally supplies * * *.

* * * excess fat in many cases is caused by a little gland that does not work well * * *.

* * * If you are over-fat, you probably have an under-active thyroid * * *.

Such representations and implications as contained in the above quoted statements are inaccurate and not true statements of the facts as hereinbefore shown.

PAR. 7. Respondent, in its advertising matter, circulated as aforesaid, also makes statements which represent or imply that all modern physicians use thyroid in the treatment of obesity; that, if a prospective purchaser of Marmola were to consult a specialist in obesity, he would probably prescribe the reducing ingredient contained in Marmola; that such medication in treating obesity generally is supported by the opinion of physicians and science the world over; and that the prospective purchaser's own physician would probably employ the same medication. Examples of such statements are the following (all referring to use of thyroid medication):

The modern method of reduction, now used by doctors the world over * * *.

* * * All modern doctors employ it * * *.

* * * this method has been employed by doctors the world over, in a very extensive way * * *.

* * * Now that method has come into world-wide use. Physicians everywhere employ it in obesity * * *.

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* * * doctors the world over have been feeding that gland factor in obesity * * *.

* * * Combat the cause, as all modern doctors do * * *.

Modern doctors, the world over now bring reduction in a new way * * *.

* * * What your doctor prescribes does reduce fat * * *.

* * * a world-famous corrective for abnormal obesity. A corrective prescribed by physicians everywhere.

* * * Physicians know about this element and prescribe it for patients who easily take on fat from their food * * *.

* * * The very element that physicians everywhere prescribe for fat-reducing is the principal element of Marmola * * *.

* * * But he (your doctor) will probably employ the Marmola factors now recognized by science the world over * * *.

As hereinbefore shown, such representations are misleading and inaccurate or only true in part and are not correct statements of the facts.

PAR. 8. Respondent in and by its advertising and printed matter, circulated to the purchasing public, makes many statements which represent or imply that Marmola or desiccated thyroid, the active ingredient of Marmola is the remedy indicated in and best suited for the treatment of obesity or the reduction of excess fat in the great multitude of such cases or in the average case, or for all persons who are over-weight or who wish to reduce. Among such statements are the following:

The Right Way to Reduce

* * * The Marmola prescription made for the multitudes considers the average person simply seeking to reduce * * *

Marmola is for the average case.

The modern method of reduction. * * *

Marmola Prescription Tablets—The Right Way to Reduce.

If you want a slender, lovely figure, try Marmola.

* * * Why be fat when it's so easy to get rid of excess weight by means of a tried and true corrective, * * *

* * * Go try Marmola if you over-weigh. * * *

* * * why should anyone wishing to reduce fail to try this famous remedy * * *

* * * If you are overweight you owe it to yourself to regain your youthful slenderness. * * * All you do is to try four tablets (of Marmola) each day * * *

Go try Marmola if you suffer excess fat, * * *

as well as many other representations of the same import as contained in respondent's advertisements when taken as a whole.

In truth and in fact, as heretofore stated, desiccated thyroid is suitable to be taken for reducing purposes only in a small proportion of cases and only then under the conditions and limitations previously set forth. Respondent fails to explain and set forth those limitations and conditions.

PAR. 9. Respondent, in and by its advertising matter, circulated to the purchasing public, makes many statements which represent or imply that Marmola or desiccated thyroid, the active ingredient in Marmola, feeds and stimulates the thyroid gland when taken internally and restores such gland, to a normal condition and thus removes the cause of obesity or excess fat. Examples of such representations are the following:

* * * Doctors correct this condition (thyroid deficiency) by feeding this little gland the substance it lacks—and Marmola Prescription Tablets are based on this same method. * * *

Science Fights Fat Through an Important Gland.

* * * A common cause of excess fat is an under-active gland, which largely controls nutrition. Scientists * * * found that when they corrected that cause (by administering thyroid) fat dropped away. * * *

The chief purpose of Marmola is to feed and stimulate the thyroid gland. * * *

In truth and in fact as heretofore stated, said representations are scientifically inaccurate and not correct statements of the facts involved since neither Marmola nor desiccated thyroid, the ingredient thereof on which such statements are based, feeds the thyroid gland or stimulates or restores it to normal action and condition. Desiccated thyroid merely acts as a supplement to the secretion supplied by the thyroid gland.

PAR. 10. Respondent in and by its advertising matter, circulated to the purchasing public, through the publication of certain tables of weights of persons, respectively, of the heights and ages severally indicated therein, and by various statements in its advertising matter in connection with such tables or referring thereto, represents and implies that such tables indicate for the prospective purchaser of Marmola his or her correct or normal weight, which should be attained by taking Marmola, that any weight in excess thereof is due to abnormal excess fat and that said tables should be used as guides. Some of respondent's statements containing such representations and implications are the following:

Stop Marmola when your weight comes down to normal. A table in this booklet tells you what a person of your height and age should weigh. If, later you start to gain again, take more Marmola tablets until conditions are corrected.

Correct Weight Based on Age and Height.

* * * Simply take four tablets of Marmola daily until weight comes down to normal. * * *

If you overweigh, go try Marmola. * * *

* * * Use it (Marmola) as a treatment—week by week—until you have approached your normal weight. * * *

If you are over-weight, you owe it to yourself to regain your youthful slenderness. * * * A book that you will find in every package gives full details.

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The right rule is to take Marmola until you reach normality. A table in this pamphlet tells your proper weight. * * *

In truth and in fact, the tables of weights given by respondent in its printed literature are not tables of correct or normal weights, but of average weights. Such tables cannot be depended upon by the average lay person as a safe and accurate guide to his or her normal weight at a given height and age. Many persons, whose weights are correct and normal for them, vary in weight from such average figures. Many persons are over-weight when compared with the weights given in such tables, and at the same time do not have surplus or excess fat in their physical makeup. In such cases, Marmola should not be used and cannot be used without danger of injury to health. Such persons are normal as to weight so far as they themselves are concerned, although they are not the average. Such condition may be due to racial, family or individual characteristics or tendencies.

PAR. 11. Respondent in and by its advertising matter circulated to the purchasing public, makes various statements which represent or imply that it makes a complete and true disclosure of all material and relevant facts in regard to Marmola, its properties and effects, as well as those of the ingredients thereof. The prospective purchaser and user of said preparation is thus induced to believe that respondent has set forth and imparted to him or her all the information that one need know before deciding upon the use of the same and before taking the same as a medication for reducing purposes. Examples of such statements are the following:

We feel a responsibility to those who buy Marmola and we wish them to know all the facts at our command. Here we present them, and we urge every user to read them. You should know what to expect, and why to expect it. You should know what you are taking and why. This little booklet will tell you in the best way we know. Please read it.

Here we tell you what to expect.

Herein we try to present a consensus of the best opinion as to why Marmola acts and how. You should read it carefully to learn how to accomplish the best results. Then hand it to some friend who is over-weight—as a favor.

In the 24 years of Marmola many wrong conceptions have developed. That is why we are publishing the facts and the formula. * * *

* * * This will answer all the questions asked about it (Marmola)—all the silly gossip about harmful ingredients and factors to beware of.

No Secrecy.

* * * Ask your druggist for Marmola. Read the book in the box to learn what to expect, and why. * * *

If you over-weigh, go try Marmola. All druggists supply it, and a book in each box tells you all about it. * * *

* * * The book in the Marmola package explains the details of this extraordinary treatment. * * *

No secrets about Marmola. * * *

* * * A booklet in every package gives full details. * * *

In truth and in fact, respondent does not make a complete and true disclosure of all material and relevant facts in regard to Marmola, its properties and therapeutic effects, or those of its ingredients in any or all of its printed matter. Many pertinent facts are not told. Among such facts that respondent does not and has not disclosed to buyers of Marmola and prospective buyers thereof, are the following:

1. That desiccated thyroid is a powerful and dangerous drug or product when used internally for reducing purposes.

2. That desiccated thyroid attacks and oxidizes or burns not only fatty tissue but all bodily tissues.

3. That cases in which obesity or abnormal excess fat is caused by deficiency of the secretion of the thyroid gland are rare and exceptional, constituting only a small minority of the total number of such cases.

4. That medical science and physicians, generally speaking, justify, recommend and prescribe the use of thyroid as a treatment for obesity or abnormal excess fat only in cases in which such condition is caused by a deficiency of the secretion of the thyroid gland.

5. That in cases of obesity or abnormal excess fat not caused by a deficiency of the secretion of the thyroid gland, thyroid is not indicated as a proper treatment and is not the usual treatment used by physicians in such cases, and that its use in such cases is apt to be, and frequently is, harmful to the health of the user.

6. That many persons are so constituted that they may not use Marmola with safety to physical health. That many bodily conditions, defects and abnormalities make the use of Marmola harmful to the user. That, in respect to any person, it can be ascertained whether or not such person may safely take or use Marmola (desiccated thyroid) only by an examination by a competent physician, often to be supplemented by experimental use of such product under medical advice and observation. Also that, generally speaking, physicians prescribe and administer thyroid only after such examinations and precautionary safeguards and that such administration is usually followed by regular observation and examination of the patient.

7. That Marmola (desiccated thyroid) cannot be used generally for reducing purposes by self-medication without the possibility of harmful results.

8. That Marmola (desiccated thyroid) when used by a patient who has a deficiency of the secretion of the thyroid gland, does not feed or stimulate such gland or materially increase its activity or tend to restore it to a normal condition, or, thereby tend to remove the cause of the obesity or abnormal excess fat.

All of the things above enumerated, which respondent fails to make known to users and prospective users of Marmola, are true facts according to the consensus of medical opinion and according to the great weight of the expert testimony presented herein.

PAR. 12. Respondent has made representations such as those alleged and set out herein since April 17, 1929, in promotion of the sale of Marmola throughout the United States, and in urging the use thereof for reducing purposes by members of the public. Such representations have been made either by means of advertisements inserted in newspapers, magazines, and periodicals of general circulation throughout the United States, by radio broadcasts, by booklets and printed matter or by other means, or by one or more of such means. There are and have been among the general consuming public, and especially among those who have seen and read or otherwise have become informed of respondent's representations, as herein set forth, many persons who are seeking or who are by respondent's representations caused to seek some safe and dependable means whereby they may safely, quickly, easily, certainly and permanently remove from their bodies superfluous flesh or excess fat. Many other persons having very little excess fat or superfluous flesh, or being only slightly over average weight or their own normal weights, or even below these, also seek to reduce. These persons, or a great many of them, see and read and are influenced by respondent's representations as herein set out. Such members of the general purchasing public are uninformed and unskilled in medical science, and depend upon the statements and representations, or silence of, or lack of warning by the makers and sellers thereof for information concerning taking or using remedies, preparations, methods or systems to be used in treating bodily conditions, ailments and abnormalities, and for their effects therein and as to their other bodily effects or lack thereof, and as to whether they may safely use the same. The general public including the purchasers and users of Marmola have so depended upon the respondent herein, as to Marmola, and respondent's representations have encouraged and justified such dependence.

Such statements and representations made by respondent, as herein set out and referred to, and respondent's said failure to disclose the facts previously set forth and referred to herein as not having been disclosed, have the tendency and capacity to mislead and deceive the public, prospective purchasers of Marmola, and purchasers and users thereof, into the erroneous beliefs:

1. That all said statements and representations so made by respondent are true.

2. That the facts previously referred to herein as not having been disclosed by respondent, are not true or do not exist.

3. That all cases of obesity or excess fat are caused by thyroid deficiency.

4. That Marmola is indicated as a treatment in all such cases, is the proper and scientific treatment therein, and that it may be used in all such cases without fear of harmful results and with safety to bodily health and physical well being.

5. That Marmola or desiccated thyroid, the effective reducing medium therein, is prescribed and used by all modern physicians in all cases of obesity or excess fat or for reducing purposes in all cases regardless of cause or origin of such condition or of the physical condition of the person concerned.

6. That Marmola is superior to all other remedies, systems, methods or means of effecting reduction that are offered for sale or sold to the purchasing public for use in such cases.

PAR. 13. The representations of respondent 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 purchase and use respondent's said preparation or medicine for reducing purposes because of such erroneous beliefs engendered as above set forth, in preference to and to the exclusion of the products of competitors, as herein specified and indicated, and to divert trade to respondent from such competitors engaged in the sale in interstate commerce of medicines, preparations, systems, methods, books of instruction, and other articles and means designed, intended and used for the purpose of reducing weight.

PAR. 14. There are among the said competitors of respondent those who do not make the same or similar misleading representations as those made by respondent, as herein set out, in regard to the products sold by them, or who do not otherwise misrepresent 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.

PAR. 15. In arriving at the findings and conclusions herein stated, the Commission has carefully considered and weighed the testimony and evidence as presented in support of the complaint and as offered in behalf of respondent. Such testimony and evidence, so considered and weighed, include a considerable volume of expert testimony upon medical and scientific subjects included in the issues and subject matter here involved. Testifying in support of the complaint, were five outstanding medical witnesses, who were called as experts and who qualified as such, and in addition, a famous and distinguished phar-

macologist of international reputation. Further, there were four other physicians called to testify primarily as to certain facts involved, who also qualified as experts and who gave testimony of the same general character in support of the complaint as that given by the experts previously referred to.

For respondent, four physicians were called and gave expert medical testimony. Generally speaking, their testimony conflicts with that of the witnesses who testified in support of the complaint.

It is the opinion of the Commission, and it is so found, that the medical and scientific testimony offered in support of the complaint far out-weighs that offered in behalf of respondent, both in respect to the number of such witnesses and as to the character and convincingness of the testimony given. Without intending to detract from respondent's expert witnesses, it is found that the medical and scientific opinions and conclusions of the expert witnesses who appeared in support of the allegations of the complaint are entitled to more weight and are more authoritative than the medical and scientific opinions and conclusions given by respondent's expert witnesses. The expert witnesses who testified in behalf of the complaint, taken as a group, are more outstanding professionally and their opinions entitled to more credit than those who appeared for respondent, taken as a group.

PAR. 16. The answers of respondent to the amended complaint herein pleads *res adjudicata* of the issues here involved. Evidence was introduced in support of this plea and in opposition thereto. The question is thus raised as a matter of fact and the Commission therefore, makes findings in that regard, and passes upon it herein. The plea of *res adjudicata* is based on a previous proceeding by the Commission against said respondent and involving the same medicine as here involved. The Commission issued an order to cease and desist in said case on April 13, 1929, and the order was served on respondent on April 17, 1929. Said order was subsequently set aside by the United States Circuit Court of Appeals, Sixth Circuit. This action was later affirmed by the United States Supreme Court, but on the ground of lack of evidence as to competitors and competition. The Supreme Court's opinion sustained the findings of the Commission on the merits in certain other particulars.

The two cases are different. Respondent's representations upon which the two cases are based are entirely different, as are the general issues arising therefrom. The first case was based upon two general classes of direct and specific representations, first, that Marmola is safe for use by the general public for reducing

purposes, and second, that said medicine and the method of reducing thereby is scientific. No such direct and specific representations are involved in the present case. The various types of representations upon which the present complaint is based, are those previously set forth herein. They raise distinguishable issues from those involved in the first case. They constitute types of representations used after the service of the order to cease and desist issued in the first case against respondent.

CONCLUSION

The aforesaid acts and practices of the respondent, Raladam 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 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 brief in support of complaint, counsel for respondent having failed to file a brief, although given an opportunity so to do, and having failed to appear at the time and place set for oral argument after due notice of the same, 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, Raladam Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of Marmola, or of a preparation or medicine of the same or substantially the same formula, or of a preparation or medicine containing dessicated thyroid or other form of thyroid, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That thyroid deficiency is a common cause or the usual cause of obesity or excess fat or that, if a person is over-weight, it is necessarily an indication of thyroid deficiency and that thyroid should be taken for reducing purposes.

2. That all modern physicians use the reducing ingredient in Marmola or thyroid in the treatment of obesity, or that they use thyroid in all classes of such cases, and that such method of treatment in all such cases is supported by the opinion of physicians and science the world over, or that if a prospective purchaser of Marmola, one seeking to reduce, would consult a specialist or his or her own physician, such medication would probably be used.

3. That Marmola or thyroid, the reducing ingredient therein, is the remedy indicated in and best suited for the treatment of obesity or the reduction of excess fat in the great multitude of such cases or in the average case, or for all persons who are over-weight or who wish to reduce or for all persons whose weights are above the average for persons of their ages and heights.

4. That Marmola or thyroid, the reducing ingredient therein, feeds the thyroid gland, when taken internally, or stimulates or restores it to normal action or that it removes the cause of obesity or excess fat.

5. That a table of average weights for given ages and heights indicates a person's normal or correct weight at a given age and a given height or that any weight in excess of the average weight so given is due to excess fat and that such person should reduce and should effect the reduction by taking Marmola.

6. That respondent makes a full and complete disclosure of the properties and effects of Marmola or of the ingredients thereof, whether such representation be made directly or indirectly, or by implication, unless and until it does in fact make such disclosure, including the following:

a. That desiccated thyroid is a powerful and dangerous drug or product when used internally for reducing purposes.

b. That desiccated thyroid attacks and oxidizes or burns not only fatty tissues, but all bodily tissues.

c. That cases in which obesity or abnormal excess fat is caused by deficiency of the secretion of the thyroid gland are rare and exceptional, constituting only a small minority of the total number of such cases.

d. That medical science and physicians generally speaking, justify, recommend and prescribe the use of thyroid as a treatment for obesity or abnormal excess fat only in cases in which such condition is caused by a deficiency of the secretion of the thyroid gland.

e. That in cases of obesity or abnormal excess fat not caused by a deficiency of the secretion of the thyroid gland, thyroid is not indicated as a proper treatment or the usual treatment used

by physicians, and that its use in such cases is apt to be and frequently is harmful to the health of the user.

f. That many persons are so constituted that they may not use Marmola with safety to physical health. That many bodily conditions, defects and abnormalities make the use of Marmola harmful to the user. That in respect to any person, it can be ascertained whether or not such person may safely take or use Marmola or desiccated thyroid only by an examination by a competent physician, often to be supplemented by experimental use of such product under medical advice and observation. Also that, generally speaking, physicians prescribe and administer thyroid only after such examinations and precautionary safeguards and that such administration is usually followed by regular observation and examination of the patient.

g. That Marmola or desiccated thyroid cannot be used generally for reducing purposes by self-medication without the possibility of harmful results.

h. That Marmola or desiccated thyroid when used by a patient who has a deficiency of the secretion of the thyroid gland, does not feed or stimulate such gland or materially increase its activity or tend to restore it to a normal condition or thereby tend to remove the cause of the obesity or abnormal excess fat.

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
CONSOLIDATED DISTILLERS CORPORATION

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

Docket 2488. Complaint, July 3, 1935—Decision, Jan. 22, 1937

Where a corporation engaged as rectifier and wholesaler of distilled spirits in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in selling same in trade and commerce among the various States and in the District of Columbia, in competition with those engaged in manufacture by distillation of whiskies, gins, and other spirituous beverages and in sale and distribution thereof in interstate commerce, and with other rectifiers and wholesalers—

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, together with words "Bottled by" or "Blended by," as case might be, to its customers and furnished some with means of representing to their vendees, both retailers and ultimate consuming public, that the said whiskies, gins, and other spirituous beverages contained in such bottles were by it made through process of distillation, notwithstanding fact it did not distill said whiskies or other spirituous liquors thus bottled, sold, and transported by it, and did not prepare its said distilled spirits from mash, wort, or wash through continuous closed pipes and vessels until manufacture was complete, and was not, in sense ordinarily understood by the industry, an actual distiller, for the purchase of the bottled liquors of which, as from original distiller or manufacturer thereof, there is a substantial preference by both trade and public;

With tendency to mislead and deceive wholesalers, retailers, and ultimate purchasers into the belief that in buying its said spirituous liquors, thus sold, they were purchasing product bottled out of distillery by original distillers thereof, and with effect thereby of unfairly diverting trade to it from its competitors, including those who, engaged in manufacturing spirituous liquors by process of original and continuous distillation from mash, wort, or wash, truthfully designate themselves as distilling company, and also those who, like itself, engaged in that branch of the industry known as the distilled spirits rectifying industry, and as rectifiers, do not untruthfully designate themselves as "distillers" or "distilling" company:

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. DeWitt T. Puckett and *Mr. P. Gad B. Morehouse* for the Commission.

Mr. O. Bowie Duckett, Jr., of Hargest, Leviness, Duckett & McGlannan, 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 Consolidated 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 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 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 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 "Distillers" 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 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 prepared and bottled 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 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 July 3, 1935, issued and served its complaint in this proceeding, upon respondent Consolidated Distillers 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 and PGad B. Morehouse, attorneys 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 O. Bowie Duckett, Jr., of Hargest, Leviness, Duckett, and McGlannan, 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 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 38 South Calvert Street, in the city of Baltimore in said State. It was incorporated in October 1933, with a capital stock of seventeen thousand shares of which two thousand are of the par value of \$1,000 per share designated as preferred stock and fifteen thousand shares are of the par value of \$20 each. Its charter authorizes it to engage among other things in the manufacture, purchase, sale, distribution, storage, and export of alcoholic beverages including whiskies and wines and in the distillation of whiskey.

It is now and has been since shortly after its organization engaged in business as a rectifier and wholesaler of distilled spirits under basic permits from the Federal Government, purchasing, rectifying, blending, and bottling whiskies, gins, 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. Its business is in excess of \$100,000 a year and during the six months period from November to April, 1935-36 it doubled its volume of business. Its distilled spirits are purchased in bulk from several distillers in several States of the United States, but principally from distillers in Maryland. This bulk whiskey is bottled by respondent straight or in blends, about 60% of its product being rectified and the remainder being bottled as straight whiskey. About 5% of its business is done outside the State of Maryland, it having customers in the District of Columbia, New York, and South Carolina. Most of its customers are retailers.

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, gins, and other spirituous beverages, and in the sale and distribution thereof in interstate commerce; and also in competition with other rectifiers and wholesalers.

Respondent does not now and never did distill alcoholic beverages from raw materials at 38 South Calvert Street or elsewhere. It does not now and never has owned, operated, or controlled any stills or any plant equipped for the distilling 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 whiskeys of different ages or the mixing of other ingredients with whiskeys, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskeys 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 800 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-34" 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 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 twenty-two witnesses of whom twenty-one were purchasers of liquor and 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 whiskeys 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 all 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 twenty-two 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. Respondent's labels offered and received in evidence were brand labels. Besides the brand name and the nature of the product these words appeared generally upon the labels: "Bottled by Consolidated Distillers Corporation, Baltimore, Md." The words "bottled by" are in much smaller print than the corporate name as a rule but still are quite legible. Blended whiskey has on the brand label the following inscription: "Blended by Consolidated Distillers Corporation, Baltimore, Md." In this case, too, the words "blended by" are in much smaller type than the name of the respondent corporation, although the words are quite legible.

In the case of "Maryland Hunt Club" whiskey, a blend, there appears as Exhibit No. 9-A, the back or Government label placed on the package by respondent. This label reads as follows: "Maryland Hunt Club Blended Whiskey. The straight whiskey in this product is 20 years old, 20% straight whiskey, 18% neutral spirits. Blended by Consolidated Distillers Corporation, Baltimore, Maryland." There is a similar back label in the record as Commission's Exhibit No. 10-A relating to the brand "Carrollton Club" also a blended whiskey. A similar back label also appears for the "My Maryland" brand.

Respondent also advertised its name and business in the Baltimore Sun and in some trade papers and on billboards.

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 customers 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

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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 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."

CONCLUSION

The aforesaid acts and practices of the respondent, Consolidated Distillers 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 DeWitt T. Puckett and PGad B. Morehouse, counsel for the Commission, and by O. Bowie Duckett, Jr., of Hargest, Leviness, Duckett and McGlannan, 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 Consolidated Distillers 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 and in the District of Columbia do forthwith cease and desist from:

Order

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; (b) that the said whiskies, gins, or other spirituous beverages are 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 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

**THE I. T. S. COMPANY, THE NATIONAL FEDERATION OF
MASTER SHOE REBUILDERS, ITS OFFICERS AND
MEMBERS**

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

Docket 2802. Complaint, May 15, 1936—Decision, Jan. 22, 1937

Where a corporation engaged in sale at wholesale of rubber heels and soles to shoe findings jobbers and shoe repairers, but not to 5-and-10 cent stores, in competition with those who sell their products to such stores as well as to or through shoe manufacturers, shoe findings jobbers, and shoe repairers; and a voluntary nonprofit trade association of shoe repairers, and individual shoe-repairer members and officers of said association, acting officially and individually—

- (a) United in a common course of action and entered into an agreement, combination, and conspiracy to close the natural channels of distribution of the products of competitors who sell to aforesaid stores, and cause shoe manufacturers, shoe findings jobbers, shoe repairers, and hardware stores to boycott and refuse to deal with such manufacturers of and wholesale dealers in aforesaid products, who sell same to stores aforesaid, and thereby suppress competition among such manufacturers and wholesalers; and in the accomplishment of said end, severally and jointly, as the case might be—
- (b) Circularized channels of trade involved with literature which was falsely derogatory or defamatory as respects those manufacturers and wholesalers of rubber heels and soles who sell to aforesaid stores, and which designated sources of information as to the identity of such manufacturers and wholesalers who sold and who did not sell to stores in question, and circularized such channels with so-called "white lists" and "black lists" of such non-selling and selling manufacturers and wholesalers, and disseminated similar information to channels involved through and by their missionary men and sales force; and
- (c) Made use of other cooperative and individual means to carry out and make effective their aforesaid undertaking;

With result that trade in rubber heels and soles was unduly restrained among the States, competition among manufacturers and wholesalers, retailers and consumers, and manufacturers and wholesalers in their sales to retailers and among retailers in their sales to consumers was substantially suppressed, and consuming public was deprived of benefits that would naturally flow from normal competition among and between aforesaid wholesalers and other manufacturers, wholesalers, and retailers in aforesaid products:

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. G. A. Resek, of Lorain, Ohio, for respondents.

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 each and all of the respondents named in the caption hereof 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, The I. T. S. Company, is a corporation organized under the laws of the State of Ohio, with its office and principal place of business at 135 Maple Street, Elyria, Ohio. L. P. Tufford, C. H. Ingwer, A. G. Smith, and Helen Schuenemann are respectively president, vice president, and general manager, second vice president, and sales manager and secretary and treasurer of said corporation. The respondent is engaged in selling at wholesale rubber heels and soles to retail dealers located in the various States of the United States. Respondent purchases the aforesaid products in which it deals directly from B. F. Goodrich Company. Respondent, upon resale of the aforesaid products to the retail trade, causes said products to be transported from its place of business in Ohio to vendees at their respective points of location in the various States of the United States.

In the course and conduct of its aforesaid business the respondent has been and now 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 products to be used for the same and similar purposes.

The channels of distribution in the trade commence with the wholesaler and flow through (a) shoe manufacturers, (b) shoe findings jobbers, (c) shoe repairers, (d) 5-and-10¢ stores, (e) hardware stores, to the ultimate consumer. The respondent confines practically all of its sales to the shoe findings jobbers and the shoe repairers and does not sell any of its products to the 5-and-10¢ stores. Some competitors of respondent do sell to the 5-and-10¢ stores as well as to the other four outlets aforesaid.

PAR. 2. Respondent, National Federation of Master Shoe Rebuilders, is a voluntary nonprofit trade association of shoe repairers, incorporated in 1924 under the laws of Delaware with a certificate to do business in the State of Ohio. George Benson, C. C. Zeigler,

Walter L. Green, and S. L. Orenstein are respectively president, vice president, treasurer, and executive secretary of said association, in charge of and conducting its affairs, and the principal place of business of said association is 1124 Chester Avenue, Cleveland, Ohio. The members of the association are many in number, the membership varying from time to time by the dropping out of old and the addition of new members, so that it is impracticable at any given time to name as parties respondent and bring before the Commission each and all of the members of said association without manifest inconvenience and delay; wherefore, the officers of said association made respondents herein individually and as such officers, are now here made respondents as representing each and all the members of said association.

PAR. 3. In or about the month of January 1935, the respondents, I. T. S. Company, National Federation of Master Shoe Rebuilders, and its officers aforesaid acting individually, united in a common course of action and entered into an agreement, combination and conspiracy to close the natural channels of distribution of the products of competitors of respondent who sell their products to the 5-and-10¢ stores and to cause the natural channels of trade, viz, the shoe manufacturers, the shoe findings jobbers, the repairers, and hardware stores, to boycott and refuse to deal with those manufacturers and wholesale dealers in the aforesaid products who also sell their products to the 5-and-10¢ stores, thereby suppressing competition among manufacturers of, and wholesale dealers in, the products aforesaid, and in such regard have used the following methods and practices:

(a) Respondent, I. T. S. Company, circularized the channels of trade, other than the 5-and-10¢ stores, with letters, pamphlets, literature, and advertisements in trade magazines (all of which it caused to be prepared, published, and distributed) to the following effect, gist, or meaning:

A New Year's resolution every shoemaker and jobber must make for 1935 prosperity: "In 1935 I will not buy rubber heels or soles made by manufacturers selling heels or stick-on soles to the 5-and-10¢ stores." * * * Now is certainly the time to make the New Year's resolution—to refuse to buy any more rubber heels from manufacturers who double-cross you by selling heels and stick-on soles to the 5-and-10¢ stores under some other brand name. You are a swell guy, these manufacturers say, and they are very fond of you and your orders—but they also like those car-load orders from the chain stores. Yet every heel and stick-on sole they sell the 5-and-10¢ stores means that you are cheated out of a heel or tap job. * * * The I. T. S. Company has always been on the side of the shoemaker and jobber. We have never sold to the 5-and-10¢ stores, any chain store, or shoe manufacturer.

* * * * *

Complaint

* * * We know and we'd like to give you the information as to what concerns are selling to the 5-and-10¢ stores, but our legal counsel advises us that it would be unethical for us to do so, that we might be subject to prosecution for unfair competition and instituting a boycott against individual companies. But here's where you can get the information: The secretary, or officers of your local shoe repairers' association, can get this information through—

Mr. S. L. Orenstein, Executive Secretary, The National Federation of Master Shoe Rebuilders, 405 Chester—12th Street Building, Cleveland, Ohio.

* * * Stick to your guns, refuse to buy from any heel manufacturer supplying your worst competition, the 5-and-10¢ stores, with either heels or stick-on soles, and 1935 should be the beginning of more shoe repairing for the repair shops and better profits for you and your fellow shoemakers.

Respondent, I. T. S. Company, also has caused and causes information to the same effect, gist and meaning as that set forth in subsection (a) of this paragraph to be disseminated to the trade in the various States of the United States by its missionary men and sales force.

(b) Respondent, National Federation of Master Shoe Rebuilders, in response to inquiries made of it as the result of the reference to it as a source of information in the printed matter distributed by respondent, I. T. S. Company, and the reference made to it by the missionary men and sales force of I. T. S. Company, as described *supra*, caused to be prepared and forwarded to said inquirers a list of manufacturers and wholesale rubber heel and sole dealers who do not sell their products to 5-and-10¢ stores.

(c) Respondent, I. T. S. Company, persecutes and harasses the shoe findings jobbers who handle the products of manufacturers or wholesalers who sell to 5-and-10¢ stores by continuously urging them by persuasion, intimidation, threats of boycott, to cease handling the products of such concerns.

(d) Respondents use other cooperative and individual means to carry out and make effective their aforesaid undertaking.

PAR. 4. The said agreement, combination, and conspiracy, and the things done thereunder and pursuant thereto, as hereinabove alleged, have had and have the effect of unduly restraining trade among the States of the Union in rubber heels and soles; of substantially suppressing competition among manufacturers and wholesalers, retailers and consumers, and among manufacturers and wholesalers in their sales to retailers, and among retailers in their sales to consumers; and of depriving the public of benefits that would flow from normal competition among and between the respondent, I. T. S. Company, manufacturers, wholesalers, and retailers; and such agreement, combination, and conspiracy, and the things done thereunder and pursuant thereto, as above alleged, constitute unfair methods of

competition within the meaning of an Act of Congress approved September 26, 1914, above entitled, and are to the prejudice of the public interest.

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 the respondents, The I. T. S. Company, The National Federation of Master Shoe Rebuilders, George Benson, C. C. Zeigler, Walter L. Green, and S. L. Orenstein, individually and as president, vice president, treasurer, and executive secretary respectively, of said association, 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 John Darsey, 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 G. A. Resek and S. L. Orenstein, attorneys 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

PARAGRAPHS 1. The respondent, The I. T. S. Company, is an Ohio corporation with an office and principal place of business at 135 Maple Street, Elyria, Ohio. It is engaged in selling at wholesale rubber heels and soles to retail dealers located in the various States of the United States. It purchases its products principally from B. F. Goodrich Company, and upon resale of the same to the retail trade causes them to be transported from its place of business in Ohio to vendees located in the various States of the United States.

In the course and conduct of its business it has been and now is in competition with other individuals, firms, partnerships, and corpora-

tions engaged in the sale and distribution in commerce as herein set out, of similar and like products, or products to be used for the same or similar purposes.

The channels of distribution in the trade begin with the wholesaler and flow through the shoe manufacturer, the shoe findings jobbers, the shoe repairers, the 5-and-10¢ stores, and hardware stores, to the ultimate consumers. The respondent confines practically all of its sales to the shoe findings jobbers and the shoe repairers and does not sell any of its products to the 5-and-10¢ stores. There are competitors of respondent who sell some of their products to the 5-and-10¢ stores as well as to the other four channels of trade set forth above.

PAR. 2. The respondent, The National Federation of Master Shoe Rebuilders, is a voluntary nonprofit trade association of shoe repairers. It is a Delaware corporation with a certificate to do business in the State of Ohio. George Benson, C. C. Ziegler, Walter L. Green, and S. L. Orenstein are respectively, president, vice president, treasurer, and executive secretary of said association, and have charge of and conduct its affairs. The present place of business of said association is 1124 Chester Avenue, Cleveland, Ohio. The members of the association are many in number, the membership varying from time to time by the dropping out and the addition of new members, making it impracticable at any given time to name the membership of the association. The officers of said association, named *supra* this paragraph, are individual shoe repairers, and as such are members of said association.

PAR. 3. In or about the month of January 1935, the respondents, The I. T. S. Company, The National Federation of Master Shoe Rebuilders, and its officers, acting officially and individually, united in a common course of action and entered into an agreement, combination, and conspiracy to close the natural channels of distribution of the products of competitors of respondents who sell their products to the 5-and-10¢ stores, and to cause the natural channels of trade, viz, the shoe manufacturers, the shoe findings jobbers, the shoe repairers, and hardware stores, to boycott and refuse to deal with those manufacturers and wholesale dealers in the aforesaid products who sell their products to the 5-and-10¢ stores, thereby suppressing competition among manufacturers of, and wholesale dealers in the products aforesaid. The following methods and practices were used to accomplish this end:

(a) The respondent, The I. T. S. Company, circularized the channels of trade, other than the 5-and-10¢ stores, with letters, pamphlets, literature, and advertisements in trade magazines (all of which it

caused to be prepared, published, and distributed) to the following effect, gist, or meaning:

A New Year's resolution every shoemaker and jobber must make for 1935 prosperity: "In 1935 I will not buy rubber heels or soles made by manufacturers selling heels or stick-on soles to the 5-and-10¢ stores". * * * Now is certainly the time to make the New Year's resolution—to refuse to buy any more rubber heels from manufacturers who double-cross you by selling heels and stick-on soles to the 5-and-10¢ stores under some other brand name. You are a swell guy, these manufacturers say, and they are very fond of you and your orders—but they also like those car-load orders from the chain stores. Yet every heel and stick-on sole they sell the 5-and-10¢ stores means that you are cheated out of a heel or tap job. * * * The I. T. S. Company has always been on the side of the shoemaker and jobber. We have never sold to the 5-and-10¢ stores, any chain store, or shoe manufacturer.

* * * We know and we'd like to give you the information as to what concerns are selling to the 5-and-10¢ stores, but our legal counsel advises us that it would be unethical for us to do so, that we might be subject to prosecution for unfair competition and instituting a boycott against individual companies. But here's where you can get the information: The secretary, or officers of your local shoe repairers' association, can get this information through—

Mr. S. L. Orenstein, Executive Secretary,
The National Federation of Master Shoe Rebuilders,
405 Chester—12th Street Building,
Cleveland, Ohio.

* * * Stick to your guns, refuse to buy from any heel manufacturer supplying your worst competition, the 5-and-10¢ stores, with either heels or stick-on soles, and 1935 should be the beginning of more shoe repairing for the repair shops and better profits for you and your fellow shoemakers.

The respondent, The I. T. S. Company, also caused information to the same effect, gist, and meaning as that set forth in subsection (a) of this paragraph, to be disseminated to the trade in the various States of the United States by its missionary men and sales force.

(b) The respondent, The National Federation of Master Shoe Rebuilders, acting by and through its officers in response to inquiries made of it as a result of the reference to it as a source of information in the printed matter distributed by the respondent, The I. T. S. Company, and the reference made to it and its officers by the missionary men and sales force of The I. T. S. Company, as described *supra*, caused to be prepared and forwarded to said inquirers a list (so-called white list) of manufacturers and wholesale rubber heel and sole dealers who do not sell their products to 5-and-10¢ stores.

(c) The respondent, The I. T. S. Company, continuously urged shoe findings jobbers by persuasion, intimidation, and threats of boycott, to cease handling the products of manufacturers or wholesalers of rubber heels and soles who sell their products to the 5-and-10¢ stores.

(d) All of the respondents used other cooperative and individual means to carry out and make effective their aforesaid undertaking.

PAR 4. As a result of the aforesaid agreement, combination, and conspiracy, and the things done thereunder and pursuant thereto, as hereinabove set forth, trade in rubber heels and soles was unduly restrained among the States of the Union; competition among manufacturers and wholesalers, retailers and consumers, manufacturers and wholesalers in their sales to retailers, and among retailers in their sales to consumers, was substantially suppressed; and the consuming public was deprived of the benefits that would naturally flow from normal competition among and between the respondent, The I. T. S. Company, and other manufacturers, wholesalers, and retailers, dealing in rubber heels and soles.

CONCLUSION

The aforesaid acts and practices of the respondents, The I. T. S. Company, The National Federation of Master Shoe Rebuilders, its officers and members; George Benson, C. C. Zeigler, Walter L. Green, and S. L. Orenstein, 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 respondents, 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, briefs 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 the respondents, The I. T. S. Company and its officers; The National Federation of Master Shoe Rebuilders, its officers, both individually and in their official capacity, and its individual members, and their respective agents, representatives, and employees, or any group of such respondents or their agents, either with or without the cooperation of persons not parties hereto, do forthwith cease and desist from:

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1. Combining and conspiring or cooperating and confederating together, among themselves or with others, to close natural channels of trade to manufacturers and wholesalers of rubber heels and soles who sell to the 5-and-10¢ stores;

2. Circularizing the channels of trade of the rubber heel and sole industry with literature falsely derogatory or defamatory to manufacturers and wholesalers of rubber heels and soles who sell to the 5-and-10¢ stores, and which designates sources from which information may be obtained disclosing the identity of manufacturers and wholesalers of the said products who sell to the 5-and-10¢ stores, or who do not sell to the 5-and-10¢ stores;

3. Publishing or circularizing the channels of trade of the rubber heel and sole industry with lists (so-called "white lists" or "black lists") containing the names of manufacturers and wholesalers of said products who do or do not sell to the 5-and-10¢ stores;

4. Disseminating information to the channels of trade of the rubber heel and sole industry through and by their missionary men and sales force, that certain manufacturers and wholesalers of the said products sell or do not sell to the 5-and-10¢ stores;

5. Using any other cooperative or coercive means to suppress competition in the sale and distribution of rubber heels and soles, or to close the natural channels of trade in such products to manufacturers and wholesalers who sell to the 5-and-10¢ stores.

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
F. L. McWETHY

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

Docket 2853. Complaint, June 26, 1936—Decision, Jan. 22, 1937

Where an individual engaged in the manufacture, sale and distribution of a pharmaceutical preparation which was known as "McWethy's Home Treatment," and was in the form of pills and made up in packages sold for \$5.00, but, in some instances, to old customers for \$3.50—

Misrepresented, in advertising his said product in newspapers and in periodicals of interstate circulation which, in the main, reached readers in rural communities and small towns, that said preparation was an effective or valuable remedy or treatment for bladder, prostatic, kidney, and bowel troubles, and that it reached the underlying causes thereof and would cure or rid one of all such ailments, and that delay in taking such medicine might make it too late for one to treat his bladder ailment effectively, and misrepresented the functioning thereof through numerous statements of one sort and another of foregoing tenor, such as "Suffered 12 years. Bladder trouble now gone. * * * I have just finished two treatments and after 12 years of suffering, I can truthfully say I am free from bladder trouble," " * * * not only for the bladder, but helps the kidneys, liver, and bowels as well," "Now then why not get after this ailment and get rid of it?," etc., facts being said "Home Treatment" is not an effective remedy for such troubles and does not relieve systemic causes of kidney, bladder, and bowel ailments and troubles as represented, and aforesaid representations with respect to nature, value and effect of preparation in question were grossly exaggerated, misleading, and deceptive, and such product does not and will not accomplish results claimed therefor;

With capacity and tendency to lead purchasers and prospective purchasers of his said so-called "Home Treatment" into the belief that it constituted an effective or valuable remedy or treatment for such various ailments, and would reach the underlying causes of such troubles and cure or rid one of all such ailments, relieve weakened condition of the bladder due to enlarged prostate gland or to deranged condition of the kidneys, be beneficial in effect upon acid or rheumatic conditions of the blood, enable one, through action thereof, to avoid Bright's disease, and that delay might make it too late, etc., and to purchase his said product in substantial quantities in and on account of erroneous belief that his said various representations were true, and with result of thereby unfairly diverting trade to him from competitors, including manufacturers and distributors, and sellers and distributors of like and similar products, who truthfully advertise and represent the character and nature and therapeutic value of their respective products and do not advertise and otherwise represent, as the case may be, that such products have merit or therapeutic value which they do not have; to the injury of competition in commerce among the various States;

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*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

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 F. L. McWethy, an individual, 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, F. L. McWethy, is an individual with his principal office and place of business located at 329 Michigan Avenue, in the city of Marshall, State of Michigan. Respondent, for more than three years last past, has been, and still is, engaged in the manufacture and sale of a pharmaceutical preparation known as "McWethy's Home Treatment," which he represents to be a diuretic stimulant for the kidneys. In the course and conduct of his business respondent offers said product for sale and sells the same in commerce between the State of Michigan and the several States of the United States and in the District of Columbia.

When said product is sold, respondent transported from his place of business in the State of Michigan to the purchasers thereof located in States of the United States other than the State of Michigan and in the District of Columbia. There has been for more than three years last past, and still is, a constant current of trade and commerce in said product so manufactured and sold 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 three years last past has been engaged in substantial competition with

¹ As amended by order of Commission on Dec. 30, 1936. Extended enumeration in Par. 2 of the complaint, as thus amended, quoting at length respondent's various representations with respect to the alleged therapeutic value of respondent's product and its effect upon users thereof, is likewise set forth in the findings, *infra*, at page 524, and for this reason is omitted from the amended complaint as published in the interest of brevity.

Complaint

other individuals and with firms, partnerships, 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 his business, as aforesaid, the respondent, in soliciting the sale of and in selling "McWethy's Home Treatment" and for the purpose of creating a demand upon the part of the consuming public for said product, now causes and for more than three years 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 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:²

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and many others similar thereto, serve as representations on the part of respondent to purchasers and prospective purchasers of respondent's product as to the nature of the product and its effectiveness in use. Said representations are:

- (a) That said Home Treatment is an effective remedy for any bladder trouble;
- (b) That it is an effective or valuable treatment for prostatic trouble of any kind;
- (c) That it is an effective or valuable treatment for kidney trouble;
- (d) That it is an effective or valuable treatment for the bowels;
- (e) That it reaches all of the underlying causes of either bladder or kidney or prostatic or bowel troubles;
- (f) That it will "cure" or "rid" one of all such ailments;
- (g) That it will relieve a weakened condition of the bladder due to enlarged prostate gland or to a deranged condition of the kidneys;
- (h) That it can or should eliminate the cause of bladder or other organic troubles;
- (i) That it will have a beneficial effect upon an acid or rheumatic condition of the blood causing bladder irritations;

² The quotations which follow at length in the complaint at this point, as allegedly made by respondent with respect to the therapeutic value of its preparation and effect upon users thereof, is set forth in the findings, *infra*, at page 524, and is, for this reason, omitted here in the interest of brevity.

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(j) That the use of this medicine in preventing retention of urine will enable one to avoid interstitial nephritis or Bright's disease;

(k) That delay in taking this medicine may make it too late for one to treat his bladder ailment effectively;

(l) That the Home Treatment acts directly on the seat of the trouble or that it brings quick relief no matter what the causes are;

(m) That it relieves systemic causes of kidney, bladder and bowel ailment and troubles;

whereas, in truth and in fact, "McWethy's Home Treatment" is not an effective remedy for bladder, bowel, or prostatic irritations or ailments, nor does it relieve the systemic causes of kidney, bladder, and bowel ailments and troubles, as represented. It does not eliminate the cause of such irritations or ailments or relieve a user's weakened physical condition due to a derangement of the kidneys, prostate gland, bladder or bowels. In truth and in fact, the representations made by respondent with respect to the nature, value and effect of his preparation, when used, are grossly exaggerated, false, misleading, and untrue, as said preparation will not accomplish the results claimed for it.

PAR. 4. There are among the competitors of the respondent in interstate commerce, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products. There are also among such competitors of the respondent, sellers and distributors of like and similar products who do not advertise and otherwise represent that such products have the merit or therapeutic value which they do not have.

PAR. 5. 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 that respondent's representations set out in paragraph 3 hereof are true and into the purchase of respondent's product in such beliefs. Thereby trade is unfairly diverted to respondent from respondent's competitors in interstate commerce referred to in paragraph 4 and as a consequence thereof substantial injury is done by respondent to competition in interstate commerce.

PAR. 6. 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

Findings

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 26, 1936, issued and served its complaint in this proceeding upon the respondent, F. L. McWethy, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent duly filed his answer on July 27, 1936, in which he denied the material allegations of the complaint. Thereafter, testimony and evidence in support of the allegations of said complaint were introduced in behalf of the Commission before W. W. Sheppard, 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, notice and service of a copy of said motion having been waived in writing by the attorney for the respondent, the Commission, on December 24, 1936, ordered the complaint amended conformable to the testimony and evidence received at the hearing theretofore held, and ordered that said testimony and evidence be received and considered as testimony and evidence under said complaint, as amended. After the issuance of said order amending the original complaint herein, the respondent, through his attorney, John A. Nash, Esq., filed his answer in which said answer the respondent stated that he waived hearing on the charges set forth in the complaint, as amended, that he admitted all of the material allegations of the complaint as amended to be true and that the Commission might, without trial, without further evidence, and without any intervening procedure, make, enter, issue and serve upon him, 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, as amended. Thereafter, the proceeding regularly came on for final hearing before the Commission on said amended complaint, and the answer of the respondent to the amended complaint, testimony and other evidence, 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, F. L. McWethy, is an individual with his principal office and place of business located at 329 Michigan Avenue, in the city of Marshall, in the State of Michigan. He is now, and for more than five years last past, has been engaged in the manufacture, sale, and distribution of a pharmaceutical preparation known as "McWethy's Home Treatment." This treatment, in the form of pills, is made up in packages which respondent sells for \$5.00, but which, in some instances, he has sold to old customers for \$3.50. Respondent represents and has represented this so-called home treatment to be a diuretic stimulant for the kidneys and to be a remedy for bladder and bowel ailments. He offers and has offered said product for sale and distribution in commerce between and among the various States of the United States, and in the District of Columbia.

When said product is sold, respondent transports it from his place of business in Marshall, Mich., to the purchasers thereof, located in various parts of the United States and in the District of Columbia. Respondent is now, and has been at all times hereinafter mentioned, in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the manufacture, sale, and distribution in commerce as herein set out of like and similar products.

PAR. 2. In the course and conduct of his business, as above described, respondent advertises his product by means of advertisements published in newspapers and magazines such as the "National Farm News" and in other periodicals and publications and forms of printed matter having interstate circulation which, in the main, reach readers in rural communities and small towns. Typical of the advertisements which the respondent thus published and circulated prior to November 7, 1932, is the following advertisement which appeared in the "National Farm News" for January 1932:

CAN YOU SLEEP
ALL NIGHT?

Or Must You Get Up Frequently By Reason of Bladder Trouble?

If you are kept awake half the night and get up frequently on account of irritation and weakness of the bladder, or if you are suffering from prostatic trouble, write me at once for a generous free trial of my home treatment for the relief of bladder weakness. I send it free so you can try it in your own case and know how quickly it relieves the irritation and stops the getting up nights. This trial treatment alone will bring you such wonderful relief you will be delighted beyond words. Write me today. F. L. McWethy, 329 Michigan Ave., Marshall, Mich.

In form letters, folders, and circulars, which respondent published prior to November 7, 1932, respondent made many statements and representations concerning his product, of which the following are typical:

* * * The Home Treatment is proving effective in many cases of long standing, and I see no reason why you can not derive the same splendid results, if you will persist in the use of the medicine.

So many reports of cures have been coming in the past two weeks from my customers from all over the United States and Canada that I sometimes feel I do not recommend the medicine half as high as I should.

No matter whether caused by enlarged prostate gland or a deranged condition of the kidneys, the Home Treatment is designed to relieve this condition. (To wit: Weakened condition of the bladder.)

I induced a number of my acquaintances to try it, some of them in such an extremely bad condition they could hardly pass water without artificial means, and the results were so wonderfully satisfactory that I at once arranged for the manufacture of the medicine.

Bladder irritations arise from various sources, a very common one being an acid and rheumatic condition of the blood, but whatever the cause, you can not overestimate the advantage to be gained by giving prompt attention to the trouble.

No matter what the causes are, you want relief quickly. My Home Treatment is prepared to act directly on the seat of your trouble, and you will not have to use the medicine very long to prove its effectiveness.

The object all the way through is not only to relieve the existing local conditions, but as far as possible relieve systemic causes of the trouble.

To everyone afflicted with a disordered condition of the bladder, I say, do not let another day go by, * * * but order a full treatment at once.

McWethy's Combined Home Treatment is not only for the bladder, but the kidneys and bowels.

Why put up with your trouble longer. Others were told their case was incurable, yet after all, see what they say about the medicine after giving it a good fair trial.

In November 1932, the respondent stipulated and agreed with the Federal Trade Commission to discontinue making and advertising the foregoing statements and representations, and other representations and statements equivalent thereto, in form or substance. Since November 7, 1932, the effective date of the aforementioned stipulation, which was approved by the Commission, the respondent has no longer used any of the foregoing advertisements and has discontinued making the specific representations as hereinabove set out. However, among the statements and representations made by the respondent since November 7, 1932, have been the following:

Suffered 12 years. Bladder trouble now gone. * * * I have just finished two treatments and after 12 years of suffering, I can truthfully say I am free from bladder trouble. b-5a

McWethy's Combined Home Treatment is not only for the bladder, but helps the kidneys, liver and bowels as well. b-4d

Now then why not get after this ailment and get rid of it? f-12a

A medicine that has proven wonderfully successful in relieving what is commonly called a weakened condition of the bladder indicated by an unnatural desire to pass water very frequently both day and night, usually accompanied with a feeling of extreme restlessness. No matter what may have caused it, the Home Treatment is designed to relieve this condition * * *.

What you or any other sufferer wants is a treatment that will produce results. No matter what the causes are you want relief quickly. My Home Treatment is prepared to act directly on the irritated parts, and you will not have to use the medicine very long to prove its effectiveness. b-4b

PAR. 3. The statements and representations as set forth in paragraph 2 hereof, and many others similar thereto, serve as representations on the part of respondent to purchasers and prospective purchasers of his product as to the nature thereof, and its effectiveness in use. These statements and representations of respondent hereinabove set out, and others similar thereto, have the capacity and tendency to lead purchasers and prospective purchasers of respondent's so-called home treatment into the belief:

- (a) That said Home Treatment is an effective remedy for any organic bladder trouble;
 - (b) That it is an effective or valuable treatment for prostatic trouble of any kind;
 - (c) That it is an effective or valuable treatment for kidney trouble;
 - (d) That it is an effective or valuable treatment for the bowels;
 - (e) That it reaches all of the underlying causes of either bladder, kidney, prostatic or bowel troubles;
 - (f) That it will "cure" or "rid" one of all such ailments;
 - (g) That it will relieve a weakened condition of the bladder due to enlarged prostate gland or to a deranged condition of the kidney;
 - (h) That it can or should eliminate the cause of bladder or other organic troubles;
 - (i) That it will have a beneficial effect upon an acid or rheumatic condition of the blood causing bladder irritations;
 - (j) That the use of this medicine in preventing retention of urine will enable one to avoid interstitial nephritis or Bright's disease;
 - (k) That delay in taking this medicine may make it too late for one to treat his bladder ailment effectively;
 - (l) That the Home Treatment acts directly on the seat of the trouble or that it brings quick relief no matter what the causes are;
 - (m) That it relieves systemic causes of kidney, bladder and bowel ailments and troubles;
- and to purchase respondent's products in such beliefs.

Conclusion

In truth and in fact, "McWethy's Home Treatment" is not an effective remedy for bladder, bowel, or prostatic troubles, nor does it relieve the systemic causes of kidney, bladder, and bowel ailments and troubles, as represented. It does not eliminate the cause of such irritations or ailments or relieve a user's weakened physical condition due to a derangement of the kidneys, prostate gland, bladder, or bowels. In truth and in fact, the representations made by respondent with respect to the nature, value and effect of his preparation, when used are grossly exaggerated, misleading, and deceptive, as said preparation does not and will not accomplish the results claimed for it.

PAR. 4. There are among the competitors of respondent in commerce as herein set out, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products. There are also among such competitors of the respondent, sellers and distributors of like and similar products who do not advertise and otherwise represent that such products have merit or therapeutic value which they do not have.

PAR. 5. The use of the statements and representations herein set forth in paragraphs 2 and 3 by the respondent in offering for sale and selling his products in commerce herein set out, have had, and now have the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that said representations are true and into the purchase of substantial quantities of respondent's product on account of such belief induced as aforesaid. As a result thereof, trade has been unfairly diverted to the respondent from competitors referred to in paragraph 4 hereof, who truthfully advertise and represent the character and nature and therapeutic value of their respective products. In consequence thereof, injury has been done by respondent to competition in commerce between and among the various States of the United States.

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 constitute unfair methods of competition in commerce 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 the respondent filed herein on July 25, 1936, testimony and evidence taken before Trial Examiner W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint, upon the said complaint as amended by order of the Commission on December 24, 1936, and the answer to the said amended complaint, filed herein on January 7, 1937, by respondent admitting all the material allegations of the complaint, as amended, 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, F. L. McWethy, his agents, representatives, servants, and employees, in connection with the offering for sale, sale and distribution of a product now designated as "McWethy's Home Treatment" or any product of substantially the same composition and ingredients sold under the name "McWethy's Home Treatment" or under any other name, in interstate commerce, do cease and desist from:

Representing, directly or indirectly, through form letters, folders, circulars, catalogs, or any other form of printed matter, or by radio broadcasting, or in any other manner:

(a) That said Home Treatment is an effective remedy for any bladder trouble;

(b) That it is an effective or valuable treatment for prostatic trouble of any kind;

(c) That it is an effective or valuable treatment for kidney trouble;

(d) That it is an effective or valuable treatment for the bowels;

(e) That it reaches all of the underlying causes of either bladder, kidney, prostatic or bowel troubles;

(f) That it will "cure" or "rid" one of all such ailments;

(g) That it will relieve a weakened condition of the bladder due to enlarged prostate gland or to a deranged condition of the kidneys;

(h) That it can or should eliminate the cause of bladder or other organic troubles;

(i) That it will have a beneficial effect upon an acid or rheumatic condition of the blood causing bladder irritations;

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(j) That the use of this medicine in preventing retention of urine will enable one to avoid interstitial nephritis or Bright's disease;

(k) That delay in taking this medicine may make it too late for one to treat his bladder ailment effectively;

(l) That the Home Treatment acts directly on the seat of the trouble or that it brings quick relief no matter what the causes are;

(m) That it relieves systemic causes of kidney, bladder and bowel ailments and troubles;

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 him of this order file with this Commission a report, in writing, setting forth the manner and form in which he shall have complied with this order.

IN THE MATTER OF
SUN RADIO SERVICE & SUPPLY CORPORATION

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

Docket 3022. Complaint, Dec. 23, 1936—Decision, Jan. 23, 1937

Where a corporation long engaged in the manufacture, sale, and distribution of radio receiving sets and radio tubes and supplies in commerce among the various States and in the District of Columbia, made use of letters "R. C. A." as a mark or brand for its said sets, tubes, and supplies thus made and sold by it and its subsidiaries, and built up and enjoyed a valuable goodwill in said letters as thus applied, which, so used, were generally recognized and understood by trade and purchasing public as meaning products made and sold as aforesaid by it and its said subsidiaries; and where activities above set forth of said corporation and its subsidiaries, as well as those of other well-known manufacturers and distributors of such products, included the new type of metal tube developed by them to meet demand of many purchasers of such sets for such a tube, in which the technical elements are sealed in steel, or in which metal functions instead of glass, and such so-called metal tubes had become popularized and were sold to purchasers in large quantities; and thereafter a corporate retailer engaged in the District of Columbia in selling and distributing radio sets, tubes and supplies, including its so-called "Automatic Radio"—

Displayed letters "R. C. A." over word "Automatic" in representing, designating and referring to its aforesaid set in advertisements in newspapers of wide interstate circulation, together with words "Newest" and "Licensed," and "Featuring the New METAL Tube," and sold said products, thus advertised and represented, in commerce among the various States and in aforesaid District, notwithstanding fact sets in question were not those made by aforesaid corporation and its subsidiaries, nor were the tubes thus featured those products which had become popularized and known to trade and purchasing public as metal tubes, as hereinbefore set forth;

With effect of confusing, misleading and deceiving purchasers and prospective purchasers into the erroneous belief that said various products were those of said corporation and its subsidiaries, and of other competitors who had built up and long enjoyed valuable goodwill, as aforesaid, in manufacture, sale and distribution of their respective products, and with tendency and capacity unfairly to divert trade to it from its competitors, including manufacturers and distributors who do not misrepresent their products and deceive or mislead purchasers or prospective purchasers thereof through use of such letters or simulation, or through use of word "Metal" as descriptive of their tubes, not, in fact, such, as understood as hereinbefore explained, and who truthfully represent nature and merits of their products under their own trade names and brands and as of their own manufacture and design; and to the substantial injury of aforesaid corporation and its subsidiaries and other competitors, and of a substantial portion of public, by inducing purchasers and prospective purchasers to buy prod-

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ucts made and sold by it, in and because of the erroneous belief that they were those products of hereinbefore corporation and its subsidiaries, preferred by many purchasers as superior to products competitive therewith, and that its said tubes were metal tubes, as such had become popularly known to trade and purchasing public:

Held, That such acts and practices were to the injury and 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 Sun Radio Service & Supply Corporation, a corporation, 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, Sun Radio Service & Supply Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal place of business located at 938 F Street N. W., in the city of Washington, in the District of Columbia. It is now, and has been for more than one year last past, engaged in the business of selling and distributing at retail, radio receiving sets and radio tubes and supplies in commerce within the District of Columbia, and among the various States of the United States. In the course and conduct of its business respondent has been at all times referred to herein, in competition with other corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution of similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The Radio Corporation of America 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 30 Rockefeller Plaza, in the city of New York and State of New York. It is now, and since 1919, has been engaged in the manufacture, sale and distribution of radio receiving sets and radio tubes and supplies between and among the various States of the United States and in the District of Columbia, using the letters "R. C. A." as a mark or brand for said radio receiving sets, radio tubes, and

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supplies thus manufactured and sold by it and by its owned and controlled subsidiaries, and causing said products when sold to be shipped from its place of business or that of its subsidiaries, to purchasers thereof located in States of the United States other than the State in which such shipments originated. Said Radio Corporation of America has built up and enjoys a valuable goodwill in the said letters "R. C. A." as applied to its said products, particularly radio receiving sets, radio tubes and supplies. Said letters, "R. C. A." when applied to or used in connection with radio receiving sets and radio tubes and supplies, are generally recognized and understood by the trade and purchasing public to signify products manufactured and sold in commerce between and among various States of the United States and in the District of Columbia by the said Radio Corporation of America and its subsidiaries.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, and for the purpose of creating a demand for its products on the part of the purchasing public, the respondent has caused advertisements and advertising matter pertaining to certain of its products to be inserted in newspapers having circulation between and among various States of the United States and in the District of Columbia, and by said means respondent has caused and now causes its said products to be represented, designated and referred to as—

Newest

R. C. A.
AUTOMATIC
Featuring the New
METAL Tube

Licensed

and respondent has sold and now sells its products, thus advertised and represented, between and among various States of the United States and in the District of Columbia.

In truth and in fact, the respondent's said products were not and are not products made or manufactured by the Radio Corporation of America or its subsidiaries referred to in paragraph 2 hereof; nor are the tubes featured in the aforesaid advertising matter those tubes which have become popularized and known to the trade and purchasing public as "metal" tubes, in which the technical elements are sealed in a vacuum in steel, or radio tubes wherein metal functions instead of glass for radio receiving sets.

PAR. 4. The acts and practices of the respondent as set forth in paragraph 3 hereof, and others similar thereto, are false and misleading and have the capacity and tendency to confuse, mislead, and deceive purchasers and prospective purchasers and cause them erroneously to believe that the respondent's said products so described and

referred to were and are the products of the Radio Corporation of America and its subsidiaries, when such was not and is not the fact, and erroneously to believe that said glass tubes are metal tubes, in which the technical elements are sealed in a vacuum of steel, when such is not the fact, to the injury of said Radio Corporation of America and its subsidiaries, and to the injury of other competitors of the respondent, and unfairly injures the goodwill of said competitors which they have built up and have had for many years in the manufacture, sale and distribution of their respective products among the purchasing public in the various parts of the United States and in the District of Columbia.

PAR. 5. There are now, and have been for more than one year last past, among the competitors of respondent, manufacturers and distributors likewise engaged in the business of manufacturing and selling in commerce, as herein set out, radio receiving sets and radio tubes and supplies, and similar products, who do not misrepresent said products and who do not deceive or mislead purchasers or prospective purchasers of their products by simulating or using the letters "R. C. A.," or by simulating or using the trade name or brand of any other competitor, and who do not use the word "metal" as descriptive of tubes offered for sale and sold by them which are not, in fact, tubes in which the technical elements are sealed in a vacuum in steel, or such tubes wherein metal functions instead of glass, and who truthfully represent the nature and merits of their products under their own trade names and brands, and as of their own manufacture and design.

PAR. 6. The use by respondent of said methods, acts and practices as above set forth, have had and now have the tendency and capacity to unfairly divert trade to respondent from its competitors, to the substantial injury of its competitors in said commerce, and also has the tendency and capacity to injure a substantial portion of the public by inducing purchasers and prospective purchasers to purchase the products manufactured and sold by respondent as aforesaid, in and because of the erroneous belief that said products are the products of its competitors or as aforesaid, and that its tubes are "metal" tubes as such tubes have become popularly known to the trade and purchasing public.

PAR. 7 The aforesaid methods, acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged, and 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 23, 1936, issued, and served its complaint in this proceeding upon respondent, Sun Radio Service & Supply Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On January 6, 1937, 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 stated 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 respondent, Sun Radio Service and Supply Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Maryland, having its principal office and place of business at 938 F Street, N. W., in the city of Washington, in the District of Columbia. Respondent, for more than one year last past has been, and still is, engaged in the business of selling and distributing at retail radio receiving sets, radio tubes, and supplies. Among these products which respondent sells in commerce within the District of Columbia and among the various States of the United States is the "Automatic Radio." Respondent advertises this particular product with the letters "RCA" immediately above the words "AUTOMATIC." Respondent also advertises the "Automatic Radio" as "featuring the new METAL tube."

Respondent transports its product or causes the same to be transported from its place of business in the city of Washington, in the District of Columbia, to the purchasers thereof located in various States of the United States, 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

Findings

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. The Radio Corporation of America 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 30 Rockefeller Plaza, in the city of New York and State of New York. It is now, and since 1919 has been, engaged in the manufacture, sale and distribution of radio receiving sets and radio tubes and supplies in commerce between and among the various States of the United States and in the District of Columbia, using the letters "RCA" as a mark or brand for said radio receiving sets, radio tubes and supplies thus manufactured and sold by it and by its owned and controlled subsidiaries. It causes said products when sold to be shipped from its place of business, or that of its subsidiaries, to purchasers thereof located in States of the United States other than the State in which such shipments originated. Said Radio Corporation of America has built up and enjoys a valuable good will in the said letters "RCA" as applied to its said products, particularly radio receiving sets, radio tubes, and supplies. Said letters, "RCA" as applied to or used in connection with radio receiving sets and radio tubes and supplies, are generally recognized and understood by the trade and purchasing public to signify products manufactured and sold in commerce between and among various States of the United States and in the District of Columbia by the said Radio Corporation of America and its subsidiaries.

Many purchasers of radio receiving sets have come to prefer the comparatively new "metal" tubes for use in radio receiving sets; that is to say, tubes in which the technical elements are sealed in a vacuum in steel, or tubes wherein metal functions instead of glass. To meet this demand the Radio Corporation of America and its subsidiaries and other well known manufacturers and distributors of radio receiving sets and radio tubes and supplies have developed the new type of metal tube hereinabove described and these so-called metal tubes have become popularized and sold to purchasers thereof in large quantities.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, and for the purpose of creating a demand for its products on the part of the purchasing public, the respondent has caused advertisements and advertising matter pertaining to certain

of its products to be inserted in newspapers having a wide interstate circulation, and by said means respondent has caused and now causes its said products to be represented, designated and referred to as

Newest

R. C. A.
AUTOMATIC
Featuring the New
METAL Tube

Licensed

and respondent has sold and now sells its products, thus advertised and represented in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The statements and representations set forth in paragraph 3 hereof, have a tendency and capacity to deceive and mislead purchasers and prospective purchasers of respondent's said products into the belief:

(a) That the radio receiving sets advertised and represented by respondent as "RCA AUTOMATIC, featuring the New METAL Tube," were and are the products of the Radio Corporation of America and its subsidiaries.

(b) That the tubes thus advertised and represented as "METAL" tubes are tubes that have become popularized and known to the trade and purchasing public as tubes in which the technical elements are sealed in a vacuum in steel, or tubes for radio receiving sets wherein metal functions instead of glass.

In truth and in fact, the respondent's said products were not and are not products made or manufactured by the Radio Corporation of America or its subsidiaries referred to in paragraph 2 hereof; and the tubes featured in the advertising matter above set out are not such tubes as have become popularized and known to the trade and purchasing public as "metal" tubes, i. e., tubes in which the technical elements are sealed in a vacuum in steel, or tubes for radio receiving sets wherein metal functions instead of glass.

The representations made by the respondent as herein above set forth and others similar thereto, are misleading and deceptive and have a tendency and capacity to confuse, deceive and mislead, and have confused, misled, and deceived purchasers and prospective purchasers into the erroneous beliefs herein above described to the injury of said Radio Corporation of America and its subsidiaries and of other competitors of respondent, which said competitors have built up and have for many years enjoyed valuable goodwill as aforesaid, in the manufacture, sale and distribution of their respective products among the purchasing public in various parts of the United States and in the District of Columbia.

PAR. 5. There are among the public, many purchasers of radio receiving sets, radio tubes and radio supplies, who use the products of the Radio Corporation of America and its subsidiaries in preference to products manufactured and sold by competitors, believing that the products manufactured and sold by said Radio Corporation of America and its subsidiaries are superior in quality to those of competing products.

PAR. 6. There are now, and have been for more than one year last past, among the competitors of respondent, manufacturers and distributors, likewise engaged in the business of manufacturing and selling in commerce, as herein set out, radio receiving sets and radio tubes and supplies, and similar products, who do not misrepresent said products and who do not deceive or mislead purchasers or prospective purchasers of their products by simulating or using the letters "RCA," or by simulating or using the trade name or brand of any other competitor, and who do not use the word "metal" as descriptive of tubes offered for sale and sold by them which are not, in fact, tubes in which the technical elements are sealed in a vacuum in steel, or such tubes wherein metal functions instead of glass, and who truthfully represent the nature and merits of their products under their own trade names and brands and as being of their own manufacture and design.

PAR. 7. The use by respondent of said methods, acts, and practices, as above set forth, have had and now have the tendency and capacity to unfairly divert trade to respondent from its competitors, to the substantial injury of said Radio Corporation of America and its subsidiaries and of other competitors, and also has the tendency and capacity to injure a substantial portion of the public by inducing purchasers and prospective purchasers to purchase the products manufactured and sold by respondent, as aforesaid, in and because of the erroneous beliefs that said products are the products of the Radio Corporation of America and its subsidiaries, as aforesaid, and that its tubes are "metal" tubes as such tubes have become popularly known to the trade and purchasing public.

CONCLUSION

The aforesaid acts and practices of the respondent Sun Radio Service and Supply 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 filed on January 6, 1937, 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, Sun Radio Service and Supply Corporation, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of radio receiving sets and radio tubes and supplies in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, through the use of the letters "RCA," or through any other means, that said radio receiving sets, radio tubes and supplies are manufactured by the Radio Corporation of America or any of its subsidiaries;
2. Representing that the radio tubes offered for sale and sold by it, either alone or in connection with its radios, are "new METAL tubes," until and unless said tubes are those known to the trade and purchasing public as "metal" tubes in which the technical elements are sealed in a vacuum in steel, or wherein metal functions instead of glass;
3. Making any other representations of similar tenor or import.

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

KELLY BREWING & MALTING COMPANY, TRADING AS
ROSECREST DISTILLERSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2451. Complaint, June 20, 1935—Decision, Jan. 25, 1937*

Where a rectifier and wholesaler of spirituous liquors, principal products of which were blended whiskies, distilled gin, apple brandy, and bottled straight whiskies, and, excepting production of gin by redistillation of tax-paid purchased alcohol over juniper berries and other aromatics, producing no spirits by distillation, and with no place therefor, but purchasing all its distilled spirits requirements from others, and selling its said products to wholesale and retail purchasers thereof in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages, and in selling same in trade and commerce as above set forth, and with those engaged in purchasing, rectifying, blending, and bottling such beverages and in similarly selling same, and including among said competitors those who, as manufacturers and distillers of whiskies, gins, and other spirituous beverages sold by them, from mash, wort or wash as above set forth, 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 their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of 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, to its customers and furnished them 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 thus distill said various spirituous beverages, thus bottled, labled, sold, and transported by it, by process of original and continuous distillation as above set forth, through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from word "Distillers" in connection with liquor industry, in the trade and by the consuming public, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public; With effect of misleading and deceiving dealers and purchasing public into the beliefs 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, in such beliefs, to buy its said whiskies, etc., bottled and sold by it, and of thereby diverting trade to it from its competitors who do not, by their

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corporate or trade names or in any other manner, misrepresent that they are manufacturers by distillation from mash, etc., as above set forth, of their said 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 A. Kelly, of Paterson, 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 Kelly Brewing & Malting Company, a corporation, trading under the name and style Rosecrest Distillers, 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 principal office and place of business in the city of Paterson, 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 "Distillers" 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: 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 distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distillers" in its trade 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 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

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trade and 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.

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 word "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 word "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.

Findings

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 20, 1935, issued and served its complaint in this proceeding upon respondent, Kelly Brewing & Malting Company, a corporation, trading under the name and style Rosecrest Distillers, 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 L. Hornor, an examiner of the Commission, theretofore duly designated by it, and no testimony was offered by respondent in opposition to the allegations of the complaint; 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 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 and existing under the laws of the State of New Jersey, with its office and principal place of business at No. 122 Straight Street, in the city of Paterson in said State, where, from the date of its incorporation in 1923 until about July 1, 1935, it engaged in the business of a rectifier and wholesaler of spirituous liquors under basic permit No. R-394 from the Federal Government. It had a capitalization of \$1,000,000, with \$346,000 paid in. Its principal products were blended whiskies, distilled gin, apple brandy, and bottled straight whiskies. Except for the production of gin by the redistillation of tax-paid purchased alcohol over juniper berries and other aromatics, it never produced any spirits by distillation, nor had a place therefor. Although chartered to deal in malts and beers, it had no place or brewing house or buildings wherein and by means of which are carried out the customary actual processes of preparing beers or ales, and in fact it

never handled such products in any manner, so that this case deals entirely with its use of the word "Distillers" in its trade name.

During the aforesaid period, while it was engaged in business, it purchased its alcohol from the Roseville Commercial Alcohol Corporation, and its entire quantity of other distilled spirits requirements from others. During its business operations it bottled and sold approximately 6,700 gallons of blended and straight whiskies and about 5,000 gallons of gin. 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 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 "distillers," 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 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.

PAR. 3. The attorney for the Commission called a large number of witnesses, ten being members of the trade and twenty-two being

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members of the purchasing public, and with few exceptions the Commission's witnesses testified that the word "distillers," or similar words such as "distilling," "distilleries," etc., indicate the initial distilling process of producing spirituous and alcoholic liquors from fermented grain mash, etc., the manufacturer thereof or the place of distillation of spirituous and alcoholic liquors. The greater number of these witnesses testified that the use of such words would induce them or did induce them to purchase the products of the concern using such words in their corporate name or on the label of the bottle containing the product, in the belief that a distiller's product would be more uniform and up to certain specifications, and a manufacturer's name should mean something. They testified that they preferred buying in as direct a manner as is practical and considered distillers as having more responsibility than a rectifier or bottler of spirituous liquors. It was testified that the use of the word "Distillers" in the corporate name of the respondent would indicate to them that the respondent was the actual distiller of the product and they would give preference in purchasing a product which bore a label containing such corporate name in competition with a product bearing a label which did not contain the word "distiller" or any word indicating a distilling process in its corporate name or otherwise.

The Commission finds that there is a substantial portion of the purchasing public which prefers to buy spirituous liquors prepared and bottled by distillers.

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 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. 5. 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. 6. 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.

About July 1, 1935, respondent went into the hands of receivers and its assets were sold, with the exception of a building in which had been installed its gin still. It has retained its corporate existence, and the Commission can have no assurance that in the absence of a prohibitive order, respondent may not at some future time renew the violations of law charged herein.

PAR. 7. 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 became 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, the answer of respondent, 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 no testimony being offered in opposition thereto, brief filed herein by PGad B. Morehouse, counsel for the Commission (brief of counsel for 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, Kelly Brewing & Malting Company, a corporation, trading under the name and style Rosecrest Distillers, 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 "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

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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 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.

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IN THE MATTER OF

FEDERAL DISTILLERS CORPORATION

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

Docket 2439. Complaint, June 18, 1935—Order, Jan. 27, 1937

Consent order requiring respondent corporation, its officers, etc., in connection with sale or offer, in interstate commerce and in District of Columbia, of whiskies, gins, and other alcoholic beverages produced by it, but excepting gins produced by it through process of rectification whereby alcohol purchased, but not produced, by it is redistilled as specified, to cease and desist from representing, through use of word "Distillers" in its corporate name and on its stationery, advertising, etc., or in any other way, that it is a distiller of whiskies, gins, or other alcoholic beverages or that said whiskies, etc., were by it made through process of distillation or that it owns, operates, or controls a place where such products are thus made, unless and until it shall own, operate, or control a place or places where such products are by it manufactured through process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete.

Mr. PGad B. Morehouse for the Commission.

Devine, Kent & Devine, 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 Federal Distillers Corporation, 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 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 purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic beverages in a rectifying plant, 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, 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 "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: those who manufacture 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

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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 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 alcoholic beverages by it so bottled, labeled, sold, and transported in the sense in which the word "distillers" 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 alcoholic 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 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.

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 alcoholic 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 cor-

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porate 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.

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 Federal Distillers 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 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, Federal Distillers Corporation, its officers, representatives, agents, and employees, in connection with the sale, offering for sale and distribution in interstate commerce and in the District of Columbia of whiskies, gins, and all other alcoholic beverages, except gins by it produced 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 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 alcoholic beverages; or (b) the said whiskies, gins, and other alcoholic beverages were by it manufactured through the process of distillation; or (c) 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,

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gins, and other alcoholic 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 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
REO 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, 1933.¹

Docket 2410. Complaint, May 24, 1935—Decision, Jan. 28, 1937

Where a corporation engaged as rectifier and wholesaler of spirituous liquors, in purchasing, rectifying, blending, and bottling whiskies, gins, and other such liquors, and in the making of gin, with a still which it used therefor, by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products to wholesalers and retailers in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in selling same in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages, and similarly selling same, and including among said competitors those who, as manufacturers and distillers of whiskies, gins, and other such beverages sold by them by process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, 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 their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distillers" 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 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 as aforesaid, notwithstanding fact it did not thus distill said various beverages, thus bottled, labeled, sold, and transported by it, through aforesaid process of original and continuous distillation as above set forth, as long definitely understood from word "distiller" used in connection with liquor industry and products thereof in the trade and by the ultimate purchasing public, and did not own, operate, or control any place or places where such beverages were made by process of distillation from mash, wort, or wash, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into the belief that it was a distiller and that the whiskies, gins, and other spirituous

¹ Count Two 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.

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beverages sold by it were by it made and distilled from mash, wort, or wash, as aforesaid, and of inducing dealers and such public, in such belief, to buy its said whiskies, etc., bottled and sold by it, and of thereby diverting trade to it 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; 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.

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

Mr. PGad B. Morehouse for the Commission.

Kessler & Kessler, 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 Reo Distillers, 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 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 New Jersey, with its office and principal place of business in the city of Newark, 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, retifying, 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 New Jersey and some located in other States of the United States and the District of Columbia. In the course and conduct of its busi-

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ness 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 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 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 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 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 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 whiskies, gins, and other spirituous beverages therein contained were by its manufactured through the process of distillation from mash, wort, or mash, 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

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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 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, 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 New Jersey, with its

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office and principal place of business in the city of Newark, 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 New Jersey 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.

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.

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.

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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 provisions 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.

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 24, 1935, issued and served its complaint in this proceeding upon respondent, Reo Distillers, 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 L. Hornor, an examiner of the Commission theretofore duly designated by it, and no testimony was offered by respondent in opposition to the allegations of the complaint; 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 com-

plaint the answer thereto, testimony and other evidence, briefs in support of the complaint (brief in opposition thereto 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 and existing under the laws of the State of New Jersey, with its office and principal place of business at 277 Jellif Avenue in the city of Newark in said State, where it engaged in the business of a rectifier and wholesaler of spirituous liquors from early in the year 1934 until about August 14, 1935. Originally incorporated, prior to the repeal of prohibition, under the name "Reo Chemical Company," it changed to its present corporate name by amendment of its charter, in December 1933.

Its business consisted 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, doing a business amounting to approximately \$800,000 in sales annually. It had the kind of plant and equipment ordinarily incident to that type of business, located in a three-story brick building. The first floor consisted of offices, shipping room, and receiving room; the second floor was the bottling department; and on the third floor was located the mixing room, compounding room, receiving room, laboratory, and a gin still, which still will be hereinafter more fully described.

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 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 "distiller," 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 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.

PAR. 3. The attorney for the Commission called a large number of witnesses, ten being members of the trade and twenty-two being members of the purchasing public, and with few exceptions the Commission's witnesses testified that the word "distillers," or similar words such as "distilling," "distilleries," etc., indicate the initial distilling process of producing spirituous and alcoholic liquors from fermented grain mash, etc., the manufacturer thereof or the place of distillation of spirituous and alcoholic liquors. The greater number of these witnesses testified that the use of such words would induce them or did induce them to purchase the products of the concern using such words in their corporate name or on the label of the bottle containing the product, in the belief that a distiller's product would be more uniform and up to certain specifications, and a manufacturer's name should mean something. They testified that they preferred buying in as direct a manner as is practical and considered distillers as having more responsibility than a rectifier or bottler of spirituous liquors. It was testified that the use of the word "Distillers" in the corporate name of the respondent would indicate to them that the respondent was the actual distiller of the product and they would give preference in purchasing a product which bore a label containing such

corporate name in competition with a product bearing a label which did not contain the word "distiller" or any word indicating a distilling process in its corporate name or otherwise.

The Commission finds that there is a substantial portion of the purchasing public which prefers to buy spirituous liquors prepared and bottled by distillers.

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 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. 5. 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 sta-

tionery or advertising, nor on the labels attached to the bottles in which they sold and shipped their said products.

PAR. 6. 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.

On August 14, 1935, respondent's complete equipment was seized and confiscated by the United States on an income tax levy, and sold at auction in October 1935. On May 5, 1936, two of the respondent's corporate officers were sentenced by a Federal Court to terms in the United States Northeastern Penitentiary at Lewisburg, Pa., and respondent has not engaged in this business since the aforesaid seizure. Respondent's corporate charter, however, is still existent, and the Commission can have 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.

PAR. 7. The complaint herein was issued May 24, 1935 (just prior to the decision of the United States Supreme Court in the case of *A. L. A. Schechter Poultry Corporation, et al., v. U. S.*, 295 U. S. 495), and was in two counts. Count 2 charged violation of Section 3 of Title I of the National Industrial Recovery Act, which was invalidated by the aforesaid decision. For that reason the Commission is dismissing this complaint as to count 2 thereof.

PAR. 8. Because of regulations issued under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. 977), which regulations became 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.

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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, the answer of respondent, 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—no testimony having been offered in opposition thereto—brief filed herein by PGad B. Morehouse, counsel for the Commission (counsel for respondent having failed to file brief or request 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, Reo Distillers, Inc., 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 "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; (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 ves-

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sels 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
OSTRUCON DISTILLED 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 2444. Complaint, June 19, 1935—Decision, Jan. 28, 1937

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous liquors, and in the making of gin with a still which it used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products to wholesalers and retailers in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by true distillation of whiskies, gins, and other spirituous liquors from mash, wort, or wash, and in selling same in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various liquors and in similarly selling same, and including among said competitors those who, as manufacturers and distillers of whiskies, gins, and other spirituous liquors sold by them from mash, wort, or wash, truthfully use words "distillery," "distilleries," "distillers," "distilling" or "distilled products" as a part of their corporate or trade names, on their stationery, catalogs, advertising, and labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth, nor misrepresent themselves as distillers on their letterheads or invoices used to solicit, obtain and retain customers for sale of said products—

Represented, through use of words "Distilled Products" 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 through express representation upon its letterheads and invoices used to solicit, obtain, and retain customers, and in various other ways, to its customers and furnished same with 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 the said whiskies, gins, and other spirituous liquors, thus bottled, labeled, sold, and transported by it, by process of original distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from word "distilled" in connection with liquor industry and products thereof, in the trade and by the ultimate purchasing public, and did not own, operate, or control any place or places where such liquors are made by aforesaid process, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into the belief that it was a distiller and that the whiskies, gins, and other spirituous liquors sold by it were by it made and distilled from mash, wort, or wash

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by one continuous process, and of inducing dealers and such public, in such belief, 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; 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. PGad B. Morehouse for the Commission.

Mr. Fred A. Caskey, 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 Ostrucon Distilled Products Co. 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 one 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 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.

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 "distilled" 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, spirituous liquors produced 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 words "Distilled Products" 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, together with the express representation upon its letterheads and invoices used to solicit, obtain and retain customers for the sale of 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, 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 liquors by it so bottled, labeled, sold, and transported in the sense in which the word "distillers" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent

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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 word "distillery," "distilleries," "distillers," "distilling," or "distilled products" 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," "distillers," or "distilled products" 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, and who do not misrepresent themselves to be distillers on their letterheads or invoices used to solicit, obtain and retain customers for the sale of 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 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 19, 1935, issued and served its complaint in this proceeding upon respondent Ostrucon Distilled Products 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 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 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 at 601 West 26th Street in the city of New York in 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-242, 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 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.

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 "distilled" 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, spirituous liquors produced 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 words "Ostrucon Distilled Products" 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, together with the express representation upon its letterheads and invoices used to solicit, obtain, and retain customers for the sale of 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, 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 aro-

matics, does not distill the whiskies, gins, and other spirituous liquors 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 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," "distilling," or "distilled products" 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," "distillers," or "distilled products" 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, and who do not misrepresent themselves to be distillers on their letterheads or invoices used to solicit, obtain, and retain customers for the sale of 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 name or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, Ostrucon Distilled Products, Inc., are to the prejudice of the public and of re-

spondent'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 April 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, Ostrucon Distilled Products Company, 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 purchased alcohol over juniper berries and other aromatics), do forthwith cease and desist from representing:

Through the use of the word "Distilled" 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.

Syllabus

IN THE MATTER OF
IMPERIAL DISTILLERS CORPORATION

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

Docket 2455. Complaint, June 22, 1935—Decision, Jan. 28, 1937

Where a corporation engaged as rectifier and wholesaler of spirituous liquors, in purchasing, rectifying, blending, and bottling whiskies, gins, liquors and other spirituous beverages, and in the making of gin with a still which it used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and selling its aforesaid various products to wholesalers and retailers in other States, in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in selling same in trade and commerce among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and similarly selling same, and including among said 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 "distiller," "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 their said products, and those who, engaged in purchasing, rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth—

Represented, through use of its corporate name, including word "Distillers," printed on its stationery, invoices, and labels, together with words "Distilled * * * by" in case of gins and words "Bottled by" in case of whiskies and liquors, and in various other ways to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that the whiskies, gins, and other spirituous beverages contained in such bottles were by it made through process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture was complete, notwithstanding fact it did not thus distill said various beverages, thus bottled, labeled, sold, and transported by it as above set forth, and as long definitely understood from word "distillers," used in connection with liquor industry and products thereof, in the trade and by the ultimate purchasing public, and did not own, operate, or control any place or places where such beverages are made by process of distillation from mash, wort, or wash, and was not a distiller, investment and expenses of which are, in general, greater than those of the rectifier, and for the purchase of the bottled liquors of which, as products of actual distiller and manufacturer, there is a preference on the part of a substantial portion of the purchasing public, and to which prestige, of competitive advantage in overcoming sales resistance, attaches in the minds of the wholesale trade, and associated with which is belief in trade and public that distiller's control over making of such products from start to finish is of advantage to the seller;

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With effect of misleading and deceiving dealers and purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash, and of inducing dealers and such public, acting in such belief, to buy its said whiskies, etc., bottled and sold by it, and of thereby diverting trade to it from its competitors who do not, by their corporate names or in any other manner, misrepresent that they are manufacturers by distillation from mash, wort, or wash of such 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. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

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

Mr. Samuel P. Novick, 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 Imperial Distillers Corp., 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 California, with its office and principal place of business in the city of Los Angeles, 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, 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 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

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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, 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 "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, those who manufacture spirituous 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, and on the labels attached to the bottles in which it sells and ships its said products, by express representation on its letterheads used by it to solicit and obtain customers for the sale of its aforesaid liquors, 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, 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 "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 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, 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 22, 1935, issued and served its complaint, in this proceeding upon respondent Imperial Distillers 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 Edward W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it; and by P. B. Morehouse, attorney for the Commission, before John W. Addison, an examiner of the Commission theretofore by the Commission duly substituted to take testimony and other evidence in the place and stead of said W. W. Sheppard; and in opposition to the allegations of the complaint by Samuel P. Novick, 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 the complaint (counsel for respondent having failed to file brief or request 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. Imperial Distillers Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, as a rectifier and wholesaler of spirituous liquors, with its principal office and place of business at No. 1615 Los Angeles Street, in the city of Los Angeles, State of California. It purchases, rectifies, blends, and bottles whiskies, gins, liquors, and other spirituous beverages, and sells the same at wholesale in constant current of trade and commerce between and among the various States of the United States. It estimated its average

sales (as of December 1935) at approximately \$30,000 per month. 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 States of the United States other than the State of California. 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. 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 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 rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus "R-409" 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. In the course and conduct of its business as aforesaid, respondent uses its name printed on its stationery, invoices, and labels. The name on the labels is preceded by the words "Distilled * * * by" in the case of redistilled gins; and by the words "Bottled by" in the case of its whiskies and liquors. The Commission finds that by the use which respondent makes 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 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.

Respondent 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 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 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 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

"distiller," "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 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 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's 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 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 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 a substantial injury to substantial competition in interstate commerce.

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CONCLUSION

The aforesaid acts and practices of the respondent, Imperial Distillers 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 W. W. Shepard and John W. Addison, examiners of the Commission theretofore duly designated by it, in support of the allegations of the said complaint and in opposition thereto, and brief in support of the complaint filed herein (counsel for respondent having failed to file brief or request 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, Imperial Distillers Corporation, its officers, representatives, agents, and employees, in connection with the sale, offering for sale, and distribution in interstate commerce and 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 "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;

(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 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,

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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

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IN THE MATTER OF
PARAMOUNT DISTILLERS, INC.

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

Docket 2453. Complaint, June 21, 1935—Order, Jan. 30, 1937

Consent order requiring respondent, its officers, etc., in connection with sale or offer, in interstate commerce and in the District of Columbia, of whiskies, gins, and other alcoholic beverages produced by it, but excepting gins produced by it through process of rectification whereby alcohol purchased, but not produced, by it is redistilled, as specified, to cease and desist from representing, through use of word "Distillers" in its corporate name and on its stationery, advertising, etc., or in any other way, that it is a distiller of whiskies, gins, and other alcoholic beverages, or that said whiskies, etc., were by it made through process of distillation, or that it owns, operates, or controls a place where such products are thus made, unless and until it shall own, operate, or control a place or places where such products are by it manufactured through process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete.

Before *Mr. John W. Bennett*, trial examiner.
Mr. PGad B. Morehouse for the Commission.
Cooke & Beneman, 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 Paramount Distillers, 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 Ohio, with its principal office and place of business in the city of Cleveland, 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 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

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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 alcoholic 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 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. 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 "Distillers" 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, 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 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 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 alcoholic 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 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 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 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 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 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 alcoholic 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 alcoholic 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.

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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.

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 Paramount Distillers, Inc., respondent herein, and the said respondent's written answer made thereto, waiving the taking of testimony, findings as to the fact, 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 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, Paramount Distillers, Inc., its officers, representatives, agents, and employees, in connection with the sale, offering for sale, and distribution in interstate commerce and in the District of Columbia of whiskies, gins, and all other alcoholic beverages, except gins by it produced 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 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 alcoholic beverages; or (b) The said whiskies, gins, and other alcoholic beverages were by it manufactured through the process of distillation; or (c) 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 alcoholic beverages are by it manufactured through a process of original and continuous distillation from mash, wort, or

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wash, through continuous closed pipes and vessels until the manufacture thereof is completed.

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

HERCULES PRODUCTS & DISTILLING CORPORATION

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

Docket 2473. Complaint, June 28, 1935—Decision, Jan. 30, 1937

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 the making of gin with a still which it used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products to wholesalers and retailers in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by true distillation of whiskies, gins, and other spirituous beverages and selling same in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and similarly selling same, and including among said competitors those who, as manufacturers and distillers by original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, 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 catalogs and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distilling" in its corporate name, printed on its stationery and 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 same with a 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 as aforesaid, notwithstanding fact it did not thus distill said various beverages, thus bottled, labeled, sold, and transported by it, through aforesaid process of original and continuous distillation, as long definitely understood from word "distilling," used in connection with liquor industry and products thereof in the trade and by the ultimate purchasing public, and did not own, operate, or control any place or places where such beverages are made by aforesaid process, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into the beliefs 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 by one continuous process, and of inducing dealers, in such beliefs, to buy its said whiskies and other beverages bottled and sold by it, and of thereby diverting trade to it from its competitors who do not, by their cor-

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porate or trade names or in any other manner, misrepresent that they are distillers; 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. Albert C. Drucker, 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 Hercules Products & Distilling Corp., 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 Brooklyn, 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 of distilled spirits, purchasing, rectifying, blending, and bottling whiskies, gins, 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 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 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, 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. 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 "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 the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of spirituous 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 "Distilling" in its corporate name, printed on its stationery and 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, 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, and other spirituous beverages by it so bottled, 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.

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

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 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 catalogs, 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 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 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, Hercules Products & Distilling Corporation, charging its 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 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

PARAGRAPHS 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 Brooklyn, 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 of distilled spirits, purchasing, rectifying, blending, and bottling whiskies, gins, 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 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 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, 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. 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 "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 the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of spirituous 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 "Distilling" in its corporate name, printed on its stationery and 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 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, and other spirituous beverages by it so bottled, 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.

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 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, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate

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or trade names, nor on their stationery or catalogs, 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 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 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 prepared 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, Hercules Products & Distilling 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 substituted answer of respondent, filed herein, admitting all the material allega-

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tions 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, Hercules Products & Distilling Corporation, 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 "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.

Syllabus

IN THE MATTER OF

CARLO VAN MYERS, DOING BUSINESS AS NORTH AMERICAN CLOTHES COMPANY, NATIONAL BRAND CLOTHES COMPANY, SARTORIAL ART CLOTHES COMPANY AND SOCIETY BOND CLOTHES COMPANY

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

Docket 2624. Complaint, Nov. 12, 1935—Decision, Jan. 30, 1937

Where an individual, with one or two employees, limited to a young woman assistant and occasionally a stenographer, and with office or desk space at the addresses shown by him, engaged in sale of ready-made suits, trousers, overcoats, and topcoats direct to the consumer, through salesmen whom he (1) contacted through advertisements in newspapers and periodicals describing his said product as of high quality, with numerous patterns, union-made, and reasonably priced, and (2) supplied, upon receipt of application forms, and without any adequate showing as to their fitness, honesty, or reliability, with "Authorization Certificates," order forms with instructions for and depictions of a tailor taking various measurements, and sample books displaying on each page words "Fine Clothing Reasonably Priced," and whose practice it was, in the case of many, to apply stickers to his said samples, as well as to those procured for their own use, and different from and much superior to those furnished by him, denoting such materials as "Virgin Wool" and the like, and by and of whose various misrepresentations, over the course of years, and encouraged, aided, and abetted by him in the case of many, he knowingly and deliberately benefited and took advantage, without reasonable or adequate measures to rid himself of such dishonest representatives or prevent his customers from being victimized by them, so as to constitute, in effect, a system of business and method of competition—

- (a) Represented that said clothing was all wool or of fine quality, and that it would be of the same material as the samples exhibited to purchasers and prospective purchasers, and that he would fill orders with materials corresponding exactly in quality and color with samples exhibited in swatch books or sample books, facts being clothing with which he filled orders was not all wool, but either cotton or mostly cotton, and was of very poor quality material, and was not, generally speaking, of the same material or equal to samples with which he supplied his salesmen, nor of the same material or equal to those shown by latter in cases where they used samples not furnished by him, but clothing sent out by him, in a great proportion of the orders taken by his said salesmen, was of different material, pattern, or color or of material inferior in quality to that selected, or differed in all or several of such respects from that ordered;
- (b) Represented that said clothing was made to measure or tailor-made, and that there was a choice of styles, and that personal delivery thereof would be made by the salesman or by a tailor who would make necessary alterations, and that fittings would be had before the garment was com-

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pleted, facts being clothing in question was not tailor-made nor altered to size and fit of wearer, but was ready-made clothing of cheap workmanship, and it was his practice to fill orders for suits from manufacturer's stock in one style of garment only, with no choice, and there were no personal deliveries, nor alterations on delivery, and no fittings, and in many cases he sent out clothing, in filling orders, in sizes widely at variance from those ordered, and so wholly unsuited in size, with variances amounting to as much as four or five sizes too small or too large, to customer ordering same, that clothing could not possibly be used, and filled orders, in many cases, by sending clothing not of the ready-made size indicated by customer's measurements, and, except in special instances, by sending in all cases so-called regular sizes, with no alterations, so as to make it conform as nearly as might be to individual's measurements;

- (c) Represented that two garments were included in price of one, and that extra trousers were furnished without extra charge, and that prices quoted were special introductory, and that the clothing was sold on the installment plan, with discounts given for payment in full at time of order, facts being prices quoted were the regular prices for one suit or garment, with no extra clothing included, extra trousers were furnished only at extra cost, all clothing was sent C. O. D. to the purchaser and no installments were allowed nor any discount given for cash payment; and
- (d) Represented that the business in question was a local one or one well-known locally, and that the salesman was located at a given address, and that his name was that given to the customer, facts being he had no connection with any clothing concern outside of New York City, and was not connected in any way with the named concern in Chicago, and names and addresses given by salesmen were frequently fictitious;

With effect of misleading and deceiving members of the public in the aforesaid various particulars, and of inducing them to give orders for his said clothing and to pay money to him and his salesmen therefor, and of defrauding members of the public by inducing them, as aforesaid, to pay out money for articles of clothing of a kind, quality, and description which they did not order or intend to buy, by reason of the erroneous beliefs engendered as above set forth, and of diverting trade to him from competitors engaged in the sale of men's clothing in commerce among the various States and in the District of Columbia, and including therein those who did not make use of the same or similar misleading or fraudulent methods used by him and his salesmen as above described; 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 J. Keenan*, trial examiner.

Mr. Harry D. Michael for the Commission.

Mr. Irving A. Fishman, 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 Carlo Van Myers, doing business at various times under the names and styles of North American Clothes Company, National Brand Clothes Company, Sartorial Art Clothes Company, and Society Bond Clothes Company, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That said respondent, Carlo Van Myers, doing business under the names and styles of North American Clothes Company, National Brand Clothes Company, Sartorial Art Clothes Company, and Society Bond Clothes Company, trading under one or another of the aforesaid trade names, is now and has been for more than three years last past engaged in the sale and distribution in interstate commerce of men's ready-made clothing, with his office and principal place of business in the city of New York, in the State of New York. Said respondent, in the course and conduct of his said business, causes the clothing sold by him, consisting of men's suits, trousers, overcoats, and topcoats, to be transported in interstate commerce from his said place of business in New York to, into, and through States of the United States other than New York to various and numerous persons in such other States to whom such clothing is or has been sold.

PAR. 2. That during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of men's clothing, consisting of suits, trousers, overcoats, and topcoats, and such other individuals, firms, and corporations have caused and do now cause their said clothing, when sold by them, to be transported from the various States of the United States where they are located, 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 clothing with such other individuals, firms, and corporations.

PAR. 3. That respondent, in the sale of ready-made clothing, as aforesaid, makes use of salesmen who solicit the general purchasing public in making sales of the same. Such salesmen are respondent's representatives or agents. They are contacted and secured by respondent by inserting advertisements under the heading "Salesman Wanted," and others of like character, in newspapers and magazines

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published in various parts of the United States and of general circulation therein, of which the following is an example, to wit:

Clothing Men, Direct, Finest Spring Line, Suits, Topcoats, \$16.85,
Commission \$5.00 North American Clothes, 818 Broadway, New York.

Upon replies to such advertisements being received and application forms being filed by those replying, respondent sends each of them what he designates as an "Authorization Certificate," together with order forms and book of samples. No adequate showing is required of those who apply, nor is any adequate investigation made as to their fitness, honesty, or reliability. Said representatives thereupon go about among the purchasing public and take orders for clothing, which said orders are forwarded by them to respondent to be filled. Many of such representatives have been accustomed to, and did and do, make various false and misleading representations, as a result of which they are enabled to and do secure orders for clothing. Among such false and misleading representations made by said representatives are the following:

- (1) That the clothing offered for sale is all wool, or of fine quality.
- (2) That it will be made-to-measure, or tailor-made.
- (3) That two garments are offered for the price of one.
- (4) That extra trousers will be furnished without extra charge.
- (5) That the clothing ordered will be like the samples selected, whether the ones selected are in respondent's sample book, or others secured by the salesman.
- (6) That prices quoted are special introductory prices.
- (7) That a local store is to be opened soon.
- (8) That choice of style of garment could be had, such as choice between single-breasted and double-breasted.
- (9) That personal delivery of the garment ordered will be made by the salesman or by a tailor representing respondent, who will make necessary alterations.
- (10) That fittings will be had before the garment is completed.
- (11) That respondent is a local concern, or one well known locally, such as the North American Tailoring Company, of Chicago, Ill.
- (12) That installment payments can be made on balance due after the down payment.
- (13) That a discount is allowed for payment in full at time order is given.
- (14) That the salesman is located at a given address and that his name is that given to the customer.

PAR. 4. That in truth and in fact, the clothing sold by respondent is not all wool, but is all cotton, or mostly cotton, with a small mixture of wool, or is cotton French back with wool in the facing, or is otherwise of very poor quality material. The clothing delivered by respondent is ready-made and of cheap workmanship. All of it is bought by the respondent after orders are received. The prices quoted

are the regular prices for one garment. Extra trousers are furnished only at extra cost. The samples shown are not of the same material as in the clothing shipped by respondent. The prices quoted are regular prices. Respondent neither has local stores nor has he taken steps to establish such. His only place of business is office space with another concern in New York City. He manufactures no clothing and keeps no stock on hand. Generally speaking, customers are not given a choice between single- and double-breasted, but orders are filled in one style of garment only. All garments are sent c. o. d. and there is no personal delivery or alterations on delivery, and no fittings. Respondent has no connection with any local concern outside of New York City and is not connected with the North American Tailoring Company, of Chicago, Ill. No installment payments are allowed, nor is there any discount for full cash payment. The names and addresses given by salesmen to customers are often fictitious.

PAR. 5. That such misrepresentations as hereinbefore stated have been accustomed to be made by many of respondent's salesmen for a period of years. Respondent has been notified and informed by customers of such misrepresentations. Nevertheless, respondent has continued to accept and fill orders sent in by his salesmen after having been thus put upon notice that the orders so accepted were probably procured by means of misrepresentations. No reasonable or adequate measures have been or now are taken by respondent to rid himself of dishonest salesmen, or to prevent customers from being victimized by their misrepresentations. Neither does respondent adequately, fully, and generally make restitution for losses incurred by customers as a result of transactions resulting from such misrepresentations. In some cases substitutions of garments inferior to and unlike those ordered are made. In some cases the c. o. d. payment made for the garment is returned. In only a few cases is the down payment made to the salesman refunded and then only after extended efforts made by the customers. In only rare cases is the amount paid by the customer for postage charges refunded. In nearly all cases dilatory tactics are used, so that the customer becomes discouraged and accepts a bad bargain and lets the matter drop. In such manner respondent has continually profited by the misrepresentation of his salesmen and by such method of business as aforesaid.

PAR. 6. That respondent encourages, aids, and abets some of the aforesaid false and misleading representations of his salesmen and contributes to the misleading of the customer by the means and methods as hereinafter set out. In the advertisements for salesmen he falsely represents that his clothing is of high grade and quality

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by such phrases as "Finest Spring Line". In his letters to prospective salesmen, paragraphs such as the following appear:

National Brand Clothes Company, has made up a line of samples for spring and summer suits, including topcoats, which are superb in their designs, A-1 in their quality, and at a price to fit the pocketbook of the average customer.

Our line consists of over forty handsome patterns. A fine line of Union Made suits. Great values.

On each page of the sample book sent out is a statement such as the following, which is seen and read not only by the salesman but by the customer:

Fine Clothing Reasonably Priced.

On the order blank forms furnished to salesmen and used in the taking of orders for clothing are nine pictures of a tailor taking different measurements of a man for clothing. The following directions appear under the respective pictures:

- A. Take this measure over vest at breast snugly but not tight.
- B. Take this measure with coat on from collar seam to length wanted.
- C. Take this measure with coat on from seam at armhole to sleeve length wanted.
- D. Take this measure with coat on, from middle of back to armhole seam.
 1. Around waist, over shirt but under vest snug but not tight.
 2. Around fullest part of seat.
 3. From well up in crotch to length desired.
 4. From top of pants to length desired.

In addition, said order form has thereon the following blanks for the furnishing of information relative to the customer's build, size, and general conformation, such as would be required in making clothing to measure, to wit:

Very Important

Age --- Weight ---- Size now wearing ---- Cuffs ---- No cuffs ---

Answer Carefully

Neck measure? -----
 Long, Medium, or Short Neck? -----
 Regular, Sloping, High Shoulders? -----
 Position: Regular, Erect, Stooping? -----
 Vest Opening ----- Vest Length -----
 Width of Knee ----- Width of Bottom -----
 Is customer Regular, Slender or Stout? -----
 Are Suspender Buttons Wanted? -----

Respondent's salesmen use said order form in taking orders from customers. They take the measurements as directed and secure the other information requested. All of this leads the customer to believe that he will get a made-to-measure suit and causes him to accept the salesman's assurance to the same effect.

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Moreover, respondent furnishes to his salesmen an attractive sample book containing sample swatches, many of which, to the ordinary observer, have the appearance of being all wool, or cloth of very good quality with a considerable portion of wool. Such samples aid the dishonest salesman in carrying on the deception as hereinbefore alleged and tend to mislead the purchasing public, in the absence of any statement by respondent on the sample book as to the materials entering into the makeup of the samples. Some salesmen apply stickers to the samples, denoting them as "virgin wool" and the like.

PAR. 7. That many of respondent's salesmen have been accustomed to use high grade all wool samples in taking orders, totally different from and much superior to the line of goods handled by respondent. Respondent has been informed of this practice by customers and has been well aware of the same at all times. In spite of such knowledge, respondent continues to send out suits of inferior materials to fill orders so taken and to insist on substitution after complaint is made, rather than make full restitution and put the customer in status quo.

PAR. 8. That respondent fills orders for clothing sold by his salesmen in a large number of cases by sending clothing of different material, pattern or color from that ordered, or of material inferior in quality to the samples selected, or differing in several or all of such particulars. In a great number of cases clothing has been sent to purchasers in sizes widely at variance from the sizes ordered and wholly unsuited to the customer. Such variances are as much, in some cases, as four or five sizes too small or too large, and the clothing either so small that the customer cannot get it on, or so large that it is wholly unfit to wear. In many cases orders are filled by sending clothing not of the ready-made size that would be indicated by the customer's measurements. Except in special instances, all orders received by respondent are filled by sending so-called "regular" sizes, and no alterations are made therein to conform as near as may be to measurements submitted.

PAR. 9. That the representations of respondent and his salesmen, as aforesaid, have had and do have the tendency and capacity to mislead, confuse and deceive members of the public in the particulars as aforesaid. That the practices and methods used as hereinbefore set out result in defrauding customers by causing them to pay out money for articles of clothing of a kind, quality and description which they did not order or intend to buy. Such representations, practices and methods have the tendency and capacity to cause and induce, and do in fact cause and induce members of the public to order clothing from respondent and to pay money therefor because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from

competitors engaged in the sale of men's clothing in interstate commerce. There are, among the competitors of respondent, those who do not make use of the said methods used by respondent and who do not make the same or similar false and misleading representations as made by respondent and his salesmen, as herein set out.

PAR. 10. 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 November 12, 1935, issued and served its complaint in this proceeding upon respondent, Carlo Van Myers, doing business under the trade names and styles of North American Clothes Company, National Brand Clothes Company, Sartorial Art Clothes Company, and Society Bond Clothes 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 Harry D. Michael, attorney for the Commission, before John J. Keenan, an examiner of the Commission, theretofore duly designated by it, counsel for respondent having failed to introduce testimony and other evidence in opposition to the allegations of the complaint; 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, counsel for respondent having failed to file a brief, although given an opportunity so to do, and having failed to appear at the time and place set for oral argument after due notice thereof; 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, Carlo Van Myers, doing business under the trade names and styles of North American Clothes Company, National Brand Clothes Company, Sartorial Art Clothes Company, and Society Bond Clothes Company, trading under one or another of the aforesaid trade names, was engaged at the time of the issuance of the complaint herein and had been so engaged for more than three years prior thereto, in the sale and distribution in commerce between and among the various States of the United States of men's ready-made clothing, with his office and principal place of business in the city of New York, in the State of New York. Respondent, in the course and conduct of his said business, caused the clothing sold by him consisting of men's suits, trousers, overcoats, and topcoats, to be transported in commerce from his said place of business in New York, to, into, and through States of the United States other than New York to various and numerous persons in such other States to whom such clothing had been sold.

PAR. 2. During the time above mentioned, other individuals, firms, and corporations in various States of the United States were engaged in the sale and distribution in commerce between and among the various States of the United States, and in the District of Columbia, of men's clothing, consisting of suits, trousers, overcoats, and topcoats, and such other individuals, firms and corporations caused their said clothing, when sold by them, to be transported from the various States of the United States where they were located, to, into, and through States other than the States of origin of the shipment thereof. Respondent was, during the aforesaid time, in substantial competition, in the sale of his said clothing, with such other individuals, firms, and corporations.

PAR. 3. Respondent, in the sale of ready-made clothing, as aforesaid, made use of salesmen who solicited the general purchasing public in making sales of the same. Such salesmen were respondent's representatives and agents. They were contacted and secured by respondent by the insertion of advertisements under the heading "Salesmen Wanted," and others of like character, in newspapers and magazines published in various parts of the United States and of general circulation therein, of which the following is an example, to wit:

Clothing Men, Direct, Finest Spring Line, Suits, Topcoats \$16.85, Commission \$5.00. North American Clothes, 818 Broadway, New York.

Upon replies to such advertisements being received and application forms being filed by those replying, respondent would send each of them what he designated as an "Authorization Certificate," together with order forms and books of samples. No adequate showing was required by respondent, of those who applied, nor was any adequate investigation made, as to their fitness, honesty, or reliability. Upon the receipt of such authorization, samples and other supplies, said representatives, so designated, thereupon went about among the purchasing public taking orders for clothing, which said orders were thereupon forwarded to respondent to be filled. Most of such representatives were accustomed to, and did make various false and misleading representations to those members of the public from whom they received orders, by reason of which said misrepresentations such orders were given, money was paid thereon and contracts entered into for the payment of the remainder due as provided in such contracts. Among such false and misleading representations made by representatives were the following:

(1) That the clothing offered for sale was all wool, or of fine quality.

(2) That it was to be made-to-measure, or tailor-made.

(3) That two garments were offered for the price of one.

(4) That extra trousers were to be furnished without extra charge.

(5) That the clothing ordered was to be like the samples selected, whether the ones selected were in respondent's sample book, or others secured by the salesmen.

(6) That prices quoted were special introductory prices.

(7) That a local store was to be opened soon.

(8) That choice of style of garment could be had, such as choice between single-breasted and double-breasted.

(9) That personal delivery of the garment ordered would be made by the salesman or by a tailor representing respondent, who would make necessary alterations.

(10) That fittings were to be had before the garment was completed.

(11) That respondent was a local concern, or one well known locally, such as the North American Tailoring Company, of Chicago, Illinois.

(12) That installment payments could be made on balance due after the down payment.

(13) That a discount was allowed for payment in full at time order was given.

(14) That the salesman was located at a given address and that his name was that given to the customer.

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PAR. 4. Respondent, in the conduct of his business as aforesaid, had his office at 818 Broadway, New York City. For a time while using the trade name of National Brand Clothes Company he also used the address 105 Fifth Avenue, New York City, as a mailing address, where he rented desk space only. Respondent's place of business at 818 Broadway consisted of a small space partitioned off from a loft space occupied by a manufacturer of boy's clothing. Respondent had no employees except a young lady assistant and at times a stenographer. The furnishings of his office consisted of a desk and a couple of chairs. No stock of goods was kept on hand. As orders came in, respondent went to a manufacturer of men's clothing and selected the clothing to fill the orders. Respondent had no tailors employed either for making clothing or for alterations, nor did he have any interest in any clothing manufacturing concern. The clothing with which respondent filled orders was not all-wool but was either cotton or mostly cotton with a small mixture of wool or a cotton French back with wool in the facing. All of it was of very poor quality material. It was neither tailor-made clothing nor clothing altered to the size and fit of the wearer. It was all ready-made clothing of cheap workmanship. The prices quoted by respondent for his clothing were the regular prices for one suit or garment with no extra clothing at such prices. Extra trousers were furnished only at extra cost. The clothing delivered by respondent, generally speaking, was not of the same material or equal to the samples which he furnished his salesmen, nor was it the same material or equal to the samples shown by salesmen in cases where they used samples not furnished by the respondent. Respondent filled his orders for suits in one style of garment only and gave no choice as between single-breasted and double-breasted garments. All clothing was sent C. O. D. to the purchasers thereof. There were no personal deliveries, no alterations on delivery and no fittings. Respondent had no connection with any clothing concern outside of New York City and was not connected in any way with the North American Tailoring Company of Chicago, Ill. No payments by installments were allowed, nor was any discount given for full cash payment. Names and addresses given by salesmen were frequently fictitious. All such representations by his salesmen, as stated in the preceding paragraph, were false.

PAR. 5. Misrepresentations such as those hereinbefore referred to were made by respondent's salesmen during a period of approximately five years, during which he conducted his business under one or another of the trade names herein referred to. During such time continual complaints were registered by customers who either notified respondent direct or through complaints to the Post Office Depart-

ment, various Better Business Bureaus, and the Federal Trade Commission. Such complaints were specifically brought to the attention of the respondent from time to time during such period. Regardless of such knowledge and information, the misrepresentations of salesmen continued as long as respondent was in business and respondent continued to accept and fill orders sent in by such salesmen after having been put upon notice that the orders so accepted were probably procured by means of misrepresentations. Respondent took no reasonable or adequate measures to rid himself of dishonest salesmen or to prevent customers from being victimized by their misrepresentations. Neither did respondent adequately, fully and generally make restitution for losses incurred by customers as a result of transactions based upon such misrepresentations. In some cases substitution of garments inferior to and unlike those ordered were made. In a few cases C. O. D. payments were returned, but in only rare instances were down payments made to salesmen refunded and then only after extended efforts made by the customers and others. In only rare cases were the amounts paid by customers for postage charges refunded. In nearly all cases of misrepresentations by salesmen, dilatory tactics were used by respondent so that the customer usually became discouraged and let the matter drop without adequate adjustment or none at all.

PAR. 6. Respondent encouraged, aided and abetted many of the aforesaid false and misleading representations of his salesmen by the means and methods as hereinafter set out. In his advertisements for salesmen he falsely represented that his clothing was of high grade and quality by such phrases as "Finest Spring Line." In his letters to prospective salesmen he represented his clothing as being of fine quality by the following statements:

National Brand Clothes Company, has made up a line of samples for spring and summer suits, including topcoats, which are superb in their designs, A-1, in their quality, and at a price to fit the pocketbook of the average customer.

Our line consists of over forty handsome patterns. A fine line of Union Made suits. Great values.

On each page of the sample book sent out to salesmen the following statement appears, which is seen and read not only by the salesmen but by the customers:

Fine Clothing Reasonably Priced.

Respondent assists in creating the impression that his clothing is tailor-made or made-to-measure by furnishing order blank forms to his salesmen on which are nine pictures of a tailor taking different

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measurements of a man for clothing. The following directions for measurements appear under the respective pictures:

- A. Take this measure over vest at breast snugly but not tight.
- B. Take this measure with coat on from collar seam to length wanted.
- C. Take this measure with coat on from seam at armhole to sleeve length wanted.
- D. Take this measure with coat on, from middle of back to armhole seam.
 1. Around waist, over shirt but under vest, snug, but not tight.
 2. Around fullest part of seat.
 3. From well up in crotch to length desired.
 4. From top of pants to length desired.

In addition, said order form had thereon the following blanks for the furnishing of information relative to the customer's build, size, and general conformation, such as would be required in making clothing to measure, to-wit:

Very Important

Age---- Weight---- Size now wearing---- Cuffs---- No Cuffs----

Answer Carefully

Neck measure?-----

Long, Medium, or Short Neck?-----

Regular, Sloping, High Shoulders?-----

Position: Regular, Erect, Stooping?-----

Vest Opening----- Vest Length?-----

Width of Knee----- Width of Bottom?-----

Is customer Regular, Slender or Stout?-----

Are Suspender Buttons Wanted?-----

Respondent's salesmen were accustomed to and did use such order blank forms as those above described in taking orders from customers and took the measurements as directed and secured the other information requested. All of this procedure had the effect of causing customers to believe that they would get made-to-measure clothing and caused them to accept and believe the salesmen's misrepresentations as hereinbefore set out.

Respondent, furthermore, furnished his salesmen with an attractive sample book containing sample swatches of clothing material. Many of such samples, to the ordinary observer, had the appearance of being all-wool or as being material of good quality with a considerable proportion of wool. Such samples aided respondent's dishonest salesmen in carrying on their deception as hereinbefore alleged. Many of respondent's salesmen in furtherance of their deceptive practices and misrepresentations applied stickers to respondent's samples, as well as to samples which they procured for their own use, denoting such materials as "Virgin Wool" and the like.

PAR. 7. Many of respondent's salesmen had been accustomed to use high grade all-wool samples in taking orders, which said samples were totally different from and much superior to the samples furnished by respondent, as well as being far superior to the materials used by him in filling orders. Respondent was well informed of this practice through customer complaints and through other agencies and was well aware of the same during said period in which he conducted said business. In spite of such knowledge, respondent continued to fill orders sent in by salesmen engaging in such practice and to send out suits thereon of inferior materials. Respondent continued to fail to make restitution in many such cases after complaints were made.

PAR. 8. Respondent, in a great proportion of the orders taken by salesmen and filed by him, sent out clothing of different material, pattern or color or of material inferior in quality to that selected, or differing in all or several of such respects from that ordered. In a great many cases, in filling orders, respondents sent out clothing in sizes widely at variance from the sizes ordered and so wholly unsuited in size to the customer ordering the same that it could not possibly be used. Such variances in size were in some cases as much as four or five sizes too small or too large. In many cases orders were filled by sending clothing not of the ready-made size that would be indicated by the customer's measurements. Except in special instances, all orders received by respondent were filled by sending so-called "regular" sizes. No alterations were made in such clothing by respondent so as to make it conform as near as might be to the measurements submitted.

PAR. 9. Respondent's practices as heretofore set out in connection with the misrepresentations of his salesmen and in filling their orders, became so general and continued for such a period of time as to become a system of business and a method of competition. He knowingly and deliberately, over a period of years, took advantage of the misrepresentations and fraudulent practices of his salesmen to the detriment and loss of his customers. He knowingly profited by such transactions and continued to do so after notice of the misrepresentations involved had been specifically brought to his attention by customers and others.

PAR. 10. The representations of respondent through his salesmen and otherwise as aforesaid had the tendency and capacity to confuse, mislead, and deceive members of the public in the particulars aforesaid and did in fact so deceive them and induce them to give orders for respondent's clothing and to pay money to respondent and his salesmen therefor. The practices and methods used as hereinbefore set out resulted in defrauding members of the public as afore-

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said by inducing them to pay out money for articles of clothing of a kind, quality, and description which they did not order or intend to buy. Such orders were given by members of the public and money paid thereon because of the erroneous beliefs engendered as above set out. Such practices and methods diverted trade to respondent from competitors engaged in the sale of men's clothing in commerce between and among the various States of the United States and in the District of Columbia. There were among the competitors of respondent those who did not make use of the same or similar misleading and fraudulent methods used by respondent and his salesmen as herein set out and respondent's said acts and practices tended to and did in fact divert business to respondent from his said competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts and practices of respondent, Carlo Van Myers, doing business under the trade names and styles of North American Clothes Company, National Brand Clothes Company, Sartorial Art Clothes Company, and Society Bond Clothes 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 John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and brief in support of the complaint, counsel for respondent having failed to introduce evidence in respondent's behalf, and having failed to file a brief, although given opportunity so to do, and having failed to appear at the time and place set for oral argument, after due notice of the same, 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, Carlo Van Myers, an individual, trading and doing business under the trade names and styles North

American Clothes Company, National Brand Clothes Company, Sartorial Art Clothes Company, and Society Bond Clothes Company, or under any other trade names or styles or through any corporate or other device, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of men's clothing in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication, or through salesmen:

1. That said clothing is all-wool or is of fine quality;
2. That said clothing is made-to-measure or is tailor-made;
3. That two garments are included in the price of one;
4. That extra trousers are furnished without extra charge;
5. That the prices quoted are special introductory prices or are other than the regular prices for said clothing, unless said prices are, in fact, lower than the regular prices ordinarily charged for said clothing;
6. That said clothing will be of the same material as the samples exhibited to purchasers and prospective purchasers, unless and until the clothing actually furnished said purchasers is identical with the samples exhibited;
7. That personal delivery of clothing will be made;
8. That a choice of style of garment is offered, such as a choice between single breasted and double breasted;
9. That fittings will be given or that alterations will be made;
10. That said clothing is sold on an installment plan;
11. That discounts are given for payment in full at the time the order for clothing is given;
12. That the business operated by the respondent is a local concern or is one that is well known locally;
13. That the respondent conducts any local retail stores or that any local retail stores will be opened in the purchaser's neighborhood;
14. Through the use of swatch books or sample books wherein various materials are exhibited, or through any other means or in any other manner, that respondent can and will fill orders for clothing ordered from samples so exhibited, with the identical materials of the same quality and color, when such is not the fact.

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.

Syllabus

IN THE MATTER OF

ISRAEL ZELKIND, TRADING AS LAWRENCE
BLANKET MILLS

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

Docket 2984. Complaint, Nov. 17, 1936—Decision, Feb. 1, 1937

Where an individual engaged in the sale and distribution of blankets made by others, and in causing said products to be shipped and transported from the place at which made to purchasers thereof located at various points in other States, in competition with many who manufacture, sell, and distribute blankets without in any way representing the same as actually made from wool, unless in fact so made, and with many who sell and distribute such articles without being the manufacturers thereof and thus representing themselves—

- (a) Featured legend on letterheads and invoices distributed to customers and prospective customers in which was set forth his trade name, including word "Mills," together with words "Manufacturers of All Wool Camp and Institution Blankets" and words "Mill at," aforesaid point from which he caused said articles to be shipped and transported, notwithstanding fact he did not own, operate, or control any mill for manufacture of blankets from the raw materials, was not engaged in manufacturing, and was not a manufacturer as understood by trade and public generally, for direct dealing with which there is a preference on the part of a substantial portion of wholesale and retail purchasers of such goods as securing them, in their belief, closer prices, superior quality, and other advantages, as compared with dealing with broker or middleman; and
- (b) Caused his said blankets to be labeled "all wool" or "woolen," and as "fully shrunk," notwithstanding fact said products, thus labeled, advertised, and sold by him, were not fully shrunk, nor composed wholly of wool, for which there is a preference on the part of a substantial portion of the purchasing public, as compared with such products made from materials other than wool, or products made only in part of wool;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations were true, and with effect of placing in the hands of wholesalers and retailers means whereby said blankets were passed off to said public as all wool goods, and with the result, as a direct consequence of such mistaken and erroneous beliefs thus engendered, that consuming public purchased substantial volume of the said products, and trade was unfairly diverted to him from competitors likewise engaged in selling and distributing such articles, and who truthfully advertise and represent the nature and character of their business and that of the materials used in the manufacture of 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.

Mr. DeWitt T. Puckett for the Commission.

Mr. Meyer Cohan, of Worcester, Mass., 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 Israel Zelkind, an individual trading as Lawrence Blanket Mills, 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 if 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, Israel Zelkind, is an individual, trading as Lawrence Blanket Mills, whose office and place of business is at 9-13 Winter Street, Worcester, Mass.

Respondent is now, and for several years last past has been, engaged in the sale and distribution of blankets to the purchasing and consuming public located in various States of the United States and in the District of Columbia. Respondent now causes, and for several years last past has caused, his products when sold by him, to be shipped from Wilsonville, Conn., the place at which said blankets are manufactured, to the purchasers thereof, located in the various States of the United States, and in the District of Columbia. There is now, and has been for several years last past, a constant current of trade and commerce, by the respondent, in blankets, between and among the various States of the United States, and in the District of Columbia.

Respondent is, and for several years last past has been, in substantial competition with other individuals, firms, and corporations, engaged in the sale of blankets in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the cause and conduct of his business, as described in paragraph 1 hereof, respondent offers for sale and sells his blankets labeled "All Wool" or "Woolen" and as "Fully Shrank."

In truth and in fact the blankets so described and represented are not composed wholly of wool and they do not contain wool in amounts sufficient to justify the designation, "All Wool" or "Woolen." Said blankets are not fully shrunk, as alleged.

PAR. 3. Respondent's invoices distributed wherever his blankets were sold, and also his letterheads bore the following legend:

LAWRENCE BLANKET MILLS

Manufacturers of

All Wool Camp and Institution Blankets

Mill at Wilsonville, Conn.

In truth and in fact respondent does not manufacture the said blankets offered for sale and sold by him, nor does he own, operate, or control a factory where blankets are manufactured.

It is a common belief among wholesalers, retailers, and the purchasing public, that a superior grade of merchandise can be purchased direct from the manufacturer thereof at a considerable saving in price. The representations made by respondent, as alleged in paragraph 3 hereof, have the tendency and capacity to mislead and deceive the purchasers of respondent's blankets into the belief that when they purchase said blankets from respondent, they are dealing with the manufacturer of said blankets purchased and thereby are gaining an advantage by saving the middleman's cost.

PAR. 4. 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 wholesalers, retailers, and a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said blankets on account of such erroneous belief. By said practices, respondent also places in the hands of wholesalers and retailers the means whereby said blankets are passed off to the purchasing public as all wool blankets. There are among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of blankets who do not misrepresent the kind, quality, and character of their products, nor the nature and kind of business they are engaged in, who likewise advertise, sell, and distribute their blankets among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors, thereby substantial injury is being, and has been, done by respondent to competition in commerce as herein set out.

PAR. 5. 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 November 17, 1936, issued, and on

November 19, 1936, served, its complaint in this proceeding upon respondent Israel Zelkind, an individual trading as Lawrence Blanket 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 the respondent filed his 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 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. The respondent, Israel Zelkind, is an individual, trading as Lawrence Blanket Mills. His principal office and place of business is at 9-13 Winter Street, Worcester, Mass.

He is now, and for several years last past has been, engaged in the sale and distribution of blankets. When orders are received for respondent's blankets he causes them to be shipped and transported from Wilsonville, Conn., the place at which said blankets are manufactured, to the purchasers thereof located at various points in States of the United States other than the State of Connecticut. The respondent has, at all times during the past several years, maintained a constant current of trade in said blankets, in commerce, among and between the various States of the United States and in the District of Columbia.

At all times during the last several years, the respondent has been in substantial competition with other individuals and with firms and corporations likewise engaged in the business of selling and distributing, or of manufacturing, selling and distributing blankets, in commerce, among and between the several States of the United States and in the District of Columbia.

PAR. 2. On his letterheads and invoices, distributed throughout the various States of the United States to customers and prospective customers, the respondent prominently and conspicuously displays the legend:

LAWRENCE BLANKET MILLS

Manufacturers of

All Wool Camp and Institution Blankets

Mill at Wilsonville, Conn.

Findings

The use of the word "mills" in his trade name together with the statements "Mill at Wilsonville, Conn." and "Manufacturers of" on his letterheads and invoices, serve as representations to respondent's customers and the general buying public that the respondent owns, operates, or controls a mill wherein woolen materials are converted or manufactured into blankets.

PAR. 3. The respondent does not, in fact, own, operate, or control any mill or mills for the manufacture of blankets from the raw materials. Respondent is not engaged in the business of manufacturing and is not himself a manufacturer as those terms are understood by the trade and the purchasing public generally, but is solely in the business of selling and distributing blankets manufactured from the raw materials by others.

PAR. 4. A substantial portion of the wholesale and retail purchasers of blankets have a preference for dealing direct with the manufacturer of the products being purchased. Such purchasers believe that they secure closer prices, superior quality and other advantages in dealing direct with a manufacturer rather than a broker or middleman.

PAR. 5. In order to further induce the purchase of blankets he sells, respondent causes his blankets to be labeled "all wool" or "woolen," and as "fully shrunk." These designations serve as representations to customers, prospective customers, and the purchasing public generally, that said blankets are made of wool and are fully shrunk. The blankets labeled, advertised, and sold by respondent as "all wool" or "woolen" and "fully shrunk," are not composed wholly of wool and are not fully shrunk.

PAR. 6. A substantial portion of the purchasing public has a preference for blankets made wholly of wool over blankets made from materials other than wool or blankets that are only part wool.

PAR. 7. Many of respondent's competitors who manufacture, sell and distribute blankets do not in any way represent that said blankets are actually made from wool unless such is the fact.

Many of respondent's competitors who sell and distribute blankets do not manufacture the products sold by them and do not in any way represent that they are the manufacturers of said products.

PAR. 8. The false and misleading statements and representations made by respondent in designating himself as a manufacturer by the use of the word "Mills" in his trade name, and the expressions "Mill at Wilsonville, Conn." and "Manufacturers of" on his letterheads and invoices, and in labeling or describing the blankets he offers for sale and sells as "all wool" or "woolen" and "fully shrunk," have had and do have the capacity and tendency to mislead and deceive a sub-

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stantial portion of the purchasing public into the erroneous belief that all of said representations are true. By said practices, respondent also places in the hands of wholesalers and retailers the means whereby said blankets are passed off to the purchasing public as all wool blankets. As a direct consequence of the mistaken and erroneous beliefs, induced by the false and misleading statements and representations above referred to, the consuming public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from his competitors likewise engaged in the business of selling and distributing blankets, who truthfully advertise and represent the nature and character of their business and the nature and character of the materials used in the manufacture of 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 of the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent Israel Zelkind, trading as Lawrence Blanket Mills, 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 December 16, 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, Israel Zelkind, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of blankets in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

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1. The use of the word "woolen" or the words "all wool," alone or in conjunction with any other word or words, as descriptive of its blankets not made of wool, and from the use of the word "wool," or "woolen" or of any other word or words of similar meaning, in any way, so as to import or imply that the products to which the said word or words refer are composed of wool, when such is not the fact;

2. Representing that his blankets are "fully shrunk," when such is not the fact;

3. The use of the word "mills" as part of his trade name, and from the use of the word "mill," or "mills," or the words "manufacturers of," or of any other word or words of similar import in his business or advertising literature, or in any other way, so as to import or imply that he makes or manufactures the products which he sells, or that he actually owns and operates, or directly and absolutely controls the mill or mills or factory wherein said products are manufactured, when such is not the fact.

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.

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IN THE MATTER OF
QUALITY DISTILLERS, INC.

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 2391. Complaint, May 16, 1935—Order, Feb. 2, 1937

Consent order requiring respondent corporation, its officers, etc., in connection with sale or offer, in interstate commerce and in District of Columbia, of whiskies, gins, and other alcoholic beverages produced by it, but excepting gins produced by it through process of rectification whereby alcohol purchased, but not produced, by it is redistilled as specified, to cease and desist from representing, through use of word "Distillers" in its corporate name and on its stationery, advertising, etc., or in any other way, that it is a distiller of whiskies, gins, or other alcoholic beverages or that said whiskies, etc., were by it made through process of distillation, or that it owns, operates, or controls a place where such products are thus made, unless and until it shall own, operate, or control a place or places where such products are by it manufactured through process of original and continuous distillation from mash, wort or wash through continuous closed pipes and vessels until manufacture is complete.

Mr. PGad B. Morehouse for the Commission.

Mr. Paul Loewenthal, 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 Quality Distillers, 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 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

PARAGRAPHS 1. Respondent is a corporation organized and existing and doing business under the laws of the State of California, with its office and principal place of business in Los Angeles, in the said

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

State. It is now, and since its organization in 1934 has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, liqueurs, gins, and others 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 Los Angeles 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 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, 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, liqueurs, 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 distillation from mash, wort, or wash, 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

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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, gins, liqueurs, 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, liqueurs, 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 redistillation over juniper berries and other aromatics, 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 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 rectifying, blending, and bottling whiskies, liqueurs, 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, liqueurs, 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, liqueurs, 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 of whis-

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kies, liqueurs, 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 and existing and doing business under the laws of the State of California, with its office and principal place of business in Los Angeles, 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, liqueurs, 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 Los Angeles 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 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, liqueurs, 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. As grounds for this paragraph of this complaint, the Federal Trade Commission relies upon the matters and things set out in

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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 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 on the labels attached to the bottles in which it sells and ships such products and in various

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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 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.

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 Quality Distillers, Inc., 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 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, Quality Distillers, Inc., its officers, representatives, agents and employees, in connection with the sale, offering for sale and distribution in interstate commerce and in the District of Columbia of whiskies, gins, and all other alcoholic beverages, except gins by it produced 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 its said products, or in any

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other way by word or words of like import, that (a) It is a distiller of whiskies, gins and other alcoholic beverages; or (b) the said whiskies, gins, and other alcoholic beverages were by it manufactured through the process of distillation; or (c) 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 alcoholic 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.

Complaint

24 F. T. C.

IN THE MATTER OF

CHARLES B. TRULL, TRADING AS WEST COAST
DISTILLERIES 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 2419. Complaint, May 27, 1935—Order, Feb. 2, 1937

Consent order requiring respondent individual, his agents, etc., in connection with sale or offer, in interstate commerce and in District of Columbia, of whiskies, gins, and other alcoholic beverages produced by him, but excepting gins produced by him, through process of rectification whereby alcohol purchased, but not produced, by him is redistilled as specified, to cease and desist from representing, through use of word "Distilleries" in his trade name and on his stationery, advertising, etc., or in any other way, that he is a distiller of whiskies, gins, or other alcoholic beverages or that said whiskies, etc., were by him made through process of distillation, or that he owns, operates, or controls a place where such products are thus made, unless and until he shall own, operate, or control a place or places where such products are by him manufactured through process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete.

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 Charles B. Trull, trading as West Coast Distilleries 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 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 an individual, doing business under the name and style West Coast Distilleries Co., with principal office

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

and place of business in the city of San Francisco, in the State of California. He is now, and since April 1934, has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages in a rectifying plant, under a rectifier's permit 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 distributors, some located within the State of California and some located in other States of the United States and the District of Columbia, and to some located in Waiakea-Hilo, Hawaii. In the course and conduct of his business as aforesaid, respondent is now, and since April 1934, has been in substantial competition with corporations and with other individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other spirituous 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, in the District of Columbia and in Hawaii; and in the course and conduct of his business as aforesaid respondent is, and since April 1934, has been in substantial competition with corporations and with other individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages in rectifying plants under rectifiers' permits and in the sale thereof in commerce between and among the various States of the United States, in the District of Columbia, and in Hawaii.

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 the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where such alcoholic 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 the actual distillers and manufacturers thereof.

PAR. 3. In the course and conduct of his business as aforesaid, by the use of the word "Distilleries" in his trade name, printed on his stationery and on the 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 the said whiskies, gins, and other spirituous beverages 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 beverages 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 beverages by him 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 alcoholic 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, 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 in rectifying plants under rectifiers' permits who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, advertising, 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

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that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by him from mash, wort, or wash by one continuous process 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 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 manufacturers by distillation from mash, wort, or wash of whiskies, gins, or 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 an individual, doing business under the name and style West Coast Distilleries Co., with principal office and place of business in the city of San Francisco, in the State of California. He is now, and since April 1934, has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages in a rectifying plant, under a rectifier's permit, 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 distributors, some located within the State of California and some located in other States of the United States and the District of Columbia, and to some located in Waiakea-Hilo, Hawaii. In the course and conduct of his business as aforesaid, respondent is now, and since April 1934, has been in substantial competition with corporations and with other individuals, partnerships, and firms engaged in the manufacture by true distillation of whiskies, gins, and other spirituous 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, in the District of Columbia, and in Hawaii; and in the course and conduct of his business as aforesaid respondent is, and since April 1934, has been in substantial competition with corporations and with other individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages in rectifying plants under rectifiers' permits 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.

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 "Distilleries" in his trade name, printed on his stationery and on the labels attached to the bottles in which he 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 whiskies, gins, and other spirituous beverages from mash, wort or wash and that the whiskies, gins, and other spirituous beverages by him so sold and transported have been bottled by the original distillers thereof and have been produced by a true process of distillation from mash, wort, or wash, 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

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24 F. T. C.

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 Charles B. Trull, trading as West Coast Distilleries Company, 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 him 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 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, Charles B. Trull, trading as West Coast Distilleries Company, his agents and employees, in connection with the sale, offering for sale and distribution in interstate commerce and in the District of Columbia of whiskies, gins, and all other alcoholic beverages, except gins by him produced 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 his trade name, on his stationery, advertising, or on the labels attached to the bottles in which he sells and ships his said products, or in any other way by word or words of like import, that (a) he is a distiller of whiskies, gins, and other alcoholic beverages; or (b) the said whiskies, gins, and other alcoholic beverages were by him manufactured through 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 alcoholic beverages are by him 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 said complaint be, and the same is hereby dismissed as to count 2 thereof.

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

Complaint

24 F. T. C.

IN THE MATTER OF
MOUNT ROSE DISTILLING COMPANY

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

Docket 2489. Complaint, July 3, 1935—Order, Feb. 2, 1937

Consent order requiring respondent corporation, its officers, etc., in connection with sale or offer, in interstate commerce and in District of Columbia, of whiskies, gins, and other alcoholic beverages produced by it, but excepting gins produced by it through process of rectification whereby alcohol purchased, but not produced, by it is redistilled as specified, to cease and desist from representing, through use of word "Distilling" in its corporate name and on its stationery, advertising, etc., or in any other way, that it is a distiller of whiskies, gins, or other alcoholic beverages or that said whiskies, etc., were by it made through process of distillation or that it owns, operates, or controls a place where such products are thus made, unless and until it shall own, operate, or control a place or places where such products are by it manufactured through process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete.

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 Mount Rose Distilling 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 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 Trenton, in said State. It is now, and for more than one year last past has been, engaged in the business of producing and bottling gins in a rectifying plant 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 other

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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 gins 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 has been for more than one year last past, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of producing and bottling gins 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 are stills which respondent uses 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 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, the manufacturing of such liquors by the process of distillation from mash, wort, or wash, and a substantial portion of the purchasing public prefers to buy gins produced by a process of original and continuous distillation from mash, wort, or wash prepared and bottled by the 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, advertising matter, 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 gins therein contained were by it manufactured through a true process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said gins by it so bottled, labeled, sold, and transported, and merely by the use of stills operated by it as

aforsaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, 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 a true process of distillation from mash, wort, or wash, and said gins are not produced and bottled in a distillery.

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 distill from mash, wort, or wash gins 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, 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 who manufacture and produce gins by a process of rectification similar to that used by this respondent and who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, advertising, 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 respondent is a distiller and that the gins sold by the respondent are produced by a true process of distillation 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 gins manufactured 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.

Order

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 Mount Rose Distilling Company, 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 September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is now ordered, That respondent, Mount Rose Distilling Company, its officers, representatives, agents, and employees, in connection with the sale, offering for sale, and distribution in interstate commerce and in the District of Columbia of whiskies, gins, and all other alcoholic beverages, except gins by it produced 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 "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, that (a) it is a distiller of whiskies, gins, and other alcoholic beverages; or (b) the said whiskies, gins, and other alcoholic beverages were by its manufactured through the process of distillation; or (c) 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 alcoholic 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 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

DANIEL R. HODGDON AND NATIONAL FOOD BUREAU,
INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2539. Complaint, Aug. 30, 1935—Decision, Feb. 2, 1937

Where an individual, who represented himself as a food expert, and a corporation, which he headed, directed and controlled, engaged in advertising food products through newspaper articles and through radio addresses which were broadcast from a New York station and which were heard and understood by purchasers or prospective purchasers located in various other States and in the District of Columbia, and in thus advertising a certain brand of peanut oil, made in Virginia and distributed and sold by the manufacturer to dealers and the general public among the various States and in the aforesaid District, and constituting, in the conduct of their said advertising campaign, instrumentalities of interstate commerce, by causing, aiding, or assisting in the shipment of the product in question from the aforesaid State to purchasers or prospective purchasers elsewhere located, and, as such, engaged in such commerce, and engaged in the conduct of their said activities in active and open competition with other advertising agencies and advertisers and instrumentalities for advertising in interstate commerce, who do not misrepresent the articles of trade and commerce which they promote and advertise and the professional status of the person or persons delivering radio addresses to the public,—

- (a) Represented, in said radio addresses and other advertising, that corn oil or cottonseed oil or food products made therefrom were cheap commodities which were unwholesome, impure, deleterious to health, and unfit for human consumption, and that peanut oil, or food products made therefrom, were superior, in the matter of digestibility or dietetics, to the others, and delivered such radio lectures in such a manner as would lead a listener to the erroneous belief that the aforesaid individual, referred to frequently by the announcer as "Doctor," was such, and a physician, through such statements, among others, as "It means that the market is flooded today with food concoctions, dietetical monstrosities, and cheap glucose filled candies; cottonseed oil; with stearic acid salad oils; and a lot of other junk * * *, preparing the way to death and destruction * * *," "If food is cooked in cooking oil, it may be that the cooking oil contains a large amount of stearic acid, or is composed chiefly of cottonseed oil * * *," all of which "things tend to destroy the child's appetite * * *"; and
- (b) Referred to competitors who sell articles made from cottonseed oil, corn oil and other vegetable oils as "racketeers," and to persons who sell two oils first mentioned as "cheap food swindlers," and to the products of competitors, including cottonseed oil and corn oil, as containing a substance comparable to a tallow candle, through such statements as that such competitors are "Racketeers * * * who make money * * * out of * * * salad oils which are compounds of sunflower seed oil, cottonseed

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oil, corn oil," and "These food swindlers had filled these cans cheaply with cottonseed oil which had been produced in the United States," and "It may be saturated with stearic acid, a substance that is so hard that its melting point is far above the temperature of the body. It has not any more value than eating a tallow candle";

Facts being that peanut, cottonseed and corn oils are all pure, wholesome foods of approximately the same chemical consistency and approximately 98% digestible, and, according to chemists, dietitians and experts on home economics, of equal food value and, as sold to public for food purposes, not to be distinguished except through chemical analysis, products of competitors of the manufacturer of the peanut oil thus promoted and advertised were not dietetical monstrosities, cheap concoctions, unfit for human consumption, did not have a large amount of stearic acid, etc., competitors selling articles made from cottonseed, corn and other vegetable oils were not racketeers or cheap food swindlers, such various articles were not comparable to a tallow candle, and aforesaid various other representations were likewise false and misleading, and delivery of such lectures in a way calculated to create the impression on the public that said individual was a physician disseminating medical advice was decidedly unfair to manufacturers and distributors of corn and cottonseed products throughout the United States, and to the other advertising agencies shunning such practices;

With capacity and tendency to mislead and deceive many members of the trade and public through such false, deceptive, misleading, and defamatory statements and representations, and induce them to refrain from buying competing brands of salad or cooking oil made from cottonseed oil, corn oil, and other oils, in the belief that such various statements were true, and with effect of unfairly diverting trade to manufacturers of brand of peanut oil thus advertised and sold from competitors engaged in sale and distribution of other brands of peanut, corn, or cottonseed oils in interstate commerce and who do not make such misleading and disparaging statements, and with capacity to divert unfairly trade to said individual and corporation from competitors who do not make such false, deceptive, disparaging, and misleading statements in referring to the articles advertised or promoted by them, or make misleading statements or representations regarding their professional status; to the substantial injury of competition and substantial competitors 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. James M. Hammond for the Commission.

Mr. Daniel Jacobson, 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 Daniel R.

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Hodgdon, an individual, and the National Food Bureau, Inc., hereinafter referred to as the respondents, have been and are using unfair methods of competition in "commerce" as 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 this its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. One of the respondents herein, Daniel R. Hodgdon, is an individual representing himself to the public to be an expert on the quality and fitness of food for human consumption, having his place of business at 1697 Broadway, in the city of New York. The other respondent, the National Food Bureau, Inc., is a corporation organized in and existing pursuant to the laws of the State of Pennsylvania, having its principal place of business at 1697 Broadway, New York City, N. Y. The respondent, Daniel R. Hodgdon, is, and for a long time last past, has been, president and treasurer of the respondent National Food Bureau, Inc., and is joined herein individually, as it is unknown when and at what times during the continuation of the acts and practices complained of herein he functions or functioned individually and when he functions or functioned as an officer, employee, or agent of the respondent National Food Bureau, Inc. These respondents are now, and have been for a long time last past, jointly or severally engaged for hire in the business of promoting or having promoted the sale of articles of food for human consumption by advertising the sale of the same through the medium of radio addresses, books, newspapers, pamphlets, or circulars, which are circulated among persons, firms, corporations, and partnerships; some of whom are located in the State of New York and others in various other States of the United States and the District of Columbia. The radio addresses made or caused to be made by respondents are susceptible of being heard and are or have been heard and understood by persons who are or have been purchasers or are prospective purchasers of the foods so promoted and advertised, some of whom are located in the State of New York and others located in the various States of the United States and the District of Columbia.

PAR. 2. One of the foods so promoted and advertised by the respondents herein, in the manner described in paragraph 1 hereof, is a peanut oil sold under the trade name of "Planters Hi-Hat Oil," which is manufactured in the State of Virginia and distributed and sold to dealers and to the general public located in and among the various States of the United States and the District of Columbia, and the respondents herein in conducting or having conducted said radio broadcasts and having circulated or caused to be circulated said news-

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papers, newspaper articles, books, pamphlets, and circulars in interstate commerce in furtherance of the sale of the said "Planters Hi-Hat Oil" are instrumentalities of and engaged or have been engaged in interstate commerce by causing, aiding or assisting in the shipment of this product from the State of Virginia to purchasers or prospective purchasers thereof located in other State or States of the United States, and there has been for a long time last past a constant current of trade and commerce in said product as a result, either wholly or in part, of the representations made by respondents in said radio addresses, books, circulars, newspapers, or pamphlets, and respondents assert or have asserted in said radio talks, books, circulars, newspapers, and other advertisements that other vegetable oils sold in open competition in interstate commerce are inferior to "Planters Hi-Hat Oil" by stating, among other things, words, and utterances to the effect that:

(a) It means that the market is flooded today with food concoctions, dietetical monstrosities and cheap glucose filled candies; cottonseed oil; with stearic acid salad oils; and a lot of other junk made for human consumption and at the same time, preparing the way to death and destruction of human beings.

(b) If food is cooked in cooking oil, it may be that the cooking oil contains a large amount of stearic acid, or is composed chiefly of cottonseed oil, or that irritating fatty acids are present in overabundance. All of these things tend to destroy the child's appetite for his regular meals.

(c) (That competitors are) racketeers * * * who make money * * * out of * * * salad oils which are compounds of sunflower seed oil, cottonseed oil, corn oil.

(d) These food swindlers had filled these cans cheaply with cottonseed oil which had been produced in the United States.

(e) It may be saturated with stearic acid, a substance that is so hard that its melting point is far above the temperature of the body. It has not any more value than eating a tallow candle.

These statements are false and misleading, and tend to disparage and defame the products of competitors in that, either directly or by innuendo, they assert, imply, intimate, or suggest that:

(a) The products of the competitors of "Planters Hi-Hat Oil" are dietetical monstrosities, are cheap concoctions unfit for human consumption and that the consumption of foods made from such products, including cottonseed oil and corn oil, will cause death and destruction to human beings;

(b) If a food is cooked in vegetable oil other than "Planters Hi-Hat Oil," it will contain a large amount of stearic acid or free fatty acid composed chiefly of cottonseed oil, which will destroy a child's appetite for his regular meals;

(c) Competitors who sell articles manufactured from cottonseed oil, corn oil and other vegetable oils are racketeers;

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(d) Persons who sell cottonseed oil and corn oil are cheap food swindlers;

(e) The products of competitors, including cottonseed and corn oil, contain substances comparable to a tallow candle.

When in truth and in fact the products of competitors of "Planters Hi-Hat Oil" are not diatetical monstrosities, are not cheap concoctions unfit for human consumption and that the consumption of foods made from such products including cottonseed oil and corn oil, will not cause death and destruction of human beings; do not have a large amount of stearic acid or free fatty acid and will not destroy a child's appetite for his regular meals; that competitors who sell articles manufactured from cottonseed oil, corn oil and other vegetable oils are not racketeers or cheap food swindlers and that such articles of food, including cottonseed oil and corn oil, are not comparable to a tallow candle.

PAR. 3. In the course and conduct of their said business the respondents are now, and have been for a long time last past, thus advertising and promoting, orally by radio and through the medium of books, newspapers, circulars, and printed articles the vegetable oil or peanut oil known and described as "Planters Hi-Hat Oil," which article is in substantial competition with the products of other individuals, partnerships, and corporations engaged in the sale of vegetable oils between and among the various States of the United States and the District of Columbia.

PAR. 4. There are many competitors of "Planters Hi-Hat Oil," the sale of which is advertised and promoted by respondents, who sell similar salad oils, cottonseed oil, corn oil, and peanut oil, who do not misrepresent their products or disparage the products of their competitors, and the use by respondents of the false, deceptive, misleading, and defamatory statements and representations hereinbefore set out is calculated to, and does, have the capacity and tendency to mislead and deceive many members of the trade and public, and induce them to refrain from buying competing brands of salad or cooking oil made from cottonseed oil, corn oil and other oils, in the belief that the statements made by respondents, as set out in paragraph 2 hereof, are true, and tends to and does unfairly divert trade to the manufacturers of "Planters Hi-Hat Oil" from competitors engaged in the sale and distribution of other brands of peanut oil, corn oil, or cottonseed oil in interstate commerce who do not make such misleading and disparaging statements, whereby substantial injury is done to substantial competition in interstate commerce.

Likewise respondents are in active and open competition, and have been in active and open competition, with other advertisers and adver-

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tising agencies and instrumentalities for advertising in interstate commerce who do not misrepresent the articles of trade and commerce which they promote and advertise, and the use by respondents of false, deceptive, disparaging, and misleading statements in connection with the articles which respondents do promote and advertise is calculated to and does have the capacity of unfairly diverting trade to respondents from competitors who do not make such false, deceptive, disparaging, and misleading statements in referring to articles so advertised or promoted, whereby substantial injury is done to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and practices of the respondents are each and all of them to the prejudice of the public and competitors of the article of food known as "Planters Hi-Hat Oil" and 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 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 August 30, 1935, issued and on September 3, 1935, served its complaint in this proceeding, upon respondents, Daniel R. Hodgdon, an individual, and National Food Bureau, Inc., a corporation, 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' joint answer thereto, testimony and other evidence in support of the allegations on said complaint were introduced by James M. Hammond, attorney for the Commission, before J. J. Keenan, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Daniel Jacobson, attorney for the respondents; and said testimony and other 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 other evidence, brief in support of the complaint 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. One of the respondents herein, Daniel R. Hodgdon, is an individual representing himself to the public as being an expert on the quality and fitness of food for human consumption, having his place of business at 328 Greenwich Street, in the city of New York. The other respondent, the National Food Bureau, Inc., is a corporation organized in and existing pursuant to the laws of the State of New York, having its principal place of business at the same address. The respondent, Daniel R. Hodgdon, at the time of filing the complaint in this proceeding, and for a long time prior thereto, was president and treasurer of the respondent, National Food Bureau, Inc., and he directed and controlled its business operations.

It is unknown when and at what times during the continuation of the acts and practices complained of herein the respondent Hodgdon functioned individually and when he functioned as an officer, employee or agent of the respondent, National Food Bureau, Inc. These respondents are now and have been for a long time jointly and severally engaged for hire in the business of promoting the sale of articles of food for human consumption by advertising the sale of the same through the medium of radio addresses and newspaper articles which are directed to or circulated among persons, firms, corporations, and partnerships; some of which are located in the State of New York and others in various other States of the United States. The radio addresses which are the principal matters involved herein, made or caused to be made by respondents, were susceptible of being heard and have been heard and understood by persons who are or have been purchasers or prospective purchasers of the food so promoted and advertised, some of whom are located in the State of New York and others are located in various other States of the United States and the District of Columbia.

PAR. 2. All of the radio talks hereinafter referred to were made over radio station WMCA at New York City. It is operated by the Knickerbocker Broadcasting Company, Inc., of 1697 Broadway, New York City, under license issued by the United States Government. This station has sufficient power and range to permit the matter broadcasted to be heard within a radius of one hundred miles of New York City and into several adjacent States. All of the addresses in question were delivered by the respondent, Hodgdon in person, from this station and all of the addresses containing the disparaging

statements referred to herein are in evidence as exhibits in the proceeding.

Some of them consist of the original continuities filed by the respondents with the broadcasting company at the time the lectures were delivered and some were copied into the record from phonograph records made at the time the lectures were being given. All of the lectures relate to the advertisement and promotion of the sale of food or food products of which peanut oil was one of several. The preparation of these lectures was left by the manufacturer of the peanut oil involved entirely to the respondents who functioned as independent contractors for the preparation and sale of advertising matter. During the course of these lectures the respondent Hodgdon was frequently referred to by the announcer as "Doctor" and the lectures were delivered in a manner which would lead a listener to believe that the individual respondent was a medical doctor as the context of the lectures dealt with dietetical matters and the digestibility and fitness of foods for human consumption.

PAR. 3. The brand of peanut oil involved is manufactured in the State of Virginia and distributed and sold by the manufacturer to dealers and to the general public located among the various States of the United States and in the District of Columbia, and the respondents herein, in conducting said broadcasts in interstate commerce, in furtherance of the sale of said peanut oil and in conducting the advertising campaign pertaining to the same, are instrumentalities of and engaged in interstate commerce by causing, aiding, or assisting in the shipment of this product from the State of Virginia to purchasers or prospective purchasers thereof located in other States of the United States and in the sale of or the dissemination and distribution of the said advertising matter including the radio advertising referred to herein. There has been for a long time last past, a constant current of trade and commerce in said peanut oil and advertising matter, as a result, either wholly or in part, of the representations made by respondents in said radio addresses and advertising matter. The respondents have stated in said radio addresses and other advertising that other vegetable oils sold in open competition in interstate commerce are inferior to the peanut oil advertised and promoted by them, by stating, among other things, words and utterances to the effect that:

It means that the market is flooded today with food concoctions, dietetical monstrosities and cheap glucose filled candies; cottonseed oil; with stearic acid salad oils; and a lot of other junk made for human consumption and at the same time, preparing the way to death and destruction of human beings.

If food is cooked in cooking oil, it may be that the cooking oil contains a large amount of stearic acid, or is composed chiefly of cottonseed oil, or that

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irritating fatty acids are present in overabundance. All of these things tend to destroy the child's appetite for his regular meals.

(That competitors are) Racketeers * * * who make money * * * out of * * * salad oils which are compounds of sunflower seed oil, cottonseed oil, corn oil.

These food swindlers had filled these cans cheaply with cottonseed oil which had been produced in the United States.

It may be saturated with stearic acid, a substance that is so hard that its melting point is far above the temperature of the body. It has not any more value than eating a tallow candle.

These statements are false and misleading and tend to falsely disparage and defame the products of competitors in that, either directly or by innuendo, they assert, imply, intimate, or suggest that:

(a) The products of the competitors of the manufacturers of the peanut oil so advertised are dietetical monstrosities, are cheap concoctions unfit for human consumption and that the consumption of foods made from such products including cotton seed oil and corn oil will cause death and destruction to human beings;

(b) If a food is cooked in vegetable oil other than the peanut oil so promoted, it will contain a large amount of stearic acid or free fatty acids composed chiefly of cotton seed oil which will destroy a child's appetite for its regular meals;

(c) Competitors who sell articles manufactured from cottonseed oil, corn oil, and other vegetable oils, are racketeers;

(d) Persons who sell cottonseed oil and corn oil are cheap food swindlers;

(e) The products of competitors, including cottonseed and corn oil, contain substances comparable to a tallow candle.

In truth and in fact, the products of competitors of the manufacturers of the peanut oil so promoted and advertised by the respondents are not dietetical monstrosities, are not cheap concoctions unfit for human consumption and the consumption of foods made from such products including cottonseed and corn oil will not cause death and destruction of human beings. Such products do not have a large amount of stearic acid or free fatty acid and will not destroy a child's appetite for his regular meals. Competitors who sell articles manufactured from cottonseed oil, corn oil and other vegetable oils are not racketeers or cheap food swindlers and such articles of food, including cottonseed oil and corn oil are not comparable to a tallow candle. The respondent Hodgdon is not a medical doctor.

Cottonseed oil, corn oil, and peanut oil are all pure wholesome foods; are all of approximately the same chemical consistency and are all approximately 98% digestible. The chemists, dieticians, and experts on home economics, who appeared in this case, state that all

of said products are of equal food value and can not be distinguished, as sold to the public for food purposes, except through the medium of a chemical analysis and the action of the respondents in delivering or causing these lectures to be delivered over the radio in a manner calculated to impress the public that the respondent, Hodgdon, was a medical doctor disseminating medical advice, is decidedly unfair to the manufacturers and distributors of corn and cottonseed oil products throughout the United States and to other advertising agencies who shun such practices.

PAR. 4. In the course and conduct of their said business, the respondents are now and have been for a long time last past, thus advertising and promoting by radio or through the medium of other forms of advertising the sale of peanut oil, which article is in substantial competition with the products of other individuals, partnerships, and corporations engaged in the sale of vegetable oils between and among the various States of the United States and the District of Columbia.

PAR 5. There are many competitors of the brand of peanut oil, the sale of which is advertised and promoted by respondents, who sell similar salad oils, cottonseed oil, corn oil, and peanut oil, who do not misrepresent their products or falsely disparage the products of their competitors, and the use by respondents of the false, deceptive, misleading, and defamatory statements and representations hereinbefore set out is calculated to, and does, have the capacity and tendency to mislead and deceive many members of the trade and public, and induce them to refrain from buying competing brands of salad or cooking oil made from cottonseed oil, corn oil, and other oils, in the belief that the statements made by respondents, as set out in paragraph 3 hereof, are true, and tends to and does unfairly divert trade to the manufacturers of the brand of peanut oil so advertised and sold by respondents from competitors engaged in the sale and distribution of other brands of peanut oil, corn oil, or cottonseed oil in interstate commerce who do not make such misleading and disparaging statements, whereby substantial injury is done to substantial competition in interstate commerce.

Likewise, respondents are in active and open competition and have been in active and open competition with other advertising agencies and advertisers and instrumentalities for advertising in interstate commerce who do not misrepresent the articles of trade and commerce which they promote and advertise, and who do not misrepresent the professional status of the person or persons delivering radio addresses to the public, and the use by respondents of false, deceptive, disparaging, and misleading statements in connection with the articles which respondents do promote and advertise is calculated to and

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does have the capacity of unfairly diverting trade to respondents from competitors who do not make such false, deceptive, disparaging, and misleading statements in referring to articles so advertised or promoted or who do not make misleading statements or representations regarding their professional status, whereby substantial injury is done to substantial competitors in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, Daniel R. Hodgdon, an individual, and National Food Bureau, Inc., are to the prejudice of the public and to 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 joint answer of the respondents, testimony and other evidence taken before J. J. Keenan, 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, and oral arguments by James M. Hammond, Esq., counsel for the Commission, and by Daniel Jacobson, Esq., counsel for the respondent, 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, Daniel R. Hodgdon, an individual, and National Food Bureau, Inc., and its officers, and their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of advertising matter, food or food products, including peanut oil, do forthwith cease and desist from:

1. Representing that corn oil or cottonseed oil or food products made therefrom are cheap commodities which are unwholesome, impure, or in any way deleterious to health or unfit for human consumption;
2. Representing that peanut oil or food products made therefrom are superior to or have a higher degree of digestibility or dietetical

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superiority in any way for human consumption than corn oil or cottonseed oil or food products made therefrom;

3. Using any words or phrases calculated to falsely slander, defame, or discredit any person, firm or corporation engaged in selling corn or cottonseed oil or commodities made therefrom because of his, its or their being engaged in the manufacture, offering for sale or sale of said commodities;

4. Using, or authorizing others to use the word "Doctor" or its abbreviation, "Dr.", as descriptive of the professional qualifications of the respondent Daniel R. Hodgdon, in connection with any medical or dietetical topic in any way which has a tendency to import or imply that he is a medical doctor.

It is hereby further ordered, That the respondent Daniel R. Hodgdon, an individual and the respondent National Food Bureau, Inc., shall within 60 days from the date of the serving upon them of this order, file with the Commission, their reports in writing, stating the manner and form in which they shall have complied with this order.

Syllabus

IN THE MATTER OF
ISADOR SOMMERFELD, TRADING AS DUBINER &
SOMMERFELD

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 1303. Complaint, April 8, 1925—Decision, Feb. 4, 1937

Where the term "Havana Tobacco" had long meant to cigar tobacco trade and cigar purchasing public of the United States tobacco grown on the Island of Cuba, and where many members of cigar tobacco and cigar trades and of cigar purchasing public had long believed such tobacco to be superior in quality for manufacture of cigars to be sold and consumed in the United States, and such trades and public had long considered that tobacco there grown in the Vuelta Abajo area or district of said Island was of a higher or more desirable quality for aforesaid use than tobacco grown in other countries or grown elsewhere on said Island; and thereafter an individual, engaged in New York in manufacturing and selling cigars which contained no tobacco grown on said Island, and in packing same for display and resale to members of the public who purchase cigars for consumption in and from wooden boxes and other containers, and in transporting such products to wholesale and retail dealer purchasers thereof into and through the District of Columbia and various other States; and never a recipient of any medals, prizes, or awards from any persons or associations on account of cigars made by him—

- (a) Caused words "Havana" and "Vuelta Abajo" to be placed on his cigar boxes and containers, and on the bands of cigars made and sold by him, with effect of misleading and deceiving many of said cigar and tobacco trades and members of cigar purchasing public into the belief that his said cigars were made wholly of Havana tobacco from the aforesaid district;
- (b) Caused to be placed on the boxes or containers of his said cigars certain labels carrying an outline map of the Island of Cuba and certain inscriptions in the Spanish language to the effect that cigars contained therein were made of finest Vuelta Abajo tobacco, and that tobacco in question was guaranteed as of the best Havana, and that anyone representing composition thereof to the contrary would be prosecuted to the fullest extent of the law, and containing also Spanish inscriptions and depictions of Spanish scenes and persons; and
- (c) Placed on his said boxes depictions of medals such as are awarded at World's fairs or conventions by governments, ruling members, manufacturers, trade associations, or others throughout the world, to manufacturers or dealers as prizes, decorations, or honors for the exceptional quality of their products, with effect of misleading and deceiving aforesaid trade and public into purchasing his said cigars as and for such products either imported from Cuba or made of Havana tobacco;

With result that many of the trade and public, relying on such words, labels, and inscriptions thus used by him in the manufacture and sale of said products,

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were caused to buy the same instead, or in preference to cigars of competitors who were properly labeling, branding, or advertising their products under said names, brands, or labels, "Havana" and "Vuelta Abajo," and also to cigars of competitors who were making and selling such products from domestic tobacco and who properly did not brand, label, or otherwise represent the same as made of Havana tobacco:

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

Mr. Edward E. Reardon 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 Isadore Sommerfeld, hereinafter referred to as respondent, an individual doing business under the trade name and style of Dubiner & Sommerfeld, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complaint, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is, and for a number of years immediately prior to the date hereof, has been engaged in the business of manufacturing and selling cigars, with a principal place of business in the city of New York, State of New York. Respondent causes, and during the times above referred to has caused, the cigars sold by him to be packed for display and resale to the members of the public who purchase cigars for consumption, in and from wooden boxes or other containers and to be transported to individuals, firms, and corporations, wholesale and retail dealers, the purchasers thereof, from his said place of business to, into, and through the District of Columbia and various States of the United States other than the State of origin of the shipment of the cigars.

During the times above mentioned, other individuals, firms, and corporations have been, and now are, engaged in manufacturing and selling cigars packed for display and resale in and from wooden boxes or other containers, and who cause and have caused the same, when sold by them, to be transported from without the District of Columbia to the purchasers, individuals, firms, and corporations, wholesale and retail dealers, located in the District of Columbia and in various States of the United States, other than in the State of origin of the shipment, and including those States into which, from other States than those in which his shipments originate, the respondent causes and has caused his said cigars to be transported.

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The respondent has been during the said times, and now is in competition in commerce with the above individuals, firms, and corporations, in the sale of his said cigars.

PAR. 2. For many years prior to the date hereof, and ever since tobacco has been a commercial export product of the Island of Cuba, the term "Havana" tobacco, has meant and continues to mean tobacco of Cuban growth to the cigar tobacco trade, the cigar trade and the cigar purchasing public of the United States, many of whom have during said times considered and continue to consider Cuban grown or "Havana" tobacco superior in quality, for the manufacture of cigars to be sold and consumed in the United States, to tobacco grown elsewhere. Many of the said trade and public have also during said times considered and continue to believe that cigars made in the United States, for sale and consumption there, of Cuban tobacco, or cigars made of such tobacco in Cuba for sale and consumption in the United States, are likewise superior in quality to cigars made of tobacco grown elsewhere.

PAR. 3. Vuelta Abajo is the name of an area or district in the Island of Cuba, a part of which is in the Province of Pinar del Rio, and in which tobacco is grown which is and has been considered, during the times above referred to, by many of the said tobacco and cigar trade and public, to be of a higher and more desirable quality for use in the manufacture of cigars for sale and consumption in the United States than tobacco grown, not only in countries other than Cuba, but even of a higher and more desirable quality for such purpose than any tobacco grown elsewhere on the Island of Cuba.

Likewise many of the said tobacco and cigar trade and of the said public have also considered during said times, and still believe, that cigars made in Cuba for sale and consumption in the United States of tobacco grown in Cuba either wholly or in part in said Vuelta Abajo district, or cigars made in the United States for sale and consumption there, of tobacco grown in Cuba, either wholly or in part in said Vuelta Abajo district, are and have been superior in quality to cigars made wholly of tobacco grown outside of said district. To the said trade and public Vuelta Abajo tobacco is the most famous tobacco in the world that is used in the manufacture of cigars.

PAR. 4. For a long period of years prior to and at the time respondent engaged in his said business, cigars made wholly of Cuban tobacco were made in Cuba and in the United States for sale and consumption in the United States by manufacturers whose surname was "Garcia" and who, respectively, used and displayed and still use and display their said surname either alone or in combination with the rest of their

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name or with other words on the bands of the cigars, on the said boxes or containers and on labels thereon.

For a long time prior to the use of the name "Garcia" by the respondent as hereinafter described, many in the said trade and many of the said public, became accustomed to believe and still believe that cigars in connection with the sale of which the name "Garcia" so appeared, were made by manufacturers having that name, of Cuban nationality and of Cuban grown tobacco exclusively and that they were and are of a quality superior to cigars made by many other manufacturers and of tobacco wholly or in part grown elsewhere, and in purchasing cigars became accustomed to and still call for them either by the name "Garcia" alone or in combination with the rest of the name of one of the manufacturers of that surname, and the said manufacturers whose surname is or was "Garcia" have during said times gained a valuable interest and good will in said word when used in connection with the manufacture and sale of cigars in the United States.

PAR. 5. Respondent has caused and still causes the words "Havana", "Vuelta Abajo" and "Garcia" either alone or in combination with one or more other words to be placed on his said cigar boxes or containers and on the labels on said boxes or containers, and the word "Garcia" to be placed on the bands of the cigars made and sold by him.

Respondent has caused and still causes the name M. Garcia y Ca, purporting to be the trade name of an individual or the name of a firm or corporation to be placed on the said boxes or containers of the said cigars as the manufacturer of said cigars.

Respondent causes and has caused certain labels to be placed on the boxes or containers of his said cigars, carrying the outline map of the Island of Cuba and certain inscriptions in the Spanish language that the cigars contained in the said boxes are and were made of the best Vuelta Abajo tobacco and that the tobacco contained in them was guaranteed to be of the best Havana tobacco and that anyone representing to the contrary would be prosecuted to the fullest extent of the law. Respondent during said times has placed labels containing only Spanish inscriptions and Spanish pictures or illustrations on the boxes or containers of his said cigars. Pictures or illustrations of medals, such as are or have been awarded by governments, trade associations, etc., to manufacturers as prizes, decorations or honors for the exceptional qualities of their products, have been and are caused by respondent to be placed on the labels of the boxes or containers of his said cigars.

PAR. 6. The said cigars made and sold by the respondent have never at any time contained more than a very small amount of Cuban

grown tobacco, and during most the aforesaid time they have contained no Cuban grown tobacco.

Neither the respondent nor anyone connected with the said business has or ever had the name "Garcia" as part of his name, and the name M. Garcia y Ca is fictitious and does not represent any individual, firm, or corporation engaged in the manufacture of respondent's cigars. Respondent has caused the said words "Havana," "Vuelta Abajo" and "Garcia" and the said name "M. Garcia y Ca" to be used on the boxes or containers and labels thereof, and on the bands of his cigars aforesaid, in order to compete with the long established concerns having the name "Garcia" or the right to use it, who are engaged in the manufacture and sale of cigars, and to divert the latter's trade to respondent by confusing the identity of the products of both, and leading purchasers to buy those of respondent for those of the said established concerns. Respondent chose the names "Garcia" and "M. Garcia y Ca" unnecessarily and for the purpose of unfair competition with those lawfully entitled to use the name "Garcia."

During the aforesaid time, the name M. Garcia y Ca used by respondent, as aforesaid was and is fictitious and by his said use of the same, respondent knowingly, falsely and unlawfully represents and has represented to the said trade and public that his said cigars are made by a business concern properly using the name of "Garcia." By the use of the word "Garcia" alone or with other words as aforesaid respondent knowingly, falsely and unlawfully represents to the said trade and public that his cigars are made by manufacturers having that name, and that they are made of Havana tobacco.

By the use of the said words Havana and Vuelta Abajo, respondent knowingly falsely and unlawfully represents and has represented to the said trade and public that his said cigars were made of Havana tobacco and either partly or wholly of tobacco grown in the district of Vuelta Abajo.

Respondent has knowingly and falsely represented and guaranteed to the said trade and public by the labels that the said cigars are not only of Havana tobacco but are of the best Havana tobacco from the district of Vuelta Abajo, and has knowingly and fraudulently used the aforesaid labels containing only Spanish inscriptions, pictures, and illustrations in further effort and with intent to receive and defraud the trade and members of the public into the belief that his said cigars were and are made of Havana tobacco and have the qualities characteristic of such cigars.

PAR. 7. The acts and practices of respondent, all hereinbefore set out, have the capacity and tendency to and have misled, and deceived

many of the trade and consuming public into the belief that respondent's cigars are manufactured by an individual, firm, or corporation named M. Garcia y Ca; that the manufacturer thereof has the name or the right to use the name "Garcia" in connection with the manufacture and sale of cigars; that the tobacco composing his said cigars is Havana tobacco either wholly or in part from the said district of Vuelta Abajo, and that they are made in and imported from Cuba to the United States.

PAR. 8. Among the individuals, firms, or corporations referred to in paragraph 1 hereof, who are and have been in competition with the respondent, are some who manufacture, and sell cigars made of tobacco, part of which only is grown in Cuba, or of tobacco grown wholly elsewhere than in Cuba, and who are not branding or labeling the cigars made by them or the containers thereof with or under the words, "Havana," "Vuelta Abajo," or "Garcia."

Among the individuals, firms, or corporations referred to in said paragraph 1 are some engaged in the manufacture and sale, in commerce, of cigars made wholly of tobacco grown in Cuba, either wholly or in part from the district of Vuelta Abajo, who are properly labeling, branding, and advertising cigars made by them under the name, brand or labels, "Garcia," "Havana," and "Vuelta Abajo."

PAR. 9. The above alleged acts and things done by respondent are each and 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, 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 the 8th day of April 1925, issued and served its complaint in this proceeding upon said respondent, Isador Sommerfeld, doing business under the trade name and style of Dubiner & Sommerfeld, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. 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. H. Fuller, Chief Counsel of the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in sup-

port of the charges stated in the complaint and in opposition thereto, and that the said Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from said facts) and its conclusion based thereon, and enter its order disposing of the proceeding without presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint 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, makes this its modified findings as to the facts and its conclusion drawn therefrom :

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent for a number of years immediately prior to April 9, 1925, had been engaged in the business of manufacturing and selling cigars with his principal place of business in the city, county, and State of New York. During the time above referred to, respondent had caused cigars sold by him to be packed for display and resale to the members of the public who purchase cigars for consumption in and from wooden boxes and other containers, and to be transported to individuals, firms, and corporations, wholesale and retail dealers, the purchasers thereof, from his said place of business to, into and through the District of Columbia and various other States of the United States other than the State of New York.

During the time above mentioned and referred to, other individuals, firms, and corporations had been engaged in manufacturing and selling cigars packed for resale in wooden boxes and other containers, and who caused the same when sold by them to be transported from without the District of Columbia to the purchasers, individuals, firms, and corporations, wholesale and retail dealers located in the District of Columbia and in various States of the United States other than the State of origin of the shipment, and including those States into which from other States the respondent had caused said cigars to be transported. The respondent had been during the said time, in competition in commerce with the above individuals, firms, and corporations in the sale of his said cigars.

PAR. 2. During the time above mentioned and referred to, and ever since tobacco has been a commercial export product of the Island of Cuba, the term "Havana Tobacco" has meant and continues to mean to the cigar tobacco trade and the cigar purchasing public of the United States, tobacco grown on the Island of Cuba. Many members of the cigar tobacco trade, the cigar trade and cigar purchasing public

of the United States have, during said times believed, and now believe, Havana tobacco grown on the Island of Cuba to be superior in quality for the manufacture of cigars to be sold and consumed in the United States.

Vuelta Abajo is the name of the area or district in the Island of Cuba in which tobacco is grown which was believed during the times above referred to and is now believed by the said tobacco and cigar trade and the said purchasing public to be of a higher and more desirable quality for use in the manufacture of cigars for sale and consumption than tobacco grown not only in other countries than Cuba, but of higher and more desirable quality for such purposes than any tobacco grown elsewhere than on the Island of Cuba.

PAR. 3. Respondent had caused the words "Havana" and "Vuelta Abajo" to be placed on his cigar boxes and containers and on the bands of cigars made and sold by him.

Respondent had caused certain labels carrying an outline map of the Island of Cuba and certain inscriptions in the Spanish language to be placed on the boxes or containers of his said cigars. The said inscriptions were to the effect that cigars contained in the said boxes were made of the finest Vuelta Abajo tobacco and that the tobacco in the cigars was guaranteed to be of the best Havana tobacco and the said inscriptions stated that anyone representing the composition of the said cigars to be to the contrary would be prosecuted to the fullest extent of the law.

Respondent had placed labels containing only inscriptions in the Spanish language on his cigar boxes or containers and had also placed thereon pictures or illustrations of Spanish scenes and persons on said cigar boxes or containers. Respondent had placed on said cigar boxes pictures or illustrations of medals such as are or have been awarded at World's fairs or conventions, by governments or ruling members thereof, or by manufacturers, trade associations or others throughout the world, to manufacturers or dealers as prizes, decorations or honors for the exceptional quality of their products.

The cigars made and sold by the respondent had never at any time contained any tobacco grown on the Island of Cuba.

The respondent had never received any medals, prizes or awards from any persons or associations on account of cigars manufactured by him.

PAR. 4. Among the individuals, firms, and corporations referred to above who had been in competition with the respondent there were some who manufactured and sold cigars made of tobacco part of which only was grown in Cuba, or of tobacco grown elsewhere than in Cuba,

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and who were not branding or labeling the cigars made by them or the containers thereof, with the words "Havana" and "Vuelta Abajo."

PAR. 5. The use, by the respondent, of the terms or words "Havana" and "Vuelta Abajo" on the labels or containers of cigars in connection with their manufacture and sale as above described or in other advertising referred thereto, was false and misleading and had the tendency and capacity to and did mislead and deceive many of said cigar and tobacco trade and members of the public purchasing cigars for consumption into the belief that respondent's said cigars were made wholly of Havana tobacco from the District of Vuelta Abajo.

Respondent's use of labels on the boxes or containers of his cigars having thereon an outline map of Cuba, inscriptions solely in the Spanish language, and the said guarantee that the tobacco composing his cigars was Havana tobacco, had the capacity to mislead and deceive the said trade and public, and said trade and public have been misled and deceived thereby into purchasing respondent's cigars as cigars either imported from Cuba or made of Havana tobacco.

The use by the respondent of the said words "Havana" and "Vuelta Abajo" and the said labels of Cuba and inscriptions in the Spanish language as above set forth, in the manufacture and sale of his cigars, has caused many of the trade and public relying thereon to purchase respondent's cigars instead of or in preference to cigars of competitors of respondent who were properly labeling, branding or advertising their cigars under the said names, brands or labels "Havana" and "Vuelta Abajo," as well as cigars of competitors who were manufacturing and selling cigars made of domestic tobacco and who properly did not brand, label, or otherwise represent their said cigars had been made of Havana tobacco.

CONCLUSION

The aforesaid acts and practices of respondent, Isador Sommerfeld, trading as Dubiner & Sommerfeld, were to the prejudice of the public and of respondent's competitors, and constituted 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."

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the stipulation as to the facts filed herein by respondent on July 16, 1925, admitting all the material allegations of the complaint to be true and waiving

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the taking of further evidence and all other intervening procedure, and the Commission having made its modified 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, Isador Sommerfeld, doing business under the trade name and style of Dubiner & Sommerfeld, his officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia of cigars, do forthwith cease and desist from using:

1. The words "Havana" or "Vuelta Abajo," when the said cigars are not composed entirely of Havana tobacco;

2. Words or writing on labels or otherwise solely in the Spanish language, an outline map of Cuba, or pictures or representations of Cuban scenes indicating Cuban origin in the composition of respondent's cigars when the same are not made entirely of Havana tobacco;

3. Words or writing in Spanish language on labels or otherwise to such extent or in such manner as to indicate that the cigars are made of Cuban tobacco when the same are not made entirely of Havana tobacco.

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.

Syllabus

IN THE MATTER OF
LOFT, INC., AND DR. DANIEL R. HODGDONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2496. Complaint, July 10, 1935—Decision, Feb. 4, 1937*

Where a corporation, which was one of the largest candy product manufacturers in the world, and publicly represented itself as the largest, and which owned or operated over two hundred retail stores, in addition to its sales to independent retailers, and expended large annual sums for advertising, and an individual, its agent and employee, entitled to use of word "Doctor", but not as physician, engaged under contract with it in advertising and promoting sale of its products through broadcast of lectures on food, and in lending his recommendation, name, title and photograph in promoting the sale of its said candy products, and for such use in literature advertising the same—

Featured the slogan and representation "Made without Glucose," and contains no glucose, in an extensive advertising campaign initiated and carried on by them through newspapers and radio broadcasts of said individual and through inserts in the boxes and through the labels, seals, and literature distributed through said corporation's stores, and through its store and window displays, and accompanied such slogan and representation generally with words "Seal of Protection" and "Loft Really Pure Candy," and depicted such seals in approximately all of its advertising literature, along with such words as "This Seal is Your Protection," and represented that candy products made with or containing glucose were impure and harmful to health and unsafe, and that the candies of said corporation contained no glucose, and that other candies made therewith were inferior in quality to its own and less wholesome and safe, through such statements as those above set forth and numerous others, asserting its new method of making candies without use of glucose, and purity, etc., of its own said products, and safety and beneficial quality thereof for children, and warnings against use of glucose as an adulterant made through treating starch with sulphuric or hydrochloric acid, etc., and other statements inferring or implying that said substance was a filler, preservative, cheap substitute for sugar, less digestible, etc.;

Fact being that word "Glucose," as a matter of primary definition and meaning, is a name for a certain sugar or group of sugars, glucose is contained in corn syrup, usually employed with cane sugar in the making of candy, was used by corporation in question prior to campaign in question, is regarded by many candy-makers, its competitors, as an absolutely essential ingredient for all or most of their products, has been used in industry in question for approximately fifty years because of its unique combination of values as a candy ingredient, and industrial chemistry incident to use thereof as now practiced is consistent with safe and wholesome candy, and glucose in any form, inclusive of sugar or corn syrup, as used or found in candy, is safe and wholesome and regarded as a natural and essential ingredient thereof in commercial candies, and said product, as sugar or corn

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syrup, or in any form as used or found in candy, is not an adulterant or cheap substitute, etc., and is not made with sulphuric acid, etc., or dangerous to health, and use of corn syrup affords no basis for such false disparagement of products of competitors, and its own products, while containing no glucose in form of corn syrup as such during period in question, did contain such substance as matter of scientific fact;

With result of placing in the minds of the buying public, to a substantial degree, a consciousness of danger in the use of candy or food made with or containing glucose, and of misleading and deceiving a substantial portion of such public, including purchasers and potential purchasers of candies sold in competition with candy products of said corporation, into false and erroneous belief that said statements and representations were true, that glucose was used or contained in candy in general, but not in its candies, and that it was an ingredient or substance which was impure, harmful to health, and unsafe, and that candies containing same were correspondingly thus affected and inferior to its own products, and that purchase and use of candies other than those of said corporation was in general dangerous and unsafe, and with effect of causing such purchasers and prospective purchasers of competitors to discontinue purchasing therefrom, or refrain from so purchasing, and to buy instead products of said corporation, and of thereby unfairly diverting to it trade from its competitors who do not falsely defame or disparage the products of others, and who do not misrepresent the ingredients of their own products:

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. Jay L. Jackson for the Commission.

Sanders, Childs, Bobb & Wescott, of Washington, D. C. and *O'Brien, Driscoll & Raftery*, of New York City, for respondents.

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 Loft, Inc., and Dr. Daniel R. Hodgdon, 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, Loft, Inc., 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 40th Avenue and 9th Street, Long Island City, in the State of New York. Said respondent is now and since the month of October 1934, has been engaged in manufacturing, selling, offering for sale, and distrib-

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uting candies, candy and confection products in commerce among and between various States of the United States and in the District of Columbia, and has caused and now causes said products when sold or ordered, to be shipped and transported from the State of origin thereof to various States of the United States other than the State of origin of said shipment, and to the District of Columbia. In the course and conduct of its said business, respondent, Loft, Inc., has been and is now in competition with corporations, firms, partnerships, and with individuals engaged in like commerce.

Respondent, Daniel H. Hodgdon, is an individual and an agent or employee of respondent, Loft, Inc., with his principal place of business located at 1697 Broadway, in the city of New York, in the State of New York, and as such has been and is now engaged in and with the aforesaid business of respondent, Loft, Inc., and in the advertising and promotion thereof.

PAR. 2. Respondent, Loft, Inc., has sold and now sells its said candies, candy and confection products in interstate commerce, as set forth in paragraph 1 hereof, by use of the mails, interstate carriers and other channels of interstate commerce, by means of radio broadcasting, newspapers, pamphlets, periodicals, labels, and other forms of literature and advertising which have had or have a circulation in and through the various States of the United States and in the District of Columbia, and also in circulars, candy box and window displays and placards, labels, pamphlets, printed matter, and other forms of advertising and promotion, including radio broadcasts and oral statements by agents and employees, which have been and are circulated and distributed by respondents to customers and prospective customers in and throughout various States of the United States and in the District of Columbia, in the course and conduct of which respondents, Loft, Inc., and Daniel R. Hodgdon, individually and together, 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 respondent, Loft, Inc.

PAR. 3. In the course and conduct of the business, advertising, promotion and selling of the candies, candy and confection products of respondent, Loft, Inc., as aforesaid, said respondent, Loft, Inc., advertises and makes the following statements and representations, among others, to wit:

LOFT REALLY PURE CANDIES**AN IMPORTANT MESSAGE from the PRESIDENT**

After spending thirty years in the manufacture of fine candies, I have discovered a new method of making candies without the use of glucose (U. S. Patent application serial #720,525).

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It makes Loft candies easier to digest—makes them taste better than ever—smoother—richer—more delicious.

It costs more to make Loft candies without glucose, but price is never considered by Loft where quality is involved.

I believe it is now impossible to match Loft candies, from the standpoint of purity, quality and price.

CHARLES G. GUTH, *President*.

Loft CODE OF ETHICS:

Glucose should not be put in candy unless the label states the facts—because glucose is only a starch which has been treated with sulphuric acid. Excess of starch is dangerous.

Loft candies are really pure—they contain no substitutes—no adulterants of any kind.

* * * * *

Loft does not believe that glucose should be used in candy and furthermore, believes that whenever it is used it should be so stated on the label. The U. S. Pure Food Laws compel the makers of jellies, jams and table syrups, when glucose is used, to print a statement on the label, notifying the purchaser. Loft believes this same law should apply to candy, and, therefore, every package of Loft candy made and sold by Loft contains a seal stating that Loft Really Pure Candies are Made Without Glucose.

* * * * *

THIS SEAL IS YOUR PROTECTION

SEAL OF PROTECTION

LOFT REALLY PURE CANDIES

MADE WITHOUT GLUCOSE

Loft NEW PROCESS:

Loft has discovered a new method of making candies without the use of glucose.

Loft candies do not contain substitutes or preservatives of any kind.

Loft candies are made of pure cane sugar—honey—and the purest of all fine materials.

Loft candies are really pure—therefore delicious and easily digested.

Loft Seal is Your Protection.

* * * * *

WHAT IS GLUCOSE?

U. S. Pharmacopoeia, page 178, as follows:

A product obtained by the incomplete hydrolysis of starch.

Oxford English Dictionary, page 237 (1933) says of glucose:

Now chiefly in non-scientific use as a commercial name for dextrose, obtained from starch by the action of sulphuric acid.

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Mr. Alfred W. McCann says in his book, "The Science of Eating", page 300, of glucose:

Glucose as a filler is the symbol of denatured carbohydrate foods, the excess of which in the diet of the average American family is the cause of many diseases.

* * * * *

Loft Candies do not contain Glucose.

Glucose is an adulterant made by treating starch with Sulphuric or Hydrochloric Acid.

Take no chances.

Eat Loft Candy.

Loft Candy Ideals—

1. Purity with no Substitutes.
2. Freshness with Finest Materials.
3. High Quality Leadership.
4. Low Prices with Honesty.
5. Made without Glucose.

Be safe—Buy Loft Candies and Know What You are Getting.

Absolutely Pure—Good and Safe for Children—Made without Glucose.

* * * * *

Loft Candies are made in the old-fashioned way, absolutely pure, clean and wholesome, and, above everything, delicious and mouth-melting. They are like some of the fine candies that are made in your own country where adulterations in candies and food are unknown.

Loft Candies are purest and best and the price is less because we are the largest candy makers in the world.

* * * * *

YOU ARE SAFE WHEN YOU BUY *Loft* CANDIES

LOFT STORES TO SERVE YOU RIGHT

* * * * *

Loft Candies are made without glucose, preservatives or substitutes of any kind.

* * * * *

Loft—The name you can trust for Christmas Candies.

* * * * *

Said respondents, individually and together further have advertised and made, and now advertise and make, the following statements and representations, among others, to wit:

I should like to impress upon my listeners to some measure the fraudulent practices that are going on in connection with candy that is fed to our children. * * * Now all these candies and hundreds of others like them contain a cheap, sticky mass called glucose. The question is immediately raised whether glucose is a good food to be used in candy. A great deal has been said about commercial glucose, but the only reason that I can find to account for its wide use in candy making is that it is cheap. It lowers the cost of candy manufacture. It has a sticky, slimy consistency and derives its name from the word glue. There is 50% or more dextrin in glucose. We use dextrin to make

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muilage and other adhesives. * * * It became very popular almost immediately as an ingredient in candy because it was a cheap substitute for sugar. * * * This wholesale practice of trying to make money by selling unsuspecting individuals concoctions of the worst type under the guise that they are candy, is criminal and villainous. As this Christmas season approaches, there is only one way to be assured that the spirit of Christmas can be maintained, and that is by feeding children candy free from adulterations, free from impurities, free from artificial colors and artificial eggs, and free from glucose.

* * * * *

When a stock-raiser tries to make a profit out of his animals he won't feed them with chemically produced glucose a lot of worthless dyes and drugs which may legally be used in foods to be consumed by human beings.

* * * * *

This good mother may, in all innocence give her children money to buy candy that is filled with commercial glucose, glucose, made from starch, treated with hydrochloric acid. Glucose that may have been bleached with sulphuric acid and improperly treated, so that this destructive and harmful substance is still present in the candy in sufficient amounts to do real harm to the health of children. The child may pick up this candy in the high school cafeteria where he eats his luncheon, or he may eat peanut bars with the peanuts stuck together by a cheap adulteration called commercial glucose . . . what chance has he when his food and his candy and syrups are filled with adulterations and his fruits covered with residue poisons. No wonder we find in the Rochester high school 197 children out of 425 afflicted with organic heart disease. * * * Let us strike at the heart of this evil and eliminate from our tables food that is not pure and wholesome and from the hands of our children, candies adulterated with commercial glucose. * * * Let the food and candy consumed be so pure as to keep the vital blood of life red and uncontaminated by the junk that interfere with the normal processes of digestion and elimination.

* * * * *

This is a warning to all my listeners to be careful of the products introduced into your homes. * * * candy made of cheap commercial glucose, bleached with sulphuric acid, a product that has no place in the stomach of children of tender age or in the digestive tracts of adult human beings of any age. Until we find effective laws which will prevent wholesale destruction of health through improper material in our foods, and commercial glucose in candies, we must choose carefully the things we feed the children and ourselves. Lurking behind these fine advertised labels and innocent looking foods and candy is the skull and cross bones, the symbol of disease and death.

* * * * *

When we consume quantities of candy made of commercial glucose, bleached with sulphurous acid; when we give our children such candy, we begin to interfere with the calcium retention and absorption and assimilation and we starve. I mean just what the word means. We deprive, yes, we starve ourselves, our children, the ones we love most, of those vital mineral salts so necessary to life and health.

* * * * *

It means that the market is flooded today with food concoctions, dietetical monstrosities, and cheap glucosed-filled candies * * * and a lot of other junk made for human consumption and at the same time preparing the way to

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death and destruction of human beings. Why is the child at school becoming a nervous unstable object of worry to his mother? Why does the teacher find her job irksome and her nerves jumpy? Why does Dad at home become easily irritated and upset? Because of starvation * * * the starvation which is brought about through the improper selection of foods and the introduction into the system of foods filled with artificial products which have no nourishing value and which prevent a sufficient supply of mineral elements to maintain good health. Our children purchase on the street corner candy filled with commercial glucose that has been bleached with that dangerous poison substance, sulphurous acid; glucose made of starch with the aid of hydrochloric acid; glucose still containing an over-abundance of this tissue destroying and digestive juice destroying acid. I don't care where you go; I don't care in what store you purchase your candy, except one. You will find that the candy-maker has used to a greater or less degree quantities of a cheap adulterant known as commercial glucose. It is cheaper than sugar and that is why he uses it. One of the great outstanding inventions in the candy-making world was the discovery that candy can be made wholly of pure cane sugar which could be inverted into a substance resembling honey without acid and without artificial chemical substances. This inversion created out of pure sugar, a highly digestive substance resembling honey and containing fructose, levulose and dextrose, highly nourishing, ready to be absorbed and used as food by the blood. Now, when a substance like that is created out of pure sugar and is made into candy, free from adulterations, free from artificial coloring matter other than pure vegetable colors, free from infected nuts and fruits, we have a candy that can be safely fed to children and adults without burdening the digestive tract with a lot of unhealthy, vile, filthy, poisonous, and doubtful material which would have no other function than to destroy or burden the human organisms with foreign matter, totally unnatural to the normal functions it must perform. * * * There is one candy-maker that makes pure candy. Loft Candy represents a new standard, a standard of purity, a standard of cleanliness, a standard of unadulteration, a standard of candy free from all commercial glucose with all of its possibilities of destructive acid content.

* * * * *

It frequently happens that where the mother denies the children food between meals, she opens up the way for children to stuff themselves with cheap candy made of commercial glucose. When children consume a large amount of this glucose candy between meals, they have a tendency to lack an appetite at mealtime. If the commercial glucose has been bleached with sulphurous acid and contains residues of this acid, naturally it will destroy the appetite. * * * Candy made from invert sugar is especially recommended because the cane sugar has been changed into a wholesome food resembling honey. This is quickly and easily digested and gives the child a considerable amount of energy for his play. This candy should be fed at the close of the meal or at the close of the between-meal luncheons. This kind of candy does not destroy the appetite for food, as the cheap glucose type of candy does.

* * * * *

Candies may be adulterated with all sorts of cheap commercial glucose and no mention is made of it. Little children will buy this stuff in the thousands of penny candy stores. There is not a thing on any label to indicate that it was made with commercial glucose. You can go into a store today and buy even the highest priced candies, pay a lot of money for it, and most of your

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money will go into the boxes and other fancy containers. The candy will be made up of a large percentage of cheap commercial glucose. When a product is adulterated with glucose, the public should be warned of its presence;—when the candy is made of pure sugar, the public should be told that they are getting an honest product, free from adulteration.

* * * * *

Now, studies of these mentalities and mental diseases will tend to show that mental abnormality is frequently a merely temporary condition depending on the feeding of the brain, and that, when this condition is rectified so that the brain obtains proper feeding, the disorder vanishes. * * * What effect has any poisonous byproduct such as sulphurous acid which may, or may not be, in glucose, upon the activity of the brain. * * * When we introduce sulphurous acid into the stomach * * * these ketones—which are believed the cause of old age and degeneration, can do their work. They appreciably shorten life. * * * I want children to have pure candy—not candy made with glucose. * * * I want every food to be so pure as to avoid the making of the D-ketones which are so destructive to health and life and our vitality, to our thinking power and to our mental balance, and when we do that we produce lactic acid. Then these byproducts cannot do us any harm. * * *

Announcer:—"Now, ladies and gentlemen, the following products are approved and endorsed because of their quality, of their wholesomeness and their standard of purity. Loft's candy is endorsed because it is absolutely pure, has no glucose in any form, no substitutes, no preservatives are used in Loft's candy. Loft's candies are the purest candy known to the science of candy makers. These points that Dr. Hodgdon has brought up this morning: 'The effect on the brain of candy, of sugar', in many instances are most interesting, and remember that you must have pure candy for the correct and corrective effect upon the brain."

* * * * *

DR. DANIEL R. HODGDON says:

While President of Hahneman Medical College and Chicago Memorial Hospital, I became intensely interested in the subject of Pure Candy. I have recently made a thorough inspection of the Loft manufacturing plant where 100,000 pounds, or more, of fine Candies are made daily.

Until then, I never dreamed that Candies could be made so pure, delicious and healthful.

It gives me pleasure to state that Loft Candies are made of the finest and highest quality, rich natural materials, and are absolutely free from all adulterations, substitutes and commercial glucose (corn syrup). In my opinion, this puts Loft Candies in the highest possible class, regardless of the fact that they are sold to the public at such reasonable prices.

(Signed) DANIEL R. HODGDON.

* * * * *

PAR. 4. In the course and conduct of the business aforesaid, and in the advertising, promotion and selling as aforesaid, respondent, Loft, Inc., and its agents and employees have falsely and misleadingly stated and represented and now falsely and misleadingly state and represent that said respondent uses a newly discovered method of making candies without the use of glucose and that its said products

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are "made without glucose"; whereas, in truth and in fact said respondent's products are made with and do contain glucose, and the method used by respondent, Loft, Inc., in making said products is not a new discovery.

PAR. 5. In the course and conduct of the business aforesaid, and in the advertising, promotion and selling as aforesaid, respondents, individually and together, further falsely and misleadingly have stated, represented and implied, and now falsely and misleadingly state, represent and imply that the ingredient generally used in the making of candies and confections and known as "glucose" is impure, unwholesome, harmful to health, dangerous for children, made with sulphuric acid, bleached with sulphuric acid, an adulterant, a filler, a cheap substitute for sugar in candy, and less digestible than cane sugar, and that in general candies and confection products in competition with products of respondent, Loft, Inc., are made with glucose and are therefore impure, unwholesome, harmful to health, dangerous for children, contain sulphuric acid or hydrochloric acid and starch, contain a filler, an adulterant and a cheap substitute for sugar in candies, and are less digestible than the candy and confection products of respondent Loft, Inc., and that said competing products and products of said respondent's competitors are therefore not only of inferior quality but that said products are unsafe and the use thereof dangerous or unsafe; whereas, in truth and in fact the ingredient known as "glucose" used in the making of candies and confections in competition with said respondent's products, and as used by said respondent's competitors, is, contrary to respondents' representations, pure, wholesome and healthful, is not dangerous to children, does not contain sulphuric or hydrochloric acid, is not a filler, an adulterant or a cheap substitute for sugar in candies and is not less digestible than cane sugar; and whereas, in truth and in fact the candies or confections of said competitors of respondent, Loft, Inc., and in competition with products of said respondent, Loft, Inc., are contrary to said respondents' representations, no less pure, wholesome or more harmful to health or more dangerous for children or less digestible than the products of said respondent, Loft, Inc., and do not contain sulphuric or hydrochloric acid and starch, or a filler, or an adulterant or a cheap substitute for sugar; and whereas, further, in truth and in fact the purchase and use of candies or confections of said competitors of respondent, Loft, Inc., are no more dangerous or unsafe than the purchase and use of the candies, candy and confection products of said respondent.

PAR. 6. That the aforesaid false and misleading statements so made by respondents in the sale of the candies, candy and confection

products of respondent, Loft, Inc., have had and have the tendency and capacity to mislead and to deceive, and do mislead and deceive, purchasers and prospective purchasers of products of competitors of respondent, Loft, Inc., into the false and erroneous belief that such statements and representations are true and that the purchase and use of said competing candies, candy or confection products is dangerous or unsafe, 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 products in lieu and instead of the products of its competitors, in consequence of which trade has been and is diverted to respondent, Loft, Inc., from its competitors who do not falsely defame or disparage the products of others, or who do not misrepresent their own products, and thereby substantially injuring competition and said competitors in interstate commerce.

PAR. 7. The above and foregoing acts, practices and representations of respondent have been, and are, all to the prejudice of the public and respondent's 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, 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 10, 1935, issued, and on July 11, 1935, served, its complaint in this proceeding upon respondents, Loft, Inc., and Dr. Daniel R. Hodgdon, 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' separate answers thereto, testimony and other 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 opposition to the allegations of the complaint by Messrs. Sanders, Childs, Bobb & Wescott, by Everett Sanders, Esq. and Edward F. Howrey, Esq., of counsel, and Messrs. O'Brien, Driscoll & Raftery, by Benjamin Pepper, Esq., of counsel, attorneys for respondents; and said testimony and other evidence

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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 answers 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 Loft, Inc., is a corporation organized in 1919 under the laws of the State of Delaware, with its principal office and place of business located at 40th Avenue and 9th Street, Long Island City, in the State of New York. Said respondent is now engaged, and since the first day of October 1934, has been engaged in manufacturing, selling, offering for sale, and distributing candy and confection products in commerce among and between the various States of the United States, and in the District of Columbia, and has caused said products to be sold in and shipped to several States of the United States other than the State of New York, including New Jersey, Connecticut, Massachusetts, and Pennsylvania, and the District of Columbia, in the course and conduct of which said respondent has been, and is, in substantial competition with other corporations, partnerships, and individuals likewise engaged in the sale, offering for sale and distribution of candy and confection products in commerce in, among, and between the various States of the United States, and in the District of Columbia.

Respondent Dr. Daniel R. Hodgdon is an individual with his principal place of business located at 54 West 40th Street, New York, N. Y., and with addresses at other places in New York State. During the latter part of 1934 and the early part of 1935, his principal place of business was located at 1697 Broadway, New York, N. Y. He holds the degree of Ph. D. and J. D., which entitle him to prefix the title "Dr." to his name, but he does not hold the degree of Doctor of Medicine and has never practiced medicine. On and before the 1st day of October 1934, and for several months continuously thereafter, he was an agent and employee of respondent Loft, Inc., and as such engaged, under contract for a consideration, in advertising Loft candy products and in promoting the sale thereof by means of broadcasts of lectures on food over Radio Station WMCA, of New York City, State of New York, and during said time was further

engaged in lending his recommendation, name, title, and photograph for use on advertising literature of, and in promoting the sale of, the candy products of respondent Loft, Inc.

PAR. 2. Commencing on or about the first day of October 1934, and continuously thereafter for several months, reaching into the year 1935, respondents, separately and together, began and carried on an extensive advertising and sales promotion program for Loft candy products, directed to and reaching the public in general in various States of the United States, and in the District of Columbia, by means of statements and representations, having State and interstate circulation, in newspapers, on circular literature inserted in Loft candy boxes, on labels and seals, on certain literature distributed through Loft stores, on Loft store and window displays, and by means of radio broadcasts made by respondent Daniel R. Hodgdon and contracted for and sponsored by respondent Loft, Inc. Throughout the entirety of the aforesaid advertising of respondents there runs and prominently appears the slogan and representation that Loft candies are "Made without Glucose" and contain no glucose. The said slogan and representation appears on Loft labels and seals, sometimes standing alone, but usually in combination with the words "SEAL OF PROTECTION" and "LOFT REALLY PURE CANDY." These seals, which are placed on Loft candy boxes and wrappers, are pictured in approximately all of the advertising literature of respondent Loft, Inc., and are repeatedly therein referred to and combined with such statements as "This Seal is your Protection" and "Loft Seal is Your Protection." The aforesaid statements and representations also repeatedly and variously appear in association or combination with such statements and representations as the following:

Loft CODE OF ETHICS:

Glucose should not be put in candy unless the label states the facts—because glucose is only a starch which has been treated with sulphuric acid. Excess of starch is dangerous.

Loft candies are really pure—they contain no substitutes—no adulterants of any kind.

* * * * *

Loft has discovered a new method of making candies without the use of glucose.

Loft candies do not contain substitutes or preservatives of any kind.

Loft candies are made of pure cane sugar—honey—and the purest of all fine materials.

Loft candies are really pure—therefore delicious and easily digested.

Loft Seal is Your Protection.

* * * * *

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Loft Candies do not contain Glucose. Glucose is an adulterant made by treating starch with Sulphuric or Hydrochloric Acid.

Take no chances.

Eat Loft Candy.

Loft Candy Ideals—

1. Purity with no Substitutes.
2. Freshness with Finest Materials.
3. High Quality Leadership.
4. Low Prices with Honesty.
5. Made without Glucose.

Be Safe—Buy Loft Candies and Know What You are getting.

Absolutely Pure.

Good and Safe for Children.

Made Without Glucose.

* * * * *

YOU ARE SAFE WHEN YOU BUY *Loft* Candies.

* * * * *

LOFT STORES TO SERVE YOU RIGHT

* * * * *

Loft Candies are made without glucose, preservatives or substitutes of any kind.

* * * * *

Loft—The name you can trust for Christmas Candies.

* * * * *

During the period between October 1, 1934, and the first part of January 1935, respondents made no specific reference to corn syrup as being the product identified by their use of the term "glucose" and for the most part confined themselves to the use of the term "glucose," except that a substantial portion of the newspaper advertisements of respondent Loft, Inc., during the said times, carried the following additional statements and references to definitions additional statements and references to definitions purporting to describe and identify glucose:

WHAT IS GLUCOSE?

U. S. Pharmacopoeia, page 178, as follows:

A product obtained by the incomplete hydrolysis of starch.

Oxford English Dictionary, page 237 (1933) says of glucose:

Now chiefly in non-scientific use as a commercial name for dextrose, obtained from starch by the action of sulphuric acid.

Mr. Alfred W. McCann says in his book, "The Science of Eating", page 300, of glucose:

Glucose as a filler is the symbol of denatured carbohydrate foods, the excess of which in the diet of the average American family is the cause of many diseases.

During the aforementioned period, the aforesaid statements and definitions were also made and referred to on the insert literature separately circulated and distributed to and among the purchasing and consuming public by respondent Loft, Inc., in its candy boxes, together, however, with the following additional statements, representations, and references to definitions:

Funk & Wagnalls Standard Dictionary, 1932 Edition, page 1044, says of glucose:

It is the principal member of the group to which it gives its name and is much less sweet than cane sugar. It is made commercially by treating starch with dilute sulphuric acid, and the resulting solid product is called grape sugar, and the syrup Glucose.

The Winston Simplified Dictionary, 1934, page 415, says of Glucose:

Obtained by the action of sulphuric acid on starch, or in solid form known as dextrose. Commercially a syrup containing glucose proper and other substances. Used as an adulterant.

Webster's International Dictionary (1934), page 1067, says of glucose:

Commercial. A light colored, uncrystallizable syrup obtained by the incomplete hydrolysis of starch (usually by heating it with dilute acid) and containing chiefly maltose, dextrin, and dextrose; mixing syrup; starch syrup.

PAR. 3. In the course and conduct of the aforesaid advertising and sales promotion program for Loft candy products, respondent Loft, Inc., and respondent Daniel R. Hodgdon represented and represent to purchasers and prospective purchasers of candy and to the public in general that the candy products of the respondent Loft, Inc., are "Made without Glucose" and contain no glucose; that glucose, as used or found in candy, is made with sulphuric or hydrochloric acid and bleached with sulphuric acid, is a filler, an adulterant, a preservative, and a cheap substitute for sugar in candy, is less digestible than cane sugar, and contains starch, and therefore, that it is impure, unwholesome, harmful to health, unsafe, and dangerous for adults and children; that glucose is an ingredient used and found in candies, except Loft candies; that candy products made with or containing glucose may contain and do contain sulphuric or hydrochloric acid and starch, are less digestible than candies made without glucose, contain a filler, a preservative, an adulterant, and a cheap substitute for sugar in candies, and therefore, that the same are impure, unwholesome, harmful to health, unsafe, and dangerous for adults and children; that the Loft seal, appearing on Loft candy boxes, bearing the slogan "Made without Glucose", is a "Seal of Protection" against such candies, all therein and thereby further implying and representing that the purchase and use of candy products in general, other than those of respondent Loft, Inc., is dangerous and unsafe and is to be warned against, and that candies made with or containing glucose

are inferior in quality to candies made without or containing no glucose, and to the candy products made, offered, and sold by respondent Loft, Inc.

The slogan "Made without Glucose," as used by respondents with relation to Loft candies, is calculated to and does epitomize the aforesaid statements and representations relative to glucose, to candies made with or containing glucose, and to Loft candies as distinguished therefrom and as superior thereto. Said slogan is at all times combined with respondent's statements and representations in disparagement of glucose, such that the same is inseparable from said statements and representations with respect to the benefits accruing therefrom to respondent Loft, Inc.

The substance of the aforesaid statements and representations relative to Loft candies, to glucose, to candies made with or containing glucose, and to candies other than those of Loft, Inc., all as above set forth, is abundantly diffused throughout the advertising and sales promotion conducted by respondents between October 1, 1934, and the month of October 1935, but in carrying the same over in the advertising conducted during the latter part of January 1935, and thereafter, respondents used the terms "glucose" and "commercial glucose," together or in association with the term "corn syrup," for the most part in such a way as to indicate that by the terms "glucose" and "commercial glucose" respondents specifically and exclusively referred to, meant, and intended to limit the application of such terms to that candy ingredient or product known as "corn syrup."

The aforesaid statements and representations falsely disparage the qualities and ingredient properties of the candy products of competitors of respondent Loft, Inc.

PAR. 4. In view of the primary meaning of "glucose," as more fully hereinafter set forth, and because "glucose" and "commercial glucose" are used to identify a certain sugar contained in candy products in general, and in Loft candies, said terms, in and of themselves, are inadequate to identify "corn syrup" or to identify and distinguish that commercial ingredient, specifically known as "corn syrup," from certain other sugar or candy ingredients commonly designated and identified as "glucose."

As a matter of primary definition and meaning, the word "glucose" is a name for a certain sugar or group of sugars. Dictionary definitions of "glucose" are not worded alike, and some are more extensive than others, but according to that definition which in substance is common to dictionaries in general, the word "glucose" is generic in meaning and as such identifies a sugar. This definition also usually

indicates that this sugar is found largely in the vegetable kingdom, in honey, and in animal organisms, as in the blood, liver, etc.; that it is less sweet than cane sugar, and that it is commercially derived from starch. Within this meaning, the words "glucose" and "dextrose" are interchangeable and synonymous, and in connection with the said definition of the word "glucose," the word "dextrose" is sometimes referred to and defined as a synonym for "glucose." Within this meaning, also, and as a matter of fact, the said sugar is an end-product of hydrolized cane sugar and an end-product of hydrolized starch. Some definitions also indicate that "glucose" is the name of a group of sugars or sweet compounds having a common chemical formula, to which glucose, as the principal member of the group, gives its name, and that this group includes, among others, grape-sugar, also called "dextrose," and fruit sugar, also called "fructose" and "levulose." In some instances, but not universally, dictionary definitions also indicate that the word "glucose" has a commercial significance, in which connection some definitions indicate it as a commercial name for dextrose, while other definitions indicate it as the name for syrup which is commercially derived from starch, but this information, in those definitions in which it appears, is subordinated to the primary definition of glucose as meaning a sugar or sugars, such that general reference to dictionary definitions serves to identify glucose as a sugar rather than as a commercial syrup, and even where a commercial syrup is referred to in definitions appearing under the word "glucose," no specific mention is made of "corn syrup" nor is the commercial meaning of the word limited in such a way as to identify glucose as being only that syrup commercially derived from the starch of corn.

In the sense that the word "glucose" primarily identifies sugar, it is a word familiar to and generally used in the parlance of biochemists, nutritionists, pediatricians, and medical men, and in general by those professions dealing with the feeding, uses, and metabolisms of food, and as so used, it means and signifies that particular sugar also known and identified both as "dextrose" and as "d-glucose." By such experts it is also described as the "sugar of the blood," or as that sugar which, upon digestion of carbohydrate foods, is absorbed and taken into the blood stream to the liver and to the muscles of the body. For the reason that the glucose sugars, including glucose or dextrose and levulose, are subject to scientific detection by a process known as polarization, the word "glucose" has been subjected to some refinement and has given rise in chemical and scientific terminology to the words "d-glucose" and "l-glucose." For the reason that the simple sugar known as "glucose" or "dextrose" is

dextrorotary, that is, upon polarization rotates the plane of light to the right, it has come to be more specifically identified as "d-glucose." "Levulose," on the other hand, being levurotary, rotating the plane of light to the left, has come to be more particularly identified as "l-glucose."

The Pharmacopoeia of the United States defines Glucos (Liquid Glucose) as "a product obtained by the incomplete hydrolysis of starch."

The words "glucose" and "commercial glucose" are interchangeably used among members of the candy-making trades to designate a candy ingredient or syrup product made and sold by the corn industries, and with regard thereto these words are understood by most members of the candy-making trades to mean "corn syrup", but the words as so used by some members of said trades have not been and are not accepted, adopted or used by all members of said trades as a name and synonym for "corn syrup." It is not shown that these words, standing alone and as used or understood among members of said trades, are understood by the public in general to mean "corn syrup."

PAR. 5. Sugars are called monosaccharides, disaccharides, and polysaccharides, depending upon whether they are composed of one, two, or more sugar molecules. The simple glucose sugars, dextrose (d-glucose) and levulose (l-glucose), are monosaccharides. Hydrolysis (chemical breakdown) of the disaccharides and polysaccharides produces monosaccharides. The hydrolysis of cane sugar (sucrose), a polysaccharide, into its simple sugars, produces one part dextrose and one part levulose. The hydrolysis of starch into maltose, a disaccharide, and thence into its simple sugars, produces two equal parts of dextrose. Levulose is known to be sweeter than dextrose sugar, but the food and energy values of dextrose presently appear to be more emphasized in human diet, physiology, and food metabolism.

The general process of making commercial candies with cane sugar involves a substantial hydrolysis or breakdown of the cane sugar into its simple sugars and the inversion thereof into non-crystalline form, in which form it is known as "invert sugar." The maintenance of this inversion is essential in the finished candy product. Except in the presence of acids, acid salts, or certain enzymes, by which hydrolysis and inversion are achieved and maintained, inverted cane sugar regrains or crystallizes, for which reason acidity, as distinguished from alkaline conditions, must be present in candy made of cane sugar and must be produced or induced therein in the process of manufacture in order to make and maintain candy as such. The

industrial chemistry incident and essential to these accomplishments in candy making, as now practiced, is consistent with the qualities of safety and wholesomeness in candy.

Among commercial candy makers in general, the aforesaid ends for the most part are achieved by use of that candy ingredient or product made and sold by the so-called corn industries and specifically described and identified as "corn syrup", although called "glucose" and sometimes "commercial glucose" among members of the candy-making trades. This product is obtained in commercial manufacture by the controlled hydrolysis or conversion of starch, derived from corn, in which process the starch loses its identity and nature as such, and in which, short of complete hydrolysis, producing dextrose only, the starch is converted into dextrans, maltose, and dextrose, in varying proportions dependent upon the extent of hydrolysis. A dextrin is a product which is neither starch nor sugar but intermediate between starch and sugar. Dextrans are not found in cane sugar or in hydrolyzed or inverted cane sugar. They are produced from starch in the process of human digestion and, like the starch from which derived, they are healthful and wholesome when found or produced in human diet. In addition, corn syrup contains water and is acid, as distinguished from alkaline, in its reactions.

Candy can be made with a sugar ingredient other than cane sugar, but cane sugar is usually used, and usually with corn syrup in combination therewith. Corn Syrup contains glucose, that is, sugar, which is the base of all candy, and it has the additional value and necessary properties for aiding the hydrolysis and inversion of cane sugar and for maintaining the inverted sugar of candy against regraining or reversion to crystalline form. It thus serves not only in the making of candy but also thereafter to maintain it as such. It is also valuable in obtaining and regulating the desired sweetness or taste of candy and serves to satisfy needs brought about by varied conditions under which candy is kept and sold.

PAR. 6. Respondent Loft, Inc., professes to a long record and reputation for good candies, and for many years prior to the month of October 1934, it used corn syrup in the making of its candies. Because of its unique combination of values as a candy ingredient, corn syrup, also known as "glucose" and "commercial glucose" by members of the candy making industry, has been used in said industry for approximately fifty years. Many makers of candy, competitors of respondent Loft, Inc., regard it as an absolutely essential ingredient for all or most of their candies. It is now used generally, if not universally, by competitors of respondent Loft, Inc., so that false and disparaging statements and representations by respondents relative

to corn syrup, glucose, and commercial glucose, as a candy ingredient, tend to affect and obstruct, and do affect and obstruct, competitors in the sale of their candies.

PAR. 7. For the reason that glucose, in any form, inclusive of sugar or corn syrup, as used or found in candy, is safe and wholesome and regarded both as a natural and essential ingredient in commercial candies, there is no basis for disparaging candies made with or containing glucose in any form. For the same reasons, and contrary to the statements and representations made by respondents, as set forth in paragraphs 2 and 3 above, glucose, as sugar or corn syrup, or in any form as used or found in candy, with respect to candy, is not an "adulterant" and is not a "substitute," or a "cheap substitute" for cane sugar, or a "filler," or a "preservative," in the sense that these words may be used, and were so used in Loft advertising, to reflect upon candy quality, and the same are inappropriate to describe corn syrup as a candy ingredient or to reflect comparative qualities of candies as a result of the use or non-use of corn syrup. For the same reasons, also, the market price of corn syrup, purchased in commercial quantities for use in candies, is not relevant to the quality of candies, and with respect to the qualities of candy made with or containing corn syrup, there is no basis for disparaging said candy by way of a general representation to the effect that the ingredient used or contained therein, called "glucose," "commercial glucose," or "corn syrup," is "cheap" or a "cheap substitute" for cane sugar in candy. The said ingredient, as used or found in candy, is not made with sulphuric acid, is not bleached with sulphuric acid, and does not contain either sulphuric or hydrochloric acid, or starch, is not impure, unwholesome, harmful to health, unsafe, or dangerous for adults or children, or less digestible than cane sugar. The said ingredient has been studied by biochemists and is used extensively by nutritionists, pediatricians, and experts in the field of carbohydrate feeding, and upon the overwhelming weight of evidence, it is not only healthful and wholesome but a valuable food product which may be made an ingredient in candy or other food products without risk of injuring the health of either adults or children. In general, the industrial chemistry of making said ingredient for use in candies is not in every detail parallel to that used in the making or refining of cane sugar, but the same is comparable thereto, and no basis is shown for impeaching either of these processes, or the process or processes used in hydrolizing and inverting cane sugar in candy making, as being unsafe or unwholesome. Candy products made with or containing said ingredient or product do not contain sulphuric or hydrochloric acid, or starch, are not less digestible than candies made without said ingredi-

ent, or with cane sugar only, and the same are not impure, unwholesome, harmful to health, unsafe, and dangerous for adults or children, or otherwise inferior in quality to candies made without said ingredient or product. The purchase and use of candy products in general other than those of respondent Loft, Inc., is not dangerous or unsafe. With respect to the qualities of safety, healthfulness, and wholesomeness in candy, respondent Loft, Inc., has competitors making and selling candies made with and without said ingredient, which are comparable and equal to the candy products made, offered, and sold by respondent Loft, Inc.

For the reasons above stated, the statements and representations made by respondents in disparagement of the qualities and ingredient property or properties of candy products made and sold by competitors of respondent Loft, Inc., all as set forth and referred to in paragraphs 2 and 3 above, were and are, and each of them was and is, false.

PAR. 8. It is not shown that glucose, in the form of corn syrup as such, was used or found in any of the candy products made and sold by respondent Loft, Inc., during the course of the advertising and sales promotion hereinabove referred to; but with respect to glucose, defined as "a product obtained by the incomplete hydrolysis of starch," and as so identified and represented in certain portions of Loft advertisements, some of said candies did in fact contain, or were made with, a product identified as incompletely hydrolyzed starch and as glucose, as evidenced by the presence of dextrans. Of necessity, also, being made with cane sugar and invert cane sugar, the candy products of respondent Loft, Inc., were and are made with dextrose and levulose, so that as a matter of scientific fact, and within the general and specific definition of glucose as identifying sugars and a particular sugar, and further, within the identity thereof as so represented in certain portions of Loft advertising, referred to and set out in paragraph 2 above, referring to glucose as sugar, and as a name for dextrose, said candies were and are made with glucose.

PAR. 9. Respondent Loft, Inc., is one of the largest candy products manufacturers in the world and has publicly represented itself to be the largest. While it sells to independent retailers, it also owns or operates over two hundred retail stores, located in various cities of the various States of the United States and in the District of Columbia. The total sales income of respondent Loft, Inc., in 1934, the year in which the advertising complained of was begun, was \$12,412,327.46, of which \$7,692,270.85 represents income from candy sales. Respondent spent \$226,067.32 on account of advertising in 1934, and \$208,609.82 on account of advertising from January 1, 1935, to Oc-

tober 1, 1935. The amount spent in 1934 was almost half as much as the entire net profit of the corporation for 1934, which was \$455,377.19. In the year 1934, the year in which the advertising complained of began, respondent Loft, Inc., produced and distributed 22,950,817 pounds of candies, representing an increase of considerably over two and a half million pounds more than it sold in 1933. Many of the competitors of respondent Loft, Inc., are small and inferior in business size and strength to that of said respondent.

PAR. 10. The false and disparaging statements and representations made by respondents, separately and together, all as more particularly hereinabove set forth, have the tendency and capacity to place, and have in fact placed, in the minds of the buying public to a substantial degree a consciousness of danger in the use of candy or food made with or containing glucose, and the same have had, and have, and each of them has had, and has, a tendency and capacity to, and did and do in fact, mislead and deceive a substantial portion of the buying public, including purchasers and potential purchasers of candies being sold in competition with the candy products of respondent Loft, Inc., into the false and erroneous belief that said statements and representations are, and each of them is, true; that glucose is an ingredient or substance which is used or contained in candy in general but is not used or contained in Loft candies; that it is an ingredient or substance which is impure, harmful to health, unwholesome, dangerous, and unsafe; that candies in which it is used or present are impure, harmful to health, unwholesome, dangerous, and unsafe, and otherwise inferior in quality to the candies of respondent Loft, Inc., and that the purchase and use of candies other than those of respondent Loft, Inc., is in general dangerous and unsafe, and the same have caused, and cause, such purchasers and prospective purchasers of competitors to discontinue or refrain from the making of purchases from said competitors and to purchase products of Loft, Inc., in place and stead of candy products of said competitors, in consequence of which trade has been, and is, unfairly diverted to respondent Loft, Inc., from its competitors who do not falsely defame or disparage the products of others and who do not misrepresent the ingredients of their own products.

CONCLUSION

The aforesaid acts and practices of respondent, Loft, Inc., and Dr. Daniel R. Hodgdon, 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 separate answers of respondents, testimony and other evidence taken before John W. Bennett, 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 Jay L. Jackson, attorney for the Commission and by Messrs. Sanders, Childs, Bobb & Wescott, by Everett Sanders, Esq. and Edward F. Howrey, Esq., of counsel, attorneys 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 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 Loft, Inc., and respondent Dr. Daniel R. Hodgdon, and its and his officers, agents, representatives, and employees, in connection with the advertising, offering for sale, sale, and distribution of candy products in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Representing in any way, directly or indirectly, that glucose, whether in the form of commercial glucose or glucose in any other form, as now produced and used or contained in candy products, is impure, harmful to health, unwholesome, dangerous, or unsafe, or that that ingredient, or any ingredient, now produced and used or contained in candy products, and called or identified by the name glucose, is impure, harmful to health, unwholesome, dangerous, or unsafe;

2. Representing in any way, directly or indirectly, that candy products made with or containing glucose, whether in the form of commercial glucose or glucose in any other form, are impure, harmful to health, unwholesome, dangerous, or unsafe, or that such candies are inferior in quality to, or less pure, wholesome, or safe than, the candies of respondent Loft, Inc.;

3. Representing in any way, directly or indirectly, that the purchase and use of candies made with or containing glucose, whether in the form of commercial glucose or glucose in any other form, is dangerous or unsafe, or that the purchase and use of candy products

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in general, other than those of respondent Loft, Inc., is dangerous or unsafe;

4. Representing, directly or indirectly, that the candy products of respondent Loft, Inc., are made without, or do not in fact contain, glucose.

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
**CHARLES R. LUCE, INDIVIDUALLY AND AS TRUSTEE,
 TRADING AS LUCE & COMPANY**

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

Docket 2780. Complaint, Apr. 23, 1936—Decision, Feb. 9, 1937

Where an individual engaged in manufacture and sale of "straight" goods candy and of so-called "break and take" assortments, principal trade demand for which comes from the small retailers with stores, in many instances, near schools and patronized by school children, and sale and distribution of which candy, giving with sale thereof to public 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 thereof, 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 selling of which in the market of the other, i. e., the "straight" goods, has been followed by marked decrease in sales of such "straight" candy, due to gambling or lottery feature connected with so-called "break and take" merchandise—

Sold to wholesalers and jobbers assortments variously designated as "Lucky Winner," "Lucky Smokes," and "Big Winner," and composed of a number of penny pieces of uniform size and shape, the concealed colored centers of some of which differed from those of the majority, together with number of packages of candy, to be given as prizes to those procuring one of said pieces, colored center of which differed as aforesaid from majority thereof, and together with explanatory display cards with said "Lucky Winner" assortments for retailers' use is offering same to public; so assembled and packed that such assortments might be and were displayed and sold by numerous retail dealer purchasers thereof in accordance with above described plan, and with knowledge and intent that such assortments could and would thus be resold to public by retail dealers as above set forth, in violation of public policy and in competition with many who regard such method of sale and distribution as morally bad and as encouraging gambling, and especially among children, as injurious to the industry through resulting in the merchandising of a chance or lottery instead of candy, and as providing retailers with a 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 be resold to public by lot or chance;

With result that retailers, finding such candy more salable, purchased products of said individual and others employing similar methods, some competitors began sale and distribution of candy for resale to public by lot or chance to meet competition of manufacturers who thus sell and distribute their products, "straight" goods sales of aforesaid refusing competitors, who can compete on even terms only by giving same or similar devices to retail dealers, showed a continued decrease in their unwillingness to do so, public and competitors were prejudiced and injured, and trade was

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diverted to him from said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in industry concerned:

Held, That such acts and practices, under the conditions and circumstances set forth, were all to the prejudice and injury 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.
Sperry & Yankauer, 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 Charles R. Luce, individually, and as trustee, trading as Luce & 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, operating his business as a common law trust of the type known as "Massachusetts Trust Estate," organized and filed under the laws of New Jersey, and using the trade name of Luce & Company, with his principal office and place of business located at 350 Mercer Street, in the city of Jersey City, State of New Jersey. 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 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 Jersey City, State of New Jersey, 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 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 since on or about

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December 1935, to wholesale dealers, 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 packages of candy, which packages 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 packages of candy heretofore referred to. 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 packages of candy wholly by lot or chance.

PAR. 3. The wholesale dealers, 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, as a means 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 packages 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 proceed-

ing 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 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 23, 1936, issued and served its complaint in this proceeding upon the respondent, Charles R. Luce, individually and as trustee, trading as Luce & Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent did not file answer to said complaint, and, commencing July 10, 1936, 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. Respondent was represented by counsel but offered no testimony or other evidence in opposition to the charges of the complaint.

Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, the testimony and other evidence duly recorded and filed in the office of the Commission, respondent having indicated that he did not desire to file any brief or to orally argue the matter; 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. Respondent is an individual and the sole trustee of the trust estate doing business as Luce & Company. He has his principal office and place of business at 350 Mercer Street, in the city of Jersey City, State of New Jersey, and 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 dealers and jobbers located at points in the various States in the eastern part of the United States, and causes said candy when so sold to be shipped or transported from his principal place of business in the State of New Jersey to purchasers thereof in New Jersey and in other States in the eastern part 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 individuals and with partnerships and corporations 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 were assortments known and designated by respondent as "Lucky Winner," "Lucky Smokes," and "Big Winner." Said assortments were composed of a number of pieces of candy of uniform size and shape, together with a number of packages of candy, which packages of candy were given as prizes to purchasers of said pieces of candy of uniform size and shape, in the following manner:

The majority of said pieces of candy of uniform size and shape in said assortment had centers of the same color, but a small number of said pieces of candy had centers of a different color. 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 pieces of candy having a center colored differently from the majority were entitled to receive, and were to be given free of charge, one of the said packages of candy heretofore referred to. The color of the center of 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 piece of candy selected broken open. The aforesaid purchasers, who procured a piece of candy of uniform size and shape having a center colored differently from the majority, thus procured one of the said packages of candy wholly by lot or chance.

Respondent furnished to said wholesale dealers, with the "Lucky Winner" assortment, a display card to be used by the retail dealer in offering said assortment for sale to the public. The display card bore a legend or legends informing the prospective purchaser that the said assortment was being distributed in accordance with the above-described sales plan.

PAR. 3. The candy assortments involving the lot or chance feature, as described in paragraph 2 above, are generally referred to in the candy trade or industry as "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. 4. Numerous retail dealers purchased the said assortments described in paragraph 2 above from wholesale dealers and jobbers who in turn had purchased said assortments from respondent. Such retail dealers displayed said assortments for sale to the public as packed

and assembled by the respondent, and the candy contained in said assortments was sold and distributed to the consuming public in accordance with the above described sales plan.

PAR. 5. All sales made by respondent of assortments described in paragraph 2 hereof were absolute sales, and respondent retained no control in any way over the goods after they were delivered to the wholesale dealer or jobber. The assortments were assembled and packed in such manner that they were and might be displayed by the retail dealer for sale and distribution to the purchasing public in accordance with the sales plan described in said paragraph 2. The respondent had knowledge that said assortments would be resold to the purchasing public by retail dealers by lot or chance, and packed and assembled such candy in the way and manner described so that it could and would be resold to the public by retail dealers in the manner described.

PAR. 6. The sale and distribution of candy by the retail dealers by the method herein described is a sale and distribution of candy by lot or chance and constitutes a lottery or gaming device.

Competitors of respondent appeared as witnesses in this proceeding and testified, and the Commission finds as a fact, that many competitors regard such 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. The retailers, finding that they could dispose of more candy by the "break and take" method, bought from respondent and others employing the same methods of sale, and thereby trade was 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 retail dealers. This they are unwilling to do, and their sales of "straight" candy show a continued decrease.

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 his candy was prejudicial and injurious to the public and his competitors and resulted in the diversion of trade to respondent from said competitors, and was a restraint

upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 7. There are in the United States many manufacturers of candy who do not manufacture and sell lottery or prize assortments and who sold their "straight" candy in interstate commerce in competition with the "break and take" assortments of respondent and other manufacturers of similar candy. The sale of candy without a lottery or gaming feature in connection therewith is adversely affected by the sale of "break and take" candy, and manufacturers of the former type of candy have noted a marked decrease in the sales of their products whenever and wherever the lottery or prize candy has appeared in their market. This decrease in the sales of "straight" candy is principally due to the gambling or lottery features connected with the "break and take" candy.

PAR. 8. The principal demand in the trade for the "break and take" candy comes from the small retailers. The stores of these small retailers are in many instances located near schools and attract the trade of school children. The consumers or purchasers of the lottery or prize assortments are principally children, and because of the lottery or gambling feature connected with the "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" 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 their sale. The sale and distribution of "break and take" 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. 9. The respondent testified, and the Commission finds, that the gross annual sales of the respondent are between \$80,000 and \$90,000; that the respondent sold his "break and take" assortments described in paragraph 2 hereof for a few months only, discontinuing the sale thereof during March or April 1936; and that the "break and take" assortments were a minor part of the respondent's total business.

PAR. 10. The Commission further finds that the sale and distribution in interstate commerce of assortments so packed and assembled as to enable retail dealers, without alteration, addition or rearrangement, to resale the same to the consuming public by lot or chance is contrary to public policy.

Order

CONCLUSION

The aforesaid acts and practices of the respondent, Charles R. Luce, individually and as trustee, trading as Luce & Company, under the conditions and circumstances set forth in the foregoing findings of fact, were 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," 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 testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, no testimony or other evidence haveing been offered for or on behalf of 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 the respondent, Charles R. Luce, individually and as trustee, trading as Luce & Company, his agents, representatives, and employees, in the offering for sale, sale, and distribution in interstate commerce of candy, 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 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 assortment of candy for sale to the public at retail pieces of candy of uniform size and shape having centers of different color, together with small packages of candy, which said 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.

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4. Furnishing to wholesale dealers and jobbers display cards, either with assortments of candy or separately, bearing a legend or legends 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 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.

MEMORANDUM

The Commission, as of February 11, 1937, made substantially similar findings and orders in two other cases, namely:

GEORGE CLOSE COMPANY, Docket 2688, in which complaint issued on Jan. 18, 1936, and in which respondent, Massachusetts corporation with principal office and place of business in Cambridge, Mass., sold similarly arranged assortments of penny candies with display cards, with the different colored centers entitling chance purchasers to one of the larger pieces included, and in which Commission found, as respects respondent's annual business (as set forth in Par. 9), that it was substantial, that it sold both its "straight" merchandise and "break and take" assortments in all states east of the Mississippi and in states west of the Rocky Mountains, and that the "break and take" assortments constituted the lesser part of the total volume of its business, but that it had been and was distributing numerous assortments involving same lot or chance principle and varying only in detail; and

YORK CARAMEL COMPANY, Docket 2747, in which complaint issued on Mar. 16, 1936, and in which respondent, Pennsylvania corporation with principal office and place of business in York, Pa., sold assortments of individually wrapped penny caramels of uniform size and shape, the concealed different color of a small number of which entitled person procuring such a piece to one of the larger pieces included, and in which Commission found, as set forth in Par. 9, that respondent's gross annual sales were about \$200,000, that it sold its aforesaid "break and take" assortments for a short time only and discontinued sale thereof shortly before issuance of Commission's complaint in matter, and that such "break and take" assortments were a minor part of its total volume of business.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Syllabus

IN THE MATTER OF
GRANITE ARTS, INC.

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

Docket 2610. Complaint, Nov. 2, 1935—Decision, Feb. 16, 1937

Where a corporation engaged in manufacture of monuments, tombstones and grave markers, through mixing granite chips or powder with cement and molding same into cast stone, and in the sale of its said products, which simulated in appearance and were used as a substitute for granite; in advertising its said products in farm papers of interstate circulation and through descriptive circulars mailed to prospective purchasers—

- (a) Represented its said monuments, etc., as "Victoria Granite" and featured the corporate and trade name adopted by it, in which were included words "Granite Arts," in its said advertising and in correspondence with customers and prospective customers, and caused its address in said newspaper advertisements to appear as "Graniteway, Omaha," and represented that its said products constituted "A Permanent Lasting Tribute of Love and Respect," and that "Our Memorials Will Endure Far into the Centuries," facts being it did not make any products from true granite, almost everlasting solid rock formation of great strength, etc., and known universally as a substance from which tombstones, monuments, and grave markers have long been made, and of which Victoria Granite is an old established type and well-known to trade, aforesaid address was purely fictitious, and aforesaid representations were otherwise false;
- (b) Represented, in its advertising matter, that its memorials were standardized to dimensions which had the official approval of practically every cemetery in the United States, facts being many such cemeteries have rules and regulations prohibiting any such markers, excepting those made of granite, bronze, or marble, and do not allow cast stone monuments, etc., to be placed therein, and such representations were false; and
- (c) Mailed circulars to prospective purchasers offering discount of 10% for ten days only from price listed in circulars, and sent, thereafter, to such prospects who did not reply, card, at end of such period, offering 20% discount, and third card thereafter to non-replying customers offering 30%, facts being price thus finally arrived at was not a special one for its products, but was regular and usual price at which it sold the same;

With effect of misleading purchasing public into false and erroneous belief that said representations were true, and into purchase of substantial quantities of its products on account of such belief, thus induced, and of unfairly diverting trade to it from competitors who did not make use of same or similar representations in manufacture, sale and distribution of aforesaid products; to the 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. Morton Nesmith for the Commission.

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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 Granite Arts, 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, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Granite Arts, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Nebraska, with its principal place of business at 1909 Leavenworth Street in the city of Omaha, State of Nebraska. It is now, and has been for several years last past, engaged in the business of manufacturing and selling cast stones which are used as monuments, tombstones, and grave markers. Said product is designed as and used as a substitute for granite, which it simulates in appearance. Its process of manufacture is that of mixing granite chips or powder with a cement mix, which is cemented sand. Respondent causes said product, 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 Nebraska, to the 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 manufacture, sale, and distribution of granite monuments, tombstones, and grave markers, in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of its business as aforesaid, respondent, in soliciting the sale of and selling its products in interstate commerce:

1. In advertisements and advertising matter describes its products as "Victoria Granite";

2. Adopted as and for a corporate and trade name under which to carry on its said business, the words "Granite Arts, Inc.," and used and displayed same in its advertising matter and in correspondence with customers and prospective customers in the various States of the United States; and caused in its newspaper advertisements the address "Graniteway, Omaha," to appear;

3. Described its product as "A Permanent, Lasting Tribute of Love and Respect," and "Our Memorials Will Endure Far Into The Centuries";

4. Represented in its advertising matter that their memorials are standardized to dimensions which have official approval of practically every cemetery in the United States; and

5. Mailed to prospective purchasers circulars offering a discount of 10% from the price listed in such circulars, and in other cases offered them a discount of 20% from such prices, and in certain cases, when the person circularized made further inquiry but did not purchase, offered them a special discount of 30% from the list prices.

PAR. 4. In truth and in fact:

1. The products which said corporation manufactures, sells, and distributes are not composed of natural stone or granite, but are manufactured by said corporation from cement and other ingredients;

2. The address of said corporation, "Graniteway, Omaha," given in its advertisements, is a fictitious address and one having the tendency and capacity to add to the deception caused by its misuse of the word "granite," as likewise is the corporate name of respondent, "Granite Arts, Inc.";

3. Said products are not permanent, nor will they endure for centuries;

4. Respondent's memorials do not have the official approval of practically every cemetery in the United States; and

5. The statement and representation that the discount of 10%, 20%, and 30% was a special price, is false and misleading, and the prices so quoted were and are the regular and usual prices at which said corporation sells its said products, all of which has the tendency and capacity to mislead and deceive many among the consuming public into the belief that respondent's said product is granite, and to purchase said product in that belief, and that they are obtaining a special discount in the purchase of said products.

PAR. 5. 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 the second day of November 1935, issued and on the fourth day of November 1935, served its complaint in this proceeding upon respondent Granite Arts, Inc., a corporation, charging it with the use of unfair methods of competition in violation of the provisions of said act. After the issuance of complaint the respondent failed to file answer thereto, and thereafter testimony and other evidence in support of the allegations of said complaint were introduced by Morton Nesmith, attorney for the Commission, before W. W. Sheppard, 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. Thereafter, the proceeding regularly came on for final hearings before the Commission on the said complaint, testimony and other evidence and brief in support of the complaint; respondent having filed no brief though given an opportunity to do so, 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 Granite Arts, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, with its principal office and place of business at 1909 Leavenworth Street in the city of Omaha, State of Nebraska. The respondent was for several years prior to the issuance of the complaint engaged in the business of manufacturing and selling cast stones which were used as monuments, tombstones, and grave markers. The respondent caused these products, when manufactured, to be transported from its place of business in Omaha, Nebr., to purchasers thereof located in the various other States of the United States. In the course and conduct of its business respondent was in competition with other individuals, partnerships, and corporations engaged in the manufacture, sale, and distribution of granite monuments, tombstones, and grave markers in commerce between and among the various States of the United States.

PAR. 2. Respondent's process of manufacture was that of mixing granite chips or powder with cement and moulding the same into a

Findings

cast stone. Its products, when manufactured, simulated granite in appearance and were used as a substitute for granite. The president of respondent company was one John Afflerbaugh who was the controlling and majority stockholder of the corporation. It appears that Mr. Afflerbaugh left his place of business shortly after the issuance of the complaint in this case and his address is unknown and could not be ascertained after reasonable inquiry was made.

The respondent at one time maintained an agent in Sioux City, Iowa, which agent made sales of respondent's products under the name "Sioux City Granite Arts Company."

PAR. 3. The respondent, in soliciting sale of and selling its product in commerce, as herein described, advertised its products in farm papers having an interstate circulation and mailed to prospective purchasers circulars descriptive of its products. In these advertisements respondent advertised and represented its products as "Victoria Granite." Respondent also adopted and used as its corporate and trade name "Granite Arts, Inc." which name was conspicuously displayed in all of its advertising matter and its correspondence with customers and prospective customers in the various States of the United States. Respondent also caused its address in certain newspaper advertisements having an interstate circulation to appear as "Graniteway, Omaha." Respondent further represented in its advertising matter that its memorials were standardized to the dimensions which have the official approval of practically every cemetery in the United States; and further, respondent mailed to prospective purchasers circulars offering a discount of 10% for ten days only, from the prices listed in said circulars, and at the end of said ten days respondent sent to said prospective buyers another card offering a 20% discount, and if the customer did not respond, a third card was sent offering a 30% discount. Respondent further represented in its advertising matter that its products were "A Permanent Lasting Tribute of Love and Respect," and "Our Memorials Will Endure Far into the Centuries."

PAR. 4. Granite is a solid rock formation composed of quartz, feldspar and mica of great strength, almost everlasting, and takes an excellent polish. It is universally known as a substance from which tombstones, monuments and grave markers have been made for many years. Granite is taken from quarries in various sections of the country by a mechanical process and subsequently cut and manufactured into stone markers and tombstones. Respondent's monuments, tombstones and grave markers are not composed of natural granite or stone but are made entirely of granite chips and other material

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mixed with cement. Respondent does not manufacture any products from true granite. Respondent's products therefore will deteriorate and disintegrate in time and are not permanent, lasting memorials nor will they endure far into the centuries. Respondent's products are not standardized to dimensions which have official approval of cemeteries throughout the United States. On the contrary there are many cemeteries throughout the United States that do not allow cast stone monuments, tombstones, and grave markers to be placed therein. These cemeteries have rules and regulations prohibiting any such markers except those made of granite, bronze, or marble. Victoria granite is a type of real granite which is quarried in the State of Massachusetts and is an old established type taken from old established quarries and is well known to the trade. Graniteway, Omaha, is a purely fictitious address. There is no post-office known as "Graniteway, Omaha, Nebraska." The statements and representations of respondent as to allowing first a 10% discount followed by a 20% discount and that followed by a 30% discount was not a special price for respondent's products but was the regular and usual price at which the respondent sold its monuments, tombstones, and grave markers.

PAR. 5. The aforesaid false and misleading statements and representations used by the respondent in offering for sale and selling its merchandise have had a tendency and capacity to and have misled the purchasing public into the false and erroneous belief that said representations are true and into the purchase of substantial quantities of respondent's products on account of said belief so induced. As a result thereof trade has been unfairly diverted to respondent from competitors in commerce as herein set out who did not make use of the same or similar representations in the manufacture, sale and distribution of tombstones, monuments, and grave markers, all to the injury of 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, Granite Arts, 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

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 W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and brief on behalf of the Commission filed herein by Morton Nesmith, 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, Granite Arts, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of cast stone monuments, tombstones, and grave markers in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That its cast stone monuments, tombstones, and grave markers are granite;
2. Through use of any corporate or trade name containing the word "Granite" or through the use of any other words or phrases containing the word "Granite," alone or in conjunction with any other word or words, or through any other means, that its cast stone monuments, tombstones, and grave markers are granite;
3. That its monuments, tombstones, and grave markers are standardized to dimensions which have the official approval of practically every cemetery in the United States, when such is not the fact;
4. That its cast stone products are permanent or lasting, or that they will endure far into the centuries;
5. That the prices at which said cast stone products are offered for sale and sold are other than its regular and customary retail prices unless an actual discount from its customary retail prices is offered;
6. That prices at which it sells its cast stone products are other than its customary retail prices, 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 the order.

Syllabus

IN THE MATTER OF
DOLLAR CRYSTAL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2919.—Complaint, Sept. 8, 1936—Decision, Feb. 16, 1937*

Where a corporation engaged in the offer and sale of mineral water crystals under such trade names as "Genuine Texas Mineral Crystals"—

Represented, through radio broadcasts and otherwise, that drinking water in which said product had been dissolved would relieve headaches, nervousness, irritability, and fatigue, and that such crystals would remove poisonous waste matter that had accumulated in the system and the cause of disease and of most human ailments, and inability to eat certain foods, and that they contained essential minerals necessary for good health, and would impart pep and energy and accomplish various beneficial results, and were not a medicine or habit-forming drug, and that dissolving thereof in drinking water produced solution identical with the mineral water as it came from the springs, and made use of so-called testimonial letters in its said advertising;

Facts being such letters were used by it without any investigation or knowledge as to whether statements therein were in fact true or as to whether writers thereof were sufficiently informed in proper diagnosis as to be able accurately to state facts of use of such product, sole constituent of which, practically, was the saline laxative and purgative Glauber's Salts, and only therapeutic effect of which was relief of temporary constipation, many of symptoms and ailments for which it represented its said product as a relief or cure arise from causes which said salts, or hydrated sodium sulphate, will not cure or relieve, but will positively aggravate, principal active constituent of such crystals was in fact a medicine, and habit-forming, and solution of crystals in drinking water does not result in product identical with the original mineral water, due to the removal and discarding of certain constituents in process of producing the crystals in question;

With effect of misleading and deceiving purchasers and prospective purchasers into the erroneous belief that such representations were true and into purchase of its said products in such belief, and of thereby unfairly diverting trade to it from competitors engaged in producing and selling saline purgatives and in shipping same in commerce among the various States, and who truthfully advertise and represent the therapeutic value of their products, and competitors who make and sell remedies for the relief of the ailments involved as above set forth and indicated, and who truthfully represent said remedies' therapeutic effect; 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. John Darsey for the Commission.

Crofoot, Fraser, Connolly & Stryker, of Omaha, Nebr., for respondent.

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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 the Dollar Crystal 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 the Commission that a proceeding by it in respect thereof would be to the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is, and was at all times hereinafter mentioned, a corporation organized and existing under and by virtue of the laws of the State of Nebraska, with its principal place of business in Redick Tower Building, Omaha, Nebr. It is now and has been engaged in offering for sale, and selling, a product designated by it as "Genuine Texas Mineral Crystals," "Genuine Texas Crystals," "Real Texas Mineral Water Crystals," and "Texas Mineral Water Crystals."

To a substantial extent sales of said product have been made by respondent to persons, partnerships and corporations located in States other than Nebraska, pursuant to which sales, and as a part thereof, shipment is and has been made by it from the State of Nebraska, and from points in Texas, through and into other States of the Union to said purchasers.

PAR. 2. In connection with offering for sale and selling said product in interstate commerce, and as an inducement for the purchase of said product, respondent is and has been making, and is causing and has caused to be made, the following representations, by means of radio broadcast and otherwise, of and concerning its said product:

1. (a) That the drinking of water in which said product has been dissolved will relieve headache, nervousness, irritability, and fatigue;

(b) That it will remove the cause of disease;

(c) That it will remove poisonous waste matter that has accumulated in the system;

(d) That it has relieved thousands of cases of ailments that are caused by a sluggish system;

(e) That it will remove the cause of most of the human ailments;

(f) That in its use thousands have found lasting relief from such ailments as rheumatism, arthritis, neuritis, indigestion, constipation, nervousness, sick headaches, and swollen joints, and many other common ailments which may be caused by a sluggish system or faulty elimination;

(g) That it will remove inability to eat certain foods;

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- (h) That it will neutralize acid conditions that cause 95% of suffering;
 - (i) That it contains the essential minerals from the earth that the body demands in order for it to enjoy good health;
 - (j) That it cleanses the system and strengthens the natural functions in resisting disease;
 - (k) That it will impart pep and energy;
 - (l) That the minerals contained therein are blended in just the right way to cleanse, purify and wash away the poisons and impurities that cause so many of our aches and pains, and that it contains natural minerals that supply a balance to the diet.
2. (a) That "Genuine Texas Mineral Water Crystals" are not a medicine;
- (b) That they are not a habit forming drug;
- (c) That by dissolving the crystals in drinking water there is produced a solution identical in results with the mineral water as it comes from the mineral springs.

PAR. 3. In truth and in fact, practically the sole constituent of respondent's crystals is hydrated sodium sulphate, or Glauber's Salts. This drug is a saline laxative and purgative and its only therapeutic effect is the relief of temporary constipation; many of the symptoms and ailments for which respondent represents its product to be a relief or cure, arise from causes which hydrated sodium sulphate or respondent's crystals, will not cure or relieve, but which it will positively aggravate; and for none of the ailments or symptoms mentioned in paragraph 2 hereof is it effective in producing a lasting relief or cure; nor will it produce results as represented by respondent. The principal active constituent of the crystals is in fact a medicine and is habit forming, in that its continued use will produce the condition known as laxative habit. The solution of the crystals in drinking water does not produce a solution identical with the original mineral water from which the minerals are derived, but in the process of producing the crystals some relatively insoluble constituents, and some very soluble constituents and some constituents present in a small proportion are removed and discarded.

Some of the crystals which respondent designates and sells as "Genuine Texas Mineral Water Crystals," are derived from mineral water produced at or near Mineral Wells, Tex., and other crystals, so designated and sold, are from water produced at or near Marlin, Tex., although the mineral waters from said localities differ substantially in their constituents.

PAR. 4. In advertising its said product by radio broadcast and otherwise, respondent has used and is using letters, commonly known as testimonials, of and concerning its product written by users thereof, containing statements of actual effects from the use of such product, without any investigation or knowledge on the part of respondent as to whether the statements in said letters contained are in fact true

or as to whether the writers of the letters were sufficiently informed as to be able to truthfully make such statements.

PAR. 5. There are and were at all times hereinabove mentioned, persons, partnerships, and corporations engaged in the business of producing and selling saline purgatives and pursuant to such sales shipping the same in commerce among the States, who truthfully advertise and represent the therapeutic qualities of their products; and other persons, partnerships and corporations who make and sell in interstate commerce, remedies for the relief of the ailments hereinabove mentioned who truthfully represent the therapeutic effect of said remedies; and with such other persons, firms, and corporations, respondent has been and is in active, substantial competition.

PAR. 6. Respondent's false and misleading representations of and concerning its said product, as hereinabove set forth, have the capacity and tendency to mislead and deceive, and have misled and deceived, and do mislead and deceive purchasers and prospective purchasers into the belief that such representations are true and to purchase respondent's product in such erroneous belief. Thereby the aforesaid false and misleading representations have diverted business from its aforesaid competitors to itself, to the substantial injury of substantial competition in interstate commerce.

PAR. 7. The acts and practices of respondent, as aforesaid, are to the prejudice of the public interest, 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."

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 8, 1936 issued, and on September 10, 1936, served, its complaint in this proceeding upon respondent, Dollar Crystal 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 the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which sub-

stitute 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. The respondent, Dollar Crystal Company, is a Nebraska corporation with its principal place of business in Redick Tower Building, Omaha, Nebr. It has been and is now engaged in offering for sale and selling mineral water crystals under the trade names "Genuine Texas Mineral Crystals," "Genuine Texas Crystals," "Real Texas Mineral Water Crystals," and "Texas Mineral Water Crystals." The respondent sells its products to customers located in the various States of the United States other than Nebraska and causes its products when sold, to be shipped from the State of Nebraska into and through the various States of the United States to said purchasers, maintaining a constant current of trade in its said products in such commerce.

PAR. 2. In connection with offering for sale and selling its products in interstate commerce, and as an inducement for the purchase of said products, the respondent has made and makes, and has caused and causes to be made, representations by means of radio broadcasts and otherwise, of and concerning its products, to the following effect, gist, or meaning:

1. (a) That the drinking of water in which said products have been dissolved will relieve headache, nervousness, irritability and fatigue;

(b) That they will remove the cause of disease;

(c) That they will remove poisonous waste matter that has accumulated in the system;

(d) That they have relieved thousands of cases of ailments that are caused by a sluggish system;

(e) That they will remove the cause of most of the human ailments;

(f) That in their use thousands have found lasting relief from such ailments as rheumatism, arthritis, neuritis, indigestion, constipation, nervousness, sick headaches, and swollen joints, and many other common ailments which may be caused by a sluggish system or faulty elimination;

(g) That they will remove inability to eat certain foods;

(h) That they will neutralize acid conditions that cause 95% of suffering;

(i) That they contain the essential minerals from the earth that the body demands in order for it to enjoy good health;

(j) That they cleanse the system and strengthen the natural functions in resisting disease;

(k) That they will impart pep and energy;

(l) That the minerals contained therein are blended in just the right way to cleanse, purify and wash away the poisons and impurities that cause so many of our aches and pains, and that they contain natural minerals that supply a balance to the diet.

2. (a) That "Genuine Texas Mineral Water Crystals" are not a medicine;

(b) That they are not habit forming drugs;

(c) That by dissolving the crystals in drinking water there is produced a solution identical in results with the mineral water as it comes from the mineral springs.

PAR. 3. Practically the sole constituent of respondent's crystals is hydrated sodium sulphate, or Glauber's Salts. This drug is a saline laxative and purgative and its only therapeutic effect is the relief of temporary constipation. Many of the symptoms and ailments for which respondent represents its products to be a relief or cure, arise from causes which hydrated sodium sulphate will not cure or relieve, but which it will positively aggravate. Respondent's products are not effective in producing a lasting relief or cure for any of the ailments or symptoms mentioned in paragraph 2 hereof, and they will not produce results as represented by respondent. The principal active constituent of the crystals is in fact a medicine and is habit forming, in that its continued use will produce a condition known as laxative habit. The solution of the crystals in drinking water does not produce a solution identical with the original mineral water from which the minerals are derived, but in the process of producing the crystals some relatively insoluble constituents, and some very soluble constituents and some constituents present in a small proportion are removed and discarded.

PAR. 4. In advertising its said products by radio broadcasts and otherwise, respondent has used and is using letters, commonly known as testimonials, of and concerning its products written by purported users thereof, containing statements of actual effects from the use of such products, without any investigation or knowledge on the part of respondent as to whether the statements in said letters are in fact true or as to whether the writers of the letters were sufficiently informed in the proper diagnosis of ailments and conditions of the hu-

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man body as to be able to accurately state the effect of the use of such products.

PAR. 5. There are persons, partnerships, and corporations engaged in the business of producing and selling saline purgatives and, pursuant to such sales, shipping the same in commerce among the various States, who truthfully advertise and represent the therapeutic qualities of their products; and other persons, partnerships, and corporations who make and sell in commerce, as herein set out, remedies for the relief of the ailments hereinabove mentioned who truthfully represent the therapeutic effect of said remedies. With all of such other persons, firms, and corporations, respondent has been, and is, in active and substantial competition in such commerce.

PAR. 6. Respondent's false and misleading representations of and concerning its said products, as hereinabove set forth, have the capacity and tendency to mislead and deceive, and have mislead and deceived, and do mislead and deceive purchasers and prospective purchasers into the erroneous belief that such representations are true and into the purchase of respondent's products in such erroneous belief. Trade is thereby unfairly diverted from respondent's aforesaid competitors to respondent to the substantial injury of 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 Dollar Crystal 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 and the answer filed herein on December 15, 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, Dollar Crystal Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its water crystal products in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing through the medium of radio continuity, advertising matter, testimonial letters or in any manner:

(a) That the aforesaid products have any therapeutic value in the treatment of any disease or ailment other than as a laxative or purgative;

(b) That they are not a habit forming drug;

(c) That the dissolution of the products in drinking water will produce a solution identical with the mineral water from which they are obtained as it comes from the mineral springs.

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
ROBERT HOLMES, INC., AND ALBERT GOODMAN

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

Docket 2893. Complaint, Nov. 16, 1936—Decision, Feb. 16, 1937

Where a corporation and an individual, its president and manager and director of its policies and practices, engaged in sale and distribution of so-called home study psychology health courses, in substantial competition with others likewise engaged in sale of such courses of instruction by correspondence; in advertising the same in various periodicals, booklets, circulars, and other forms of printed matter—

Represented that constipation, indigestion, cold sweats, dizzy spells, and bashfulness are always caused by nervous exhaustion, and that "lack of energy" and aforesaid ailments or conditions "positively indicate" a deranged nervous system, for which their said course would be an effective treatment, and that it was an effective and competent treatment for nervousness and aforesaid ailments or conditions and for sleeplessness, irregular heart, worry, fatigue, sex weakness and other conditions specified, and would effectively eliminate poisons from the system, and was entirely different from any other method and would absolutely bring positive and permanent relief from various ailments noted, and that each case was given individual personal attention by them, and that for the sum of twenty-five cents one might learn how to conquer bashfulness, nervousness, or embarrassment, overcome his faults easily, and enjoy life to the fullest, through such statements as "* * * every form of self-consciousness comes from * * * derangement of the Nervous System," "Do not try to fight self-consciousness alone and unaided. It is a losing battle," etc., "You need a knowledge of the action and abuses of nerves * * * such as my course of instruction fully covers," "ARE YOU—NERVOUS?—WORRIED?—UNHAPPY? * * * My wonderful book 'Watch Your Nerves' explains a new method that will help you regain lost vitality and healthy nerves. Send 25¢ * * *," "INSTRUCTION IS INDIVIDUAL * * * each case is given individual personal attention," etc.;

Facts being their said courses were not effective in treatment of the various ailments and conditions for which thus offered, and did not enable purchasers to eliminate the causes thereof, and their said representations with respect to the nature, value and effect of their said courses of home study and instruction were grossly exaggerated, false, misleading, and untrue;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of their so-called home study psychology health courses in aforesaid respects, and with the result that a substantial number of prospective purchasers of such courses were induced and persuaded to buy the same through such statements and representations, which were false, misleading, and deceptive and unfair to others selling and distributing similar courses without making the same or similar false and misleading statements or representations in solicitation and sale of their respective courses, and

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with result that there was an unfair diversion of trade to them from their 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. William C. Reeves* and *Mr. W. W. Sheppard*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Nathan D. Shapiro and Brothers, of Brooklyn, N. Y., 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 Robert Holmes, Inc., a corporation, and Albert Goodman, an individual, 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, Robert Holmes, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and the respondent, Albert Goodman, an individual is president of the respondent corporation, and manages and directs its policies and practices. The principal place of business of both of said respondents is located in the Fuller Building, in the city of Jersey City, in the State of New Jersey.

Said respondents are now, and have been for more than one year last past, engaged in the sale and distribution of home study psychology health courses calculated to enable subscribers and purchasers and prospective purchasers thereof to overcome bashfulness, nervousness, and similar and allied ailments. Respondents cause said courses of home study when sold, to be transported from their principal place of business in the State of New Jersey to purchasers thereof located in other States of the United States and in the District of Columbia. There is now, and has been, at all times mentioned herein, a constant current of trade in commerce in said courses of home study and instruction, 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, Robert Holmes, Inc., a corporation, and Albert Goodman, an individual,

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were and are in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the business of selling similar courses of instruction by correspondence through the mails in commerce among the several 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 selling said courses of study and instruction and for the purpose of creating a demand upon the part of the purchasing public for said courses, now cause and for more than one year last past have caused advertisements to be issued, published and circulated to and among the general public of the United States in various periodicals, booklets, circulars, and in other forms of printed matter. 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 alleged therapeutic value of said courses of home study and instructions and their alleged salutary effect upon the users thereof, a portion of which are as follows:

. . . every form of self-consciousness comes from * * * derangement of the Nervous System.

Do not try to fight self-consciousness alone and unaided. It is a losing battle. You are fighting yourself—your own sick nerves.

You need a knowledge of the action and abuses of nerves * * * such as my course of instruction fully covers.

Others conquer—Nervousness — Constipation — Indigestion — Sleeplessness — 'Feeling Blue' — Sex Weakness — Irregular Heart — Worry — Bashfulness — Fatigue—Pain—*So Can You!*

ARE YOU—NERVOUS?—WORRIED?—UNHAPPY?—"What's wrong with you? Do symptoms of Constipation, Indigestion, Dizzy Spells, Sweating and Sleeplessness keep you irritable, exhausted and gloomy? Are you Bashful? Despondent? There's Help for You! Medicine, tonics or Drugs probably will not relieve your weak, sick nerves. My wonderful book 'Watch Your Nerves' explains a new method that will help you regain lost vitality and healthy nerves. Send 25¢ for this amazing book. ROBERT HOLMES, 1311 Fuller Building, Jersey City, N. J.

. . . If I tell you that I can help you, I mean what I say; you may rely on it. And if you decide to take my course, you can make terms of payment to suit yourself. I give you a free Analysis. I risk my time and money. You risk NOTHING . . .

. . . After many years of intensive study and investigation, I have discovered a method which will induce sound and calm sleep in the most chronic case of insomnia. This method will help any one who is not kept awake by the sufferings of physical pain . . .

INSTRUCTION IS INDIVIDUAL—All this invaluable information is embodied in my course in Nerve and Health Culture. The instruction is not general and each case is given individual personal attention . . .

I have helped thousands of men and women to counteract and prevent extreme worry and mental depression. My course tends to bring about a normal condition of the nerves and to teach you the conservation of precious Nerve Power.

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and many others similar thereto, have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondents' said home study psychology health courses into the erroneous belief:

1. That constipation, indigestion, cold sweats, dizzy spells and bashfulness, or any of them, are always caused by nervous exhaustion;

2. That for 25 cents, or any other nominal amount, one may learn how to conquer bashfulness or nervousness or embarrassment, overcome his faults easily and enjoy life to the fullest;

3. That each such case is given individual personal attention by respondents;

4. That respondents' course of study and instruction will, if followed, immunize one against the contraction of colds;

5. That respondents' course is an effective or competent treatment for nervousness, constipation, indigestion, dizzy spells, sweating, sleeplessness, irregular heart, worry, bashfulness, fatigue, pain, sex weakness, or "feeling blue";

6. That the respondents' treatment is entirely different from any other method, or that it will absolutely bring very positive and permanent relief from the various physical ailments mentioned;

7. That lack of energy, indigestion, constipation, and kindred ailments "positively indicate" a deranged nervous system for which respondents' course would be an effective treatment;

8. That respondents' course will effectively eliminate poisons from the system;

whereas, in truth and in fact, respondents' courses of home study and instruction, when used, are not effective in the treatment of nervous-

ness, constipation, indigestion, sleeplessness, irregular heart, worry, bashfulness, fatigue, sex weakness, pain or any other nervous, mental or physical disorders. They do not eliminate the cause of such ailments or relieve a user's weakened mental or physical condition due to nervousness, bashfulness, and worry, and other kindred ailments and troubles. The representations made by respondents with respect to the nature, value and effect of said courses of home study and instruction, when used, are grossly exaggerated, false, misleading and untrue, as said courses will not accomplish the results claimed for them.

PAR. 4. The use by respondents of the statements and representations set forth in paragraph 2 hereof, and others similar thereto, is unfair to other corporations, firms, partnerships, and individuals selling like and similar courses of home study and instruction who do not make the same or similar false and misleading statements and representations in the solicitation and the sale of their respective courses of home study and instruction.

By reason of the said false, misleading and deceptive statements, subscribers and purchasers and prospective purchasers of respondents' said home study psychology health courses are and have been induced and persuaded to purchase said courses thus offered by respondents. The methods thus used by respondents result in an unfair diversion of trade to respondents from their competitors. In consequence thereof, substantial injury has been done by respondents to competition in commerce between and among the various States of the United States.

PAR. 5. The aforesaid methods, acts and practices of the respondents are all to the prejudice of the public and of the 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 the 16th day of November 1936, issued and on the 18th day of November 1936, and on the 13th day of January 1937, respectively, served its complaint in this proceeding upon respondents, Robert Holmes, Inc., a corporation, and Albert

Goodman, an individual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. The Commission, by order entered herein, granted respondents' 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 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, Robert Holmes, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey. The respondent, Albert Goodman, an individual, is president of the respondent corporation, and manages and directs its policies and practices. Both respondents have their principal place of business located in the Fuller Building, Jersey City, N. J.

The respondents herein are now, and for more than one year last past have been, soliciting the sale and distribution of so-called home study psychology health courses. These courses of home study when sold, are transported by respondents from their principal place of business in the State of New Jersey to purchasers thereof located in other States of the United States, and in the District of Columbia. There is now, and there has been at all times mentioned herein, a constant current of trade in commerce in said so-called home study psychology health courses thus 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, were and are in substantial competition with other corporations, firms, partnerships, and individuals, likewise engaged in the business of selling psychology and health courses of instruction by correspondence through the United States mails in commerce between and among the several States of the United States, and in the District of Columbia.

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PAR 2. In the course and conduct of their business, as above set out, the respondents, in soliciting the sale of and selling said courses of home study and instruction and for the purpose of creating a demand upon the part of the purchasing public for said courses now cause, and for more than one year last past have caused, advertisements to be issued, published and circulated to and among the general public of the United States in various periodicals, booklets, circulars, and in other forms of printed matter. In said ways and by said means, respondents make and have made to the general public many statements with reference to the alleged therapeutic value of said courses of home study and instruction and their alleged salutary effect upon the users thereof. Typical of the representations, which the respondents have thus published and circulated in commerce throughout the United States and in the District of Columbia, are the following:

. . . every form of self-consciousness comes from * * * derangement of the Nervous System.

Do not try to fight self-consciousness alone and unaided. It is a losing battle. You are fighting yourself—your own sick nerves.

You need a knowledge of the action and abuses of nerves * * * such as my course of instruction fully covers.

Others conquer—Nervousness—Constipation—Indigestion—Sleeplessness—“Feeling Blue”—Sex Weakness—Irregular Heart—Worry—Bashfulness—Fatigue—Pain—So Can You!

ARE YOU—NERVOUS?—WORRIED?—UNHAPPY?—What's wrong with you? Do symptoms of Constipation, Indigestion, Dizzy Spells, Sweating and Sleeplessness keep you irritable, exhausted and gloomy? Are you Bashful? Despondent? There's Help for You! Medicine, tonics, or Drugs probably will not relieve your weak, sick nerves. My wonderful book “Watch Your Nerves” explains a new method that will help you regain lost vitality and healthy nerves. Send 25¢ for this amazing book. ROBERT HOLMES, 1311 Fuller Building, Jersey City, N. J.

. . . If I tell you that I can help you, I mean what I say; you may rely on it. And if you decide to take my course, you can make terms of payment to suit yourself. I give you a free Analysis. I risk my time and money. You risk NOTHING . . .

. . . After many years of intensive study and investigation, I have discovered a method which will induce sound and calm sleep in the most chronic

case of insomnia. This method will help any one who is kept awake by the suffering of physical pain . . .

INSTRUCTION IS INDIVIDUAL—All this invaluable information is embodied in my course in Nerve and Health Culture. The instruction is not general and each case is given individual personal attention . . .

I have helped thousands of men and women to counter-act and prevent extreme worry and mental depression. My course tends to bring about a normal condition of the nerves and to teach you the conservation of precious Nerve Power.

PAR. 3. In the manner above set out the respondents represent and imply that their course of home study and instruction are effective in the treatment of nervousness, constipation, indigestion, sleeplessness, irregular heart action, worry, bashfulness, fatigue, sex weakness, pain and other nervous, mental and physical disorders; that study of said courses will enable purchasers to eliminate the cause of the ailments mentioned and will relieve a purchaser's weakened mental or physical condition due to nervousness, bashfulness, worry or other kindred ailments or troubles.

Respondents' course of home study and instruction are not effective in the treatment of nervousness, constipation, indigestion, sleeplessness, irregular heart action, worry, bashfulness, fatigue, sex weakness, pain or any other nervous, mental or physical disorders. Neither do said courses enable purchasers to eliminate the cause of such ailments or relieve a purchaser's weakened mental or physical condition due to nervousness, bashfulness, and worry, and other kindred ailments and troubles. The representations made by respondents with respect to the nature, value and effect of said courses of home study and instruction, when used, are grossly exaggerated, false, misleading and untrue, as said courses will not accomplish the results claimed for them.

PAR. 4. The statements and representations used by the respondents have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondents' so-called home study psychology health courses into the erroneous belief that constipation, indigestion, cold sweats, dizzy spells and bashfulness, are always caused by nervous exhaustion; that for 25 cents, or some other nominal amount, one may learn how to conquer bashfulness or nervousness or embarrassment, overcome his faults easily and enjoy life to the fullest; that each purchaser's case is given individual personal attention by respondents; that respondents' course is an effective or

competent treatment for nervousness, constipation, indigestion, dizzy spells, sweating, sleeplessness, irregular heart, worry, bashfulness, fatigue, pain, sex weakness, or "feeling blue"; that the respondents' treatment is entirely different from any other method, and that it will absolutely bring positive and permanent relief from the various physical ailments mentioned; that "lack of energy," indigestion, constipation, and kindred ailments "positively indicate" a deranged nervous system for which respondents' course is an effective treatment; and that respondents' course will effectively eliminate poisons from the system.

PAR. 5. The use by respondents of the statements and representations set forth in paragraph 2 hereof, and others similar thereto, is unfair to other corporations, firms, partnerships, and individuals selling and distributing courses of home study and instruction in psychology and health who do not make the same or similar false and misleading statements and representations in the solicitation and the sale of their respective courses of home study and instruction.

PAR. 6. By reason of the said false, misleading, and deceptive statements, as above set out, a substantial number of the prospective purchasers of home study psychology health courses are and have been induced and persuaded to purchase said courses offered by respondents. The acts, practices, and methods used by respondents result in an unfair diversion of trade to respondents from their competitors. In consequence thereof, substantial injury has been done by respondents to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, Robert Holmes, Inc. and Albert Goodman, 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 filed herein, dated January 27, 1937, by respondents, admitting all the material allegations of the complaint to be true and waiving the tak-

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ing 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 respondents, Robert Holmes, Inc., a corporation; and Albert Goodman, an individual, their officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of their home study psychology health courses in interstate commerce or in the District of Columbia do forthwith cease and desist from representing:

1. That constipation, indigestion, cold sweats, dizzy spells and bashfulness, or any of them, are always caused by nervous exhaustion;
2. That for 25 cents, or any other nominal amount, one may learn how to conquer bashfulness or nervousness or embarrassment, overcome his faults easily and enjoy life to the fullest;
3. That each such case is given individual personal attention by respondents;
4. That respondents' course is an effective or competent treatment for nervousness, constipation, indigestion, dizzy spells, sweating, sleeplessness, irregular heart, worry, bashfulness, fatigue, pain, sex weakness, or "feeling blue";
5. That the respondents' treatment is entirely different from any other method, or that it will absolutely bring very positive and permanent relief from the various physical ailments mentioned;
6. That "lack of energy", indigestion, constipation, and kindred ailments "positively indicate" a deranged nervous system for which respondents' course would be an effective treatment;
7. That respondents' course will effectively eliminate poisons from the system; and from making any other representations of similar tenor or import.

And it is hereby 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 the manner and form in which they have complied with this order.

IN THE MATTER OF
NATIONAL SILVER COMPANY

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

Docket 2111. Complaint, Sept. 29, 1933¹—Decision, Feb. 17, 1937

Where a corporation engaged in sale and distribution of knives and other cutlery and tableware to jobbers, wholesale and retail dealers in cutlery, chain stores, hardware stores, department stores, and house-furnishing stores, with branch sales offices in Chicago and Los Angeles; in competition with others who made and sold similar products and used word "stainless" only as a mark, brand, or stamp for or in advertising such products made of the chrome-iron alloy, stainless steel, and truthfully used words or terms "chromium plate" or "chromium plated" to indicate a carbon steel product plated with chromium, and did not employ such words as "stainpruf" as a stamp, brand, or mark for or in advertising such chromium-plated articles that were not in fact stainproof and corrosion resistant—

- (a) Stamped its aforesaid products, regardless of whether made from carbon steel or chromium alloy steel, with word "stainless," in utter disregard of well established trade custom among cutlery manufacturers, silversmiths, and trade generally, of using said word to designate cutlery made from chromium-alloyed steel, and failed to inform purchasers as to whether or not its said products were chromium plated or were in fact made of the said more costly solid stainless steel, as long understood by trade and ultimate purchasers from word "stainless" as meaning, as applied to knives, cutlery, and tableware, said high-grade type of chromium steel alloy with its high degree of resistance to oxidation and corrosion against most media, and as used by manufacturers and distributors in their catalogs and advertising material to designate only those products made of stainless steel as aforesaid;

With result that purchasers, in view of the almost identically similar appearance of the two kinds of products, purchased its chromium-plated knives and other flat tableware of inferior quality, as and for products, the metallic parts of which were made of solid alloyed or stainless steel and were not the cheaper carbon steel articles with utterly thin and inadequate chromium plating and notorious amenability to corrosive influence, and quality of rusting rapidly in presence of water, dampness, acids or similar agents;

- (b) Sold and distributed carbon steel, chromium-plated knives marked "stainpruf," made of carbon steel plated as above set forth, notwithstanding fact said products were extremely susceptible to corrosion and were not in fact stainless in any sense, and were further subject to corrosion by reason of tendency of plating to break through sharpening or other abrasive action, etc., and in its advertising of its said "stainpruf" products as guaranteed against staining by acids contained in vegetables, fruits, and

¹ Amended and supplemental.

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meats and against discoloration in ordinary use, warned against scouring materials to polish the blades;

With effect of deceiving wholesalers, jobbers, retailers, and ultimate purchasers into buying said cheap and inferior chromium-plated carbon steel knives, cutlery, and tableware, marked "stainless" and "stainpruf," as and for products made of genuine stainless steel, and of placing, as result of its said advertising and misbranding, in the hands of its wholesale and retail dealers, the means of deceiving ultimate purchasers, and with capacity and tendency to divert to it trade of competitors engaged in selling in commerce products of the same kind or nature which they truthfully advertise:

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. Marshall Morgan for the Commission.

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

AMENDED AND SUPPLEMENTAL COMPLAINT.

Whereas, The Federal Trade Commission did heretofore, to wit, on August 7, 1933, issue its complaint herein charging and alleging that the respondent corporation 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, since the issuance of said complaint, has been advised that the respondent therein is, and has been, using unfair methods of competition in interstate commerce other than, and in addition to, those in relation to which the Commission issued its complaint aforesaid on August 7, 1933, in violation of the provisions of Section 5 of said Act;

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 National Silver Company, a corporation, has been and now is using unfair methods of competition in interstate commerce in violation of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation, organized and existing under the laws of the State of New York with its principal place of business located at 61-65 West 23rd Street, in the City of New York, State of New York, and for several years last past has been engaged in the business of selling and distributing to jobbers, wholesale and retail dealers in cutlery, chain stores, hardware stores,

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department stores, and house furnishing stores, knives, other cutlery and tableware. Said respondent causes said knives, cutlery and tableware when sold by it, to be transported from its principal place of business in the State of New York into and through the various other States of the United States to the purchasers thereof.

In the course and conduct of its aforesaid business, the respondent is and for several years has been, in direct and substantial competition with other individuals, partnerships and corporations engaged in the sale and distribution in interstate commerce of knives, cutlery, and tableware, both like and similar to those sold by respondent.

PAR. 2. Through long usage the terms "stainless steel" and "stainless," when used in association with knives and other cutlery, have become and are known in the trade and by the general public to designate cutlery composed of an alloy of steel containing not more than 0.70% of carbon and from 9% to 16% of chromium. Certain grades of knives and other cutlery sold and distributed by respondent, as aforesaid, are manufactured in simulation of "stainless steel" knives and cutlery, when in truth and in fact, they are not composed of such an alloy of steel, and are not "stainless steel" as known to and understood by the trade and the general public.

In the course and conduct of its aforesaid business, respondent solicits its business by advertising in catalogs and price lists widely distributed among customers and prospective customers, in which catalogs and price lists the aforesaid certain grades of its product are by respondent described as "stainless" and by stamping on the blades thereof, respondent describes and designates such knives and cutlery as "stainless." Respondent thereby has falsely represented and does falsely represent to prospective purchaser those certain grades of its products to be such products as are known by the trade and general public as "stainless steel," when in truth and in fact, such grades of cutlery by respondent so described and branded are made from carbon steel plated with chromium, and so prepared as to imitate genuine "stainless steel."

PAR. 3. Among the grades of knives and other cutlery advertised and described in its catalog, and sold and distributed by the respondent in interstate commerce, as aforesaid, is a carving knife bearing the trade name "NASCO" and stamped "stainpruf." Said knife is made from carbon steel and is merely chromium plated. The term "stainpruf" stamped on said knife is and was employed by respondent to be the equivalent in meaning of the term "stain-proof" in its common, general acceptance, and was, and is, intended by respondent to, and does, create the impression upon the trade

and the general public, and causes the trade and general public to believe, that said carving knife is so made, and is of such quality, as that it resists rust stain and corrosion. Such is not the fact with respect to said knife, it being neither rust nor stain proof on its surfaces, its cutting edge, nor otherwise.

PAR. 4. Among other grades of knives and cutlery advertised and described in its catalog, and sold and distributed by respondent, as aforesaid, in interstate commerce, are certain knives and forks stamped "stainless," when in truth such knives and forks are composed of carbon steel, merely chromium plated, and are not stainless *in fact*. In addition to thus falsely representing to prospective purchasers in interstate commerce that those certain grades of its products are such products as are known by the trade and general public as "stainless steel" when in truth such was not the fact and said knives and forks were so prepared as to merely imitate genuine "stainless steel," the said knives and forks, as now charged and alleged, are not stainless or rust proof in fact, but on the contrary will and do rust and stain when brought in contact with agencies which do not stain, rust or blemish a stainless steel made from an alloy of steel containing not more than .7% of carbon and from 9% to 16% of chromium. Said knives and forks, apart from and consideration of the technical or trade acceptance or meaning of the word "stainless" as applied to a manufacturing process for steel, are not stainless in fact, using the term "stainless" as a mere common dictionary word.

PAR. 5. Under the foregoing facts and circumstances, both the designation and branding by respondent of certain of its products as "stainless" as set out in paragraphs 2 and 4 above, and the branding by respondent of certain of its products as "stainpruf," as set out in paragraph 3 above, including the advertising, description, and price lists of such products in respondent's catalogs, are false and misleading and have the capacity and tendency to deceive, and do deceive, wholesalers, jobbers, retailers and the ultimate purchasers into buying that which they did not intend to buy, and through its price lists, catalogs, and misbranding, as aforesaid, respondent has placed and is placing in the hands of its wholesaler and retailer in interstate commerce, the means of deceiving the ultimate purchasers. The aforesaid practices have had the capacity and tendency to divert to respondent the trade of competitors engaged in selling in interstate commerce, products of the same kind and nature as those of respondent, which products are truthfully advertised, 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 7, 1933, issued and served its original complaint in this proceeding on respondent, National Silver Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act, and on September 29, 1933, issued and served its amended and supplemental complaint on the said 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 original complaint as aforesaid. After the issuance of said complaints, and the filing of respondent's respective answers thereto, testimony and other evidence in support of the allegations of the complaints were introduced by Marshall Morgan, 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 complaints by Abraham Brill, attorney for the respondent, and said testimony and other 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 complaints, the answers thereto, testimony and other evidence, briefs in support of the complaints 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. The respondent is a corporation, organized, and existing under the laws of the State of New York, with its principal place of business located at 61-65 West 23rd Street, in the City of New York. Respondent, for several years last past, has been in the business of selling and distributing knives and other cutlery and tableware to jobbers, wholesale and retail dealers, in cutlery, chain stores, hardware stores, department stores, and house-furnishing

stores. Respondent causes said knives, cutlery and tableware, when sold by it, to be transported from its principal 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 into the District of Columbia.

In the course and conduct of its aforesaid business, the respondent is, and for several years last past has been, in direct and substantial competition with other corporations, individuals, firms, and partnerships engaged in the sale and distribution in interstate commerce of knives, cutlery, and tableware. Respondent employs a number of salesmen, directed by a sales manager. It maintains branch sales offices in the city of Chicago, directed by its New York office, and a branch office in Los Angeles, Calif., carrying its own stock.

PAR. 2. Stainless steel, as used in the manufacture of cutlery, is an alloy produced from iron, chromium and carbon, and sometimes contains other minor alloying elements. Chromium is present in percentages ranging from 9 to 16%, and carbon in percentages not exceeding .7%. The metal or alloy so produced has through long commercial usage become known to and designated by steel and cutlery manufacturers, the cutlery trade, retailers, and the purchasing and consuming public by the term "stainless." This term as applied to steel indicates a very specific type of chromium-steel alloy which has the quality of resisting oxidation and corrosion against most media. To a markedly greater degree than is true of carbon steel, chromium-steel resists alkaline materials, fruit acids, nitric acids, dampness and water, salt air and salt water, and weather conditions, including rain and snow. It is a much more expensive product to manufacture than carbon steel, and is comparable to carbon steel at normal temperatures and markedly superior to it at elevated ranges.

Stainless steel possesses great tensile strength, and takes and retains a higher polish than carbon steel, which carbon steel does not retain because it is far less resistant to oxidation and scaling. Stainless steel is from 50% to 400% stronger than ordinary steel; can be rolled, drawn, stamped, forged, pressed, machined, cast, spun, punched, braced, soldered, welded, ground, and polished. It is furnished in plates, shapes, sheets, bars, rods, flats, strips, tubing, wire, forging, blanks, billets, ingots, castings, etc. It has the inherent and combined characteristics of tremendous strength, resistance to corrosion, to high temperature, to erosion and to abrasion, and has the ability to take and permanently retain a highly polished surface. Stainless steel is either wholly or substantially immune to the action

of nearly a hundred corrosive agents. The discovery of stainless steel has been one of the major outstanding developments in metallurgy in the last twenty years.

PAR. 3. The first popular development of stainless steel was in the cutlery field. Harry Brearley, an Englishman, was granted a United States patent on September 5, 1916. In his application, Brearley stated that his invention related to new and useful improvements in cutlery or other hardened and polished articles of manufacture where non-staining objects were desired, and that it had for its object a tempered steel cutlery blade or other hardened article having a polished surface and composed of an alloy practically untarnishable, when hardened, or when hardened and tempered. "This alloy," he stated, "is malleable, and can be formed, rolled, hardened, tempered and polished under ordinary commercial conditions." Brearley further stated that his invention resulted from the discovery that the addition of certain percentages of chromium and carbon to iron will produce a steel capable of taking a polish and of having the above specified characteristics.

The American Stainless Steel Company was organized in 1918 in Pittsburgh, Pa., for the purpose of holding and exploiting various patents covering stainless steel. Among the patents so acquired was the Brearley patent of 1916, and the Haynes and Cox patents, and others, the Brearley cutlery patent antedating all other such patents. Said American Stainless Steel Company entered upon a campaign, national in scope, to advertise and develop the use of stainless steel. This company has expended more than \$500,000 in such advertising, has entered into numerous agreements licensing others to manufacture this product, and has enumerated many articles for the manufacture of which it has recommended that its "stainless" or "stainless steel" be used. Included among these were such products as trimming and mechanical parts for automobiles, bumpers, hub caps, knives, forks, and scissors. Advertisements of this product were carried in periodicals of national circulation as far back as 1919, and continued for a period of fifteen years. Thousands of pamphlets were also distributed during this period, explanatory of stainless steel, its characteristics and its uses. In all of said advertisements the American Stainless Steel Company used the word "stainless" in a noun sense to indicate and denote the product which is also designated as "The Metal of Endless Possibilities."

As a result of the continuous advertising of this product over a period of fifteen years, both the manufacturing and the purchasing and using public came to recognize and still recognizes stainless steel or "stainless" as a high-grade type of chromium-steel alloy, possessing

to a high degree the quality of resisting oxidation and corrosion against most media. The manufacturing and the using public for a number of years have been led to expect, and now do expect, when they purchase knives, cutlery and tableware marked "stainless," to receive articles, the cutting portions of which are manufactured from said chromium-steel alloy, and which possess the characteristics above enumerated.

PAR. 4. The manufacturers of cutlery, including table cutlery and flatware, and silversmiths, as a trade practice and custom, use the word "stainless" to designate knife blades, forks, and kindred articles made by them from the chromium-steel alloy, stainless steel. It is the practice of manufacturers of stainless steel cutlery and flatware to stamp the word "stainless" upon the blade of said ware, and to superimpose on that the name of the manufacturer. Many silversmiths and manufacturers of cutlery, in pursuance of such trade custom, mark and stamp stainless steel cutlery, particularly the knife blades of the same, as indicated below :

Towle Stainless,	Russell Stainless,
Goodell Stainless,	Stainless, under which are the words
Clyde Cutlery Company—Stainless,	Universal Resistain,
Community Stainless,	D. Harrington & Co., Stainless,
I. N. S. & Company Stainless,	Ontario Stainless.

The word "stainless" thus stamped by manufacturers and distributors upon their cutlery and other tableware has through long and continuous usage come to signify both to the manufacturer, to the distributor, to the retailer, and to the ultimate purchaser and user, that such cutlery is produced from stainless steel, that is, from chromium-steel alloy.

Catalogs and other advertising material of cutlery manufacturers and distributors employ the word "stainless" to designate those products only which are made of stainless steel.

A stainless steel knife ground in daily use will not stain or tarnish as a result of grinding or sharpening; it remains stainless under such grinding so long as a piece of it is left, and the corrosion resisting qualities of said knife suffer no deterioration from nicking or scratching or bending. Such a stainless steel knife made fifteen years ago is now as serviceable in the kitchen as though it were made today.

PAR. 5. In addition to the stainless steel cutlery manufactured as hereinabove described and possessing the characteristics specified, knives, cutlery and tableware are also manufactured with knife blades of carbon steel, either plain or chromium-plated. A carbon steel knife blade is one made of the ordinary unalloyed steel, containing no chromium as an alloy and being readily susceptible to rust, stain,

and corrosion. A chromium plated knife blade is manufactured of carbon steel upon which has been deposited a thin coating of chromium, or of nickel and chromium. The chromium plated carbon steel cutlery is not stainless or corrosion resistant.

A stainless steel knife costing from 25¢ to 30¢ can be duplicated, as to appearance, by a chromium plated carbon steel knife costing approximately 6¢. A thirty piece set of chromium plated flatware can be bought from a well-known mail order house for 98¢, while a one dozen piece set of stainless steel flatware of similar appearance can be bought from the same mail order house at from \$1.18 to \$7.90 per set.

A carbon steel knife blade, a stainless steel knife blade, and a chromium plated knife blade are made and finished by cutlery manufacturers so as to look exactly alike to the eye. In fact, the three types, given a similar finish, are so much alike that cutlery experts, including manufacturers of cutlery, are not able to tell them apart. Numerous tests have shown this to be the fact. The only way in which any purchaser can distinguish a chromium-plated carbon steel knife from a stainless steel knife is by the word "stainless" stamped upon the blade of the knife. When the word "Stainless" is stamped upon a chromium plated knife, the purchaser expects to receive and believes he is receiving a knife made from stainless steel.

PAR. 6. Respondent herein, the National Silver Company, distributes and sells knives, cutlery, and tableware made of the chromium-steel alloy, stainless steel, and similar articles made of carbon steel, chromium-plated, stamping such products, regardless of whether they are made from carbon steel or chromium alloyed steel, with the word "stainless." The respondent has also sold and distributed a carbon steel chromium-plated knife marked "Stainpruf". Respondent's salesmen do not inform the purchasers of its products whether the said products are made of solid metal, that is, stainless steel, or whether they are chromium-plated. Said purchasers, in view of the almost identically similar appearance of the two products, are unable to detect the difference, and have purchased and do purchase chromium-plated knives and other flat tableware of inferior quality in the belief that the metallic parts of said products are composed of solid alloyed or stainless steel. Department and other stores identified in the record as having sold chromium-plated cutlery stamped "stainless" obtained such goods from the respondent. The salesmen of respondent had no knowledge of any other firm, person or manufacturer save the respondent itself, which marked or stamped chromium-plated cutlery with the word "stainless." Respondent did not produce a single chromium-plated knife or fork, stamped "stainless," that had

been so stamped by anyone other than the respondent. It did not present, as a witness, a single cutlery manufacturer or silversmith in the United States who brands or stamps, or has stamped, a chromium-plated knife or fork with the word "stainless." Respondent did not produce a single catalog put out by any manufacturer or jobber or department store in the United States in which chromium plated knives or forks are advertised and branded with the word "stainless." Respondent alone has followed the practice of stamping or branding chromium-plated knives and forks with the word "stainless" in utter disregard of the well established trade custom in this country among cutlery manufacturers, silversmiths, and the trade generally of using the word "stainless" to designate steel cutlery made from chromium-alloyed steel.

The chromium-plated cutlery distributed and sold by the respondent is made from a base of carbon steel electrically plated with nickel and chromium. Carbon steel is notoriously subject to corrosive influences, and rusts or oxidizes rapidly in the presence of water, dampness, acids, or similar agents. Said chromium-plated cutlery is characterized by the element of porosity; that is to say, the underlying base metal becomes exposed to the atmosphere because the plating is porous.

Chromium is the most porous plating known, and is of negligible value when used alone to protect the underlying base of carbon steel against corrosion. For corrosion protection the common practice is first to apply to the underlying metal a very heavy layer of nickel. The degree of protection afforded depends upon the thickness of the nickel plating applied; the thicker the nickel, the more protection afforded.

The specifications for plating on carbon steel approved by the United States Bureau of Standards call for a minimum of 0.0005 of an inch of nickel for good protection under mild conditions and at least 0.001 of an inch of nickel for severe conditions. The Bureau's conclusions based upon a summary of exposure tests is that chromium coatings from 0.00002 of an inch to 0.00003 of an inch add very little to the protective value of said coatings but maintain their bright appearance owing to their resistance to tarnish; and that relatively thick chromium coatings, from 0.00005 of an inch to 0.0001 of an inch improve the protection against corrosion, especially in an industrial atmosphere.

The plating expert of the U. S. Bureau of Standards testified in this proceeding that "any coating of chromium less than one hundred-thousandth of an inch, over any coating of nickel less than one tenthousandth of an inch will furnish very little protection as a coating

of steel if the steel is subjected to any corrosive influences"; that a thickness of nickel less than one ten-thousandth of an inch "is insufficient to furnish protection against corrosion regardless of what may be the thickness of the chromium that you put over it".

Requirements for the plating of carbon steel to be used, among other things, for cutlery, specified by other plating experts not connected with the United States Government are that the nickel plating be not less than 0.0002 of an inch, preferably 0.0005 of an inch, and that the chromium plating shall be from 0.00002 to 0.00003 of an inch.

The chromium plating on the cutlery and other tableware products distributed and sold by respondent is utterly thin and inadequate. Various specimens of respondent's chromium-plated cutlery were tested at the United States Bureau of Standards to ascertain the thickness of the plating thereon. These tests revealed plating of nickel of thicknesses ranging from 0.00006 to 0.00008 of an inch, and plating of chromium ranging from 0.000007 to 0.000009 of an inch. No underlying copper at all was found underneath that plating.

These thicknesses, as used by the respondent, in the opinion of well-known plating experts, were entirely inadequate to furnish satisfactory protection. They were merely just "a flash" "a quick job," just "smell plating," requiring only a five-minute period for the plating, a relatively cheap operation; thin plating as plating goes, and distinctly poor for protective purposes. The plated object would be almost as much subject to corrosion as if these weak deposits had not been put on at all. Cutlery plating affording the best protection would be commercially impracticable owing to the cost of and time required for the plating operation— $2\frac{3}{4}$ hours in all. This would constitute very expensive plating. For a knife blade this time would make this cost of the operation almost prohibitive from a commercial standpoint.

Tests made by the Bureau of Standards show that the chromium-plated carbon steel cutlery sold by respondent as "stainless" is not stainless or corrosion resistant in fact. Portions of a chromium-plated fork of the respondent, stamped "stainless" subjected to a 24-hour salt spray test, were attacked, showing the presence of rust in various locations, both on the tines and bowl. An unmounted chromium-plated knife blade sold by respondent and stamped "Stainpruf," after having its cutting edge ground, to simulate ordinary use, when placed in tap water became rusty and later, when cleaned and placed in a salt spray for 24 hours, was severely attacked on the ground edge and along the plated surfaces as well.

Portions of another of respondent's chromium-plated forks,

stamped "stainless," when subjected to a 24-hour salt spray test, showed the presence of rust, both on the bowl and on the tines, particularly at the cutting edges. One of respondent's chromium-plated knife blades stamped "Nasco Stainpruf," when subjected to the same salt spray, showed a tremendous amount of corrosion on one side, not confined to the cutting edge but on the surface as well, and the ground edges were severely rusted.

Portions of one of respondent's chromium-plated forks, stamped "stainless" on the bowl, when subjected to the salt spray test, showed rust spots all over the sample, particularly along the sheared edges.

A number of carbon steel knife blades, plated for comparative purposes with plating of the same character and thickness as that used by the respondent, namely, with from 0.00006 to 0.00008 of an inch of nickel and thereafter with from 0.000007 to 0.000009 of chromium, were subjected to various corrosion tests. These samples corroded when immersed in grapefruit juice, lemon juice, acetic acid, and in distilled water for extended periods.

Chromium-plated knives, plated with the same specifications corroded when subjected to December weather, specimens subjected to humid atmosphere arising from a 2% solution of vinegar corroded, and specimens similarly chromium-plated and subjected to 48 hours of salt spray corroded.

On the other hand, stainless steel blades subjected to the above-mentioned tests remained shiny and clean and bright. Stainless steel knives and forks as sold by the respondent, subjected to the salt spray test by the U. S. Bureau of Standards, successfully withstood such test.

PAR. 7. The respondent submitted the results of chemical tests conducted in its behalf upon certain groups of unmounted chromium-plated fork blades. The said forks so tested had been plated with a coating of chromium from 40 to 60 times as thick as that appearing on the original specimens of its cutlery furnished the Commission by the respondent, and had beneath this chromium plate undetermined thicknesses of nickel and copper. It does not appear whether said forks had been or were being sold by the respondent, nor by whom they had been plated. The fork blades so tested were reported as having successfully withstood a salt spray test, but they did not withstand certain other corrosion tests to which they were subjected. One of them, after being immersed for an extended period of time in orange juice, showed the beginning of corrosion and rust on one tine. Another of the said forks, similarly subjected to a 5% solution of acetic acid, showed two different spots at which the chromium

plating had started peeling off. The blade of this fork showed rust on its shank, on the front and back sides and on one of the inside tines near the bowl, all resulting from the action of the acetic acid. Another fork blade of the same lot immersed in lemon juice for an extended period, showed evidence of corrosion of the inside of the first tine. Another of the same forks subjected to the action of orange juice, showed the beginning of rust and corrosion. Two of the fork blades, submitted respectively to the salt spray test and to distilled water, were reported as not corroding.

PAR. 8. The breaking of plating on cutlery by sharpening or other abrasive action will cause and hasten corrosion in the presence of moisture. Dissimilar metals of opposite polarity being thus brought into contact with each other, electrolytic or battery action is created, and corrosion not only results but is hastened. Nickel and chromium are negative to steel and, in a moist atmosphere, the iron goes into solution and the nickel and chromium accelerate the corrosion of the object made of iron or steel. On the other hand, there is no electrolytic action between the component parts of an alloy.

The sharpening of a chromium-plated carbon steel knife tends to wear the chromium plate away. Any abrasion on a plated knife is likely to cut through, and the carbon steel beneath will be attacked and will rust or corrode. After one grinding or sharpening the chromium plate along the ground or sharpened edge of the blade is destroyed, and the broken plating, ceasing to be stain resisting, the blade will corrode and rust.

There is a further tendency for chromium plate to flake or chip off when abraded. It is more difficult to put a satisfactory plating on a fork than on a knife, owing to the tines or prongs of a fork. When the plating on a piece of carbon steel is broken, and moisture or dampness gets to the underlying surface, the steel underneath rusts and a rust streak appears on the nickel plate.

The respondent, in advertising or representing its knife stamped "stainproof," after guaranteeing that the cutlery will not be stained by acids contained in vegetables, fruits, or meats, and that it will not rust or discolor in ordinary use, sets forth the following cautions in its advertising directions:

To clean, it is only necessary to wash in warm water and dry with cloth. Do not use scouring materials to polish the blades.

The knife concerning which this caution was given was a chromium-plated knife.

PAR. 9. A household and department store survey as to the meaning of the term "stainless" was made by respondent in New York City

and environs. A set of questions not seen by nor shown to the person interviewed was used by respondent. No person wrote his own answer or was shown how it was worded. In the first question asked, the word stainless was presented in a distinctly adjective sense. All sorts of replies were reported from these surveys, many of them contradictory and confused. Sixteen percent of those interviewed are reported as indicating a *material* that would not rust or stain. Only one person out of five hundred reported to have been interviewed made any reference to chromium plate. A number of cutlery salesmen from New York department stores offered by respondent in the capacity of experts or opinion witnesses knew comparatively little of the manufacture or manufacturers of cutlery or of cutlery markings and the significance thereof.

PAR. 10. There are among the competitors of respondent, corporations, firms, partnerships and individuals who manufacture knives, cutlery, and table flatware similar to that sold by the respondent. Such competitors of respondent use the word "stainless" only as a mark, brand, or stamp for, or in advertising knives, cutlery and table flatware made of the chrome-iron alloy, stainless steel, and they likewise truthfully use the words or terms "chromium plate" or "chromium plated" to indicate a carbon steel product plated with chromium, and they do not employ such word as "stainpruf" as a stamp, brand, or mark for, or in advertising chromium-plated knives, cutlery, and table flatware that are not in fact stainproof and corrosion resistant.

PAR. 11. The representations of respondent as hereinbefore set forth in falsely stamping, branding, marking, describing, designating and advertising cheap and inferior products, to wit, chromium-plated carbon steel knives, cutlery and tableware with the word "stainless," thereby falsely representing such products to be made of the alloy stainless steel, and the further stamping, branding, marking, describing, and advertising of certain of its chromium-plated carbon steel knives and flatware cutlery as "stainpruf," are false and misleading and have the capacity and tendency to deceive, and do deceive, wholesalers, jobbers, retailers, and the ultimate purchasers into buying chromium-plated carbon steel products as and for those made of genuine stainless steel, and through its advertising material and misbranding, as aforesaid, respondent has placed and is placing in the hands of its wholesaler and retailer in interstate commerce, the means of deceiving the ultimate purchasers. The aforesaid practices have had the capacity and tendency to divert to respondent the trade of competitors engaged in selling in interstate commerce, prod-

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ucts of the same kind and nature as those of respondent, which products are truthfully advertised, 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.

CONCLUSION

The aforesaid acts and practices of the respondent, National Silver 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 original and amended and supplemental complaints of the Commission, the answers of respondent thereto, testimony and other evidence in support of the allegations of said complaints and in opposition thereto, taken before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, briefs filed herein, and oral arguments by Marshall Morgan, counsel for the Commission, and by Abraham Brill, 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, National Silver Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of knives, cutlery and tableware in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the word "Stainless" as a trade name, brand, stamp, label or part thereof, or otherwise, upon or for knives and flatware cutlery, or in advertising or representing the same unless such knives and flatware cutlery are made of steel containing from 9% to 16% of chromium and containing not more than 0.7% carbon.
2. Marking, branding, stamping, designating or advertising chromium-plated knives and flatware cutlery with the word "Stainpruf,"

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or with a similar word or words indicating that such products are in fact stainproof.

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
CUSHING REFINING & GASOLINE COMPANY

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

Docket 2825. Complaint, May 28, 1936—Decision, Feb. 17, 1937

Where a corporation, engaged in the refining of crude petroleum, and in the manufacture therefrom of a portion of the gasoline produced by it by the new "cracking" method or process, and of the balance and greater portion thereof by the straight "distillation" method, and in the sale and distribution of such gasoline, thus variously made, in commerce among the various States and in the District of Columbia to ultimate purchasers or consumers thereof, largely through wholesale dealers, jobbers, and retailers; in substantial competition with individuals and concerns likewise engaged in manufacture, distribution, and sale of gasoline produced by one or both of such methods, and with those also engaged in making type consisting of said product made by any of aforesaid methods, with addition thereto of tetraethyl lead or "ETHYL," to eliminate knock or detonation encountered in high compression motors driven by usual "straight run" or "ordinary" gasoline, refined through the "skimming" or "distillation" process, and added, to some extent, to most of the gasoline now sold in the United States, and resulting in the so-called long and widely used "ETHYL" gasoline, use of which destroys to extent thereof demand for or sale of "straight run" and "cracked" gasoline (some of which latter is sufficiently high in grade, without addition of such tetraethyl lead, to accomplish results similar to that produced by so-called "ETHYL" gasoline); and including among its said competitors those who use both "distillation" and "cracking" processes in manufacture of gasoline sold and distributed by them to consuming public in competition with its own, but without such false and fictitious representations as to the "newness" of their product, or falsely representing all their said product "high test" or "high octane," are superior to all other gasoline, and without unfairly disparaging products of manufacturers who added tetraethyl lead or "Ethyl" to their product to eliminate knock and increase power;—

- (a) Represented, through its advertising in newspapers, periodicals, and other publications of wide circulation among the general public, in aid of the sale of its said gasoline to dealers for ultimate use by consuming public, and to create a demand therefor in preference to the gasoline containing chemicals such as tetraethyl or "Ethyl," not theretofore made or sold by it, that gasoline to which such substance or fluid had been added for the purpose of processing the same was a narcotic, or had narcotic effects, and was "doped-up" and poisonous, and unsafe to users of such motor fuel, and that gasoline thus treated was unsafe for sale to or use by the public as a motor fuel, through such statements as: "Cushing's new gasoline needs no BEWARE signs. It's safe," "You don't want to endanger the life of your customers—you DO when you use a poisonously doped gasoline, but you DON'T when you offer them Cushing's," "Needs no dangerous chemicals"; and

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- (b) Represented that all the gasoline produced by it was made by the "cracking" process, and that all of its said gasoline was made by a new process and consisted of "high-test," "high-octane," "anti-knock" gasoline, and that all of its said product was superior as motor fuel to so-called "ETHYL" gasoline, and that "cracking" process product was superior as a motor fuel to gasoline of equal octane value to which tetraethyl or "ETHYL" had been added, through such statements as: "WHAT'S CUSHING GOT THAT'S SO NEW," "Cushing's plant is new * * * We never believed gasoline had to be doped—and we're anti-narcotic now, so rather than sell you an artificially pep'ed-up product we've built a plant that's turning out an un-doped high octane gasoline that's a world beater—," "* * * A NEW AND SAFER ANTI-KNOCK MOTOR FUEL! NOT JUST ANOTHER GASOLINE," "* * * As New as Today's Cars," "* * * It stands on its own merits and needs no dangerous chemicals * * *";

The facts being that the commonly known "ETHYL" gasoline, which results from treating "straight run" or "ordinary" gasoline as made commercially either by "distillation" or "skimming" method, or by "cracking" method, by adding thereto tetraethyl lead or "ETHYL," is a high-grade, anti-knock product, which functions in an exceedingly high and efficient manner as a gasoline motor fuel, is entirely safe to health of operators thereof and to public in general when used as such, and is not narcotic in effect, or a poisonous dope, or dangerous to life or health or customers, purchasers, users, or general public, and only portion of gasoline produced by it as above set forth was made by "cracking" process, or by its new plant or refinery, or by new addition to old refinery, and balance and greater part of its said gasoline was made by straight distillation, one of the oldest processes known in industry in question;

With effect of misleading retailers and other dealers in gasoline, and substantial portion of purchasing public, into erroneous belief that statements and representations above set forth and indicated were true, and that gasoline treated with such tetraethyl lead or other chemicals to increase its power or eliminate knock, was undesirable, inefficient, doped, harmful, poisonous, and narcotic in its effect, and dangerous to health or life of customers when used for purpose for which gasoline motor fuel is intended; and that all the gasoline made by it was high-test or high-octane, obtained by a new "cracking" process, which was safe and superior to ETHYL gasoline, or that to which tetraethyl lead had been added, or to "straight run" gasoline, and with tendency to induce public to buy gasoline not thus chemically treated, because of such erroneous beliefs thus brought about, and unfairly divert trade to sellers of "straight" or "ordinary" gasoline, and to it and other sellers of "cracked" gasoline, and its customers, from sellers of gasoline treated with tetraethyl lead or "ETHYL"; 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.

Mr. Dudley, Hyde, Duvall & Dudley, of Oklahoma City, Okla., 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 Cushing Refining & Gasoline Company, a corporation, is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Cushing Refining & Gasoline Company, is a corporation organized and existing pursuant to the laws of the State of Oklahoma, having its office and principal place of business at Cushing, Okla., with branch offices at Minneapolis, Minn., and refineries at Cushing and Blackwell, Okla. It is now, and for more than one year last past has been, engaged in the business of refining crude petroleum and manufacturing therefrom gasoline, and in the sale of said gasoline in commerce between and among the various States of the United States and in the District of Columbia, shipping such products, when sold, to the purchasers thereof, some located in the State of Oklahoma, and others located in various States of the United States other than the State from which shipment is made 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 its aforesaid products.

PAR. 2. Certain other persons, firms, partnerships, and corporations have been, and are now engaged in the manufacture and sale of gasoline in interstate commerce, as described in paragraph 1 hereof, some of which gasoline is refined by what is known in the trade as the "skimming" or "distillation" process, and is called "straight run" or "ordinary" gasoline; others are engaged in the manufacture of gasoline by the "cracking" method, a newer process of refining gasoline which, as a rule, extracts a higher grade of gasoline from crude petroleum than is usually obtained by the "skimming" or "distillation" method. Most refiners use both the "cracking" and "distillation" processes. Others are engaged in manufacturing a certain type of gasoline known as "Ethyl" gasoline, which consists of gasoline made by any of the above methods, to which a chemical known as "tetra-ethyl lead" or "Ethyl" has been added for the purpose of eliminating "knocking" or "detonation" which is encountered in high compression motors when driven by the usual straight run gasoline. Some of the

gasoline manufactured by the "cracking" method is sufficiently high in grade without the addition of tetraethyl lead to accomplish a result similar to that produced by "Ethyl" gasoline. The quality or grade of gasoline in this respect is susceptible of measurement and determination. This standard of measurement is expressed in terms of octane value, and the gasoline having the highest octane rating is considered by the trade, and the purchasing public, to be the best and commands a higher price or premium, accordingly. Tetraethyl lead, or Ethyl fluid, unadulterated, is poisonous, but when used in the very limited quantity necessary or permitted in gasoline, as sold to the public for motor fuel, is entirely safe and no more poisonous or dangerous than any other motor gasoline. Tetraethyl lead or "Ethyl" has been added, to some extent, to most of the gasoline now sold in the United States.

Respondent's refineries at Blackwell and Cushing, Okla., have a daily capacity of approximately 6,200 gallons of straight run gasoline produced by the "distillation" process. In addition to this, its plant at Cushing has a daily capacity of 2,200 gallons produced by the "cracking" process. Respondent's production capacity for "cracked" gasoline is therefore approximately one-third of its capacity for producing "straight run" gasoline by the distillation process.

Respondent does not now, and never has, manufactured or sold gasoline to which tetraethyl lead, or "Ethyl" is, or has been, added.

PAR. 3. In the course and conduct of its business, respondent is now, and for more than one year last past has been, in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations, and with partnerships and individuals engaged in manufacturing, distributing, and selling gasoline to which tetraethyl lead, or "Ethyl" has been added, and with other corporations, partnerships, and individuals, who sell only "straight run" or "ordinary" gasoline to which tetraethyl lead or "Ethyl" has not been added, or who sell gasoline produced by the "cracking" process. All of the manufacturers and sellers of the several types of gasoline above described are and have been in competition in commerce as hereinabove set out, between and among themselves, as to each and all of the said types of gasoline.

PAR. 4. In such competition between the sellers of "Ethyl" gasoline and the sellers of gasoline to which no tetraethyl lead or "Ethyl" has been added, one of the controlling influences on the purchasing public, is the popular opinion as to the comparative value, desir-

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ability, effectiveness and safety of "Ethyl" gasoline, as compared with either "ordinary," "straight run" gasoline or "cracked" gasoline to none of which "Ethyl" has been added.

The use of "Ethyl" gasoline has been widely practiced in the United States for the last ten years, and its desirability and effectiveness in increasing power and eliminating "knock" is well known and understood by the purchasing public, and has been found to be entirely safe when used as motor fuel, the use for which it is intended, and is no more poisonous or dangerous than any other form of gasoline used for that purpose. Notices are placed on all gasoline pumps from which "Ethyl" gasoline is sold, in order that purchasers may be warned not to use it for cleaning or other purposes.

The respondent, as a manufacturer and seller of gasoline which does not contain tetraethyl lead or "Ethyl," is interested in and engaged in presenting to the purchasing public all available reasons or arguments against, or tending to lessen the desirability, effectiveness and safety of gasoline treated with tetraethyl lead or "Ethyl."

The use of the said "Ethyl" gasoline destroys to the extent of the use thereof, the demand for or sale of "straight run" and "cracked" gasoline, such as is manufactured and sold by the respondent, and respondent is therefore interested in an attempt to create public sentiment against or adverse to the use of gasoline containing tetraethyl lead or "Ethyl."

PAR. 5. Respondent distributes its said product to the ultimate purchasers or consumers thereof, largely through wholesale dealers, jobbers and retail merchants. In aid of its sales to such dealers, or ultimate dealers, for ultimate use by the consuming public, and for the purpose of creating a demand on the part of the consuming public for its own products, in preference to gasoline containing chemicals such as tetraethyl or "Ethyl," which it does not manufacture or sell, respondent now causes, and for a long time past, has caused advertisements to be issued, published, and circulated in newspapers, magazines and other publications of wide and general circulation, and in other forms of printed matter, and by radio broadcasting and in other ways, to and among the general public of the United States.

In said ways, and by said means, respondent has made to the general public, unfair, exaggerated, false, and misleading statements, for the purpose and intent, and with the effect of promoting the sale in commerce, as aforesaid, of its own products and for the purpose and effect of unfairly disparaging and discouraging the consumption by the purchasing public of gasoline containing tetraethyl lead or

"Ethyl," which it does not manufacture, produce or sell. These advertisements contain statements, among others, such as the following:

WHAT'S CUSHING GOT THAT'S SO NEW

Cushing's plant is new—it's 1935 from stem to stern. We thought it about time that today's motor fuels caught up with today's motor cars. We never believed gasoline had to be doped—and we're anti-narcotic now, so rather than sell you an artificially pep'ed-up product we've built a plant that's turning out an undoped high octane gasoline that's a world beater—

CUSHING'S A NEW AND SAFER ANTI-KNOCK MOTOR FUEL! NOT JUST ANOTHER GASOLINE.

There's been plenty of new gasoline, and CUSHING'S not making claims we can't deliver—so we've guaranteed our new high octane anti-knock motor fuel, because we know it's pure undoped power. We could have offered you an artificially pep'ed up product—instead we have spent thousands of dollars on a new plant to bring you a gasoline that's as new as today's cars. It stands on its own merits and needs no dangerous chemicals—hence you can offer it to your customers without doubt or fear.

NEW! WE'LL SAY CUSHING'S GASOLINE IS AS NEW AS TODAY'S CARS.

WHAT DO YOU MEAN ANTI-KNOCK! WITH CUSHING'S NEW GASOLINE WE NOT ONLY MEAN IT—WE GUARANTEE IT!

Cushing's new gasoline needs no BEWARE signs. It's safe.

You don't want to endanger the life of your customers—you DO when you use a poisonously doped gasoline, but you DON'T when you offer them Cushing's.

When we saw the handwriting on the wall we might have gone out of the room and mixed up a doped-up gasoline—but we could have hardly put the name CUSHING on such a product, so we have spent thousands of dollars on a new plant to bring you a high octane and anti-knock motor fuel so good we guarantee it.

But that's the only way we know how to give you a gasoline of real performance—not artificially doped-up.

It stands on its own merits, and needs no dangerous chemicals.

PAR. 6. The statements above set forth, together with others of similar import and effect serve as representations by respondent and have the capacity and tendency to mislead and deceive, and have misled and deceived, purchasers and prospective purchasers of gasoline treated with tetraethyl lead or "Ethyl" by leading them to believe:

1. That gasoline other than respondent's is not safe;
2. That gasoline which contains tetraethyl lead or "Ethyl" is not safe;
3. That gasoline to which a chemical has been added for the purpose of eliminating "knock" is dangerous to the life or health of the purchaser or user thereof;
4. That gasoline to which chemicals have been added is poisonous, but that the gasoline of respondent is not;
5. That gasoline to which a chemical has been added to increase its power and to eliminate "knock" is doped, and therefore unsafe for use by the

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consuming public, whereas the gasoline of the respondent is superior to chemically treated gasoline;

6. That gasoline treated with tetraethyl lead or "Ethyl," which is the only chemical used commercially for admixture with gasoline to eliminate "knock" and to increase its power, is a dangerous dope, a narcotic, and injurious to the life or health of purchasers, users and the general public;

7. That all of respondent's gasoline is made by a new process;

8. That all of respondent's gasoline is made by the "cracking" process;

9. That gasoline made by the "cracking" process is superior to gasoline to which "Ethyl" or tetraethyl lead has been added.

PAR. 7. In truth and in fact, the treatment of "straight run" or "ordinary" gasoline, as manufactured commercially, either by the distillation or skimming method, or by the cracking method, by adding thereto tetraethyl lead or "Ethyl," results in the creation of a high grade anti-knock gasoline, commonly known as "Ethyl" gasoline, which functions in an exceedingly high and efficient manner as fuel for gasoline motors. Said "Ethyl" gasoline is entirely safe to the health of persons operating said motors, and to the public in general, when used as a motor fuel, and is not narcotic in its effect, a poisonous dope, or dangerous to the life or health of a customer, purchaser, user, or the general public.

In truth and in fact only about one-third of the gasoline produced by the respondent is made by the new cracking process, or by its new plant or refinery, or by a new addition to an old refinery, the balance being made by straight distillation, one of the oldest processes known in the petroleum refining industry.

PAR. 8. The aforesaid false, misleading, and unfairly disparaging representations, so made by respondent in its advertising, as above described, have had, and now have, the tendency and capacity to mislead, and have misled and deceived retailers, jobbers, and wholesalers of gasoline and a substantial portion of the purchasing and consuming public, into the false and erroneous belief that said statements and representations, or any of them as set forth in paragraph 5 are true, and that gasoline treated with tetraethyl lead or other chemicals to increase its power or to eliminate "knock," is undesirable, inefficient, doped, harmful, poisonous, narcotic in its effect, and dangerous to the health or life of customers, when used for the purpose for which gasoline motor fuel is intended; and that all of the gasoline manufactured by respondent is high test, or high octane gasoline obtained by a new "cracking" process which is safe and is superior to "Ethyl" gasoline or gasoline to which tetraethyl lead has been added, or to straight run gasoline.

Further, said false and misleading statements and representations have the tendency and capacity to induce the public to purchase

gasoline not so chemically treated, in and because of such erroneous beliefs, brought about as hereinabove set out, and to unfairly divert trade to the sellers of straight or ordinary gasoline and to the sellers of "cracked" gasoline, including the respondent, and its customers, from sellers of gasoline treated with tetraethyl lead or "Ethyl" to increase its efficiency as a motor fuel. 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. 9. Gasoline of sundry competitors of respondent likewise engaged in commerce as herein set out who use both the "distillation" and "cracking" processes in the manufacture of their products, 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 gasoline but without such false and fictitious representations as to the "newness" of their product and without falsely representing that all of their gasoline is "high test" or "high octane" or superior to all other gasoline, when such is not the case, and without unfairly disparaging the products of manufacturers of gasoline who add tetraethyl lead or "Ethyl" to their product for the purpose of eliminating "knock" and increasing its power.

PAR. 10. 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 May 28, 1936 issued and served its complaint in this proceeding upon said respondent, Cushing Refining & Gasoline Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On June 19, 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's counsel, John B. Dudley, 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. The respondent, Cushing Refining & Gasoline Company, is a corporation organized, existing, and doing business pursuant to the laws of the State of Oklahoma, having its office and principal place of business in Cushing, Okla., with a branch office at Minneapolis, Minn., and refineries at Cushing and Blackwell, Okla. It is now, and for more than one year last past has been engaged in the business of refining crude petroleum and manufacturing therefrom gasoline, and in the sale of said gasoline in commerce between and among the various States of the United States and in the District of Columbia. It ships said products, when sold, to the purchasers thereof, some located in the State of Oklahoma, and others located in various other States of the United States, or in States other than the State from which shipment is made, 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 its aforesaid products.

PAR. 2. Certain other corporations, firms, partnerships, and individuals have been, and are now, likewise engaged in the manufacture and sale of gasoline in commerce, as described in paragraph 1 hereof. Some of said gasoline is refined by what is known in the trade as the "skimming" or "distillation" process, and is called "straight run" or "ordinary" gasoline. Other types of said gasoline are refined by the "cracking" method, a new process of refining gasoline which, when applied to the proper grade of crude petroleum may be made to extract a higher grade of gasoline than is usually obtained by the "skimming" or "distillation" method. Most refineries use both

the "cracking" and "distillation" process as the "cracking" process will extract additional gasoline from crude petroleum previously treated by other processes. Others are engaged in manufacturing a certain type of gasoline known as "ETHYL" gasoline, which consists of gasoline made by any of the above methods, to which a chemical known as tetraethyl lead or "ETHYL" has been added for the purpose of eliminating knock or detonation which is encountered in high compression motors when driven by the usual straight run gasoline. Some of the gasoline manufactured by the "cracking" method is sufficiently high in grade without the addition of tetraethyl lead to accomplish a result similar to that produced by "ETHYL" gasoline. The quality or grade of gasoline in this respect is susceptible of measurement and determination. This standard of measurement is expressed in terms of octane value, and the gasoline having the highest octane rating is considered by the trade, and the purchasing public, to be the best and commands a higher price or premium accordingly. Tetraethyl lead, or "ETHYL" fluid, unadulterated, is poisonous, but when used in the very limited quantity necessary or permitted in gasoline, as sold to the public for motor fuel, is entirely safe and no more poisonous or dangerous than any other motor gasoline. Tetraethyl lead or "ETHYL" has been added, to some extent, to most of the gasoline now sold in the United States.

Respondent, prior to the filing of the complaint in this proceeding, never manufactured or sold gasoline to which tetraethyl lead or "ETHYL" had been added, but during the summer of 1936, and after the filing of the complaint herein, commenced to manufacture gasoline so treated with tetraethyl lead, which it now sells to dealers and consumers.

PAR. 3. In the course of its business, respondent is now, and has been, in substantial competition in commerce between and among the various States of the United States and in the District of Columbia, with other corporations, and with partnerships and individuals engaged in manufacturing, distributing, and selling gasoline produced by any of the methods hereinbefore named. All of the manufacturers and sellers of the several types of gasoline above described are and have been in competition in commerce as hereinabove set out, between and among themselves, as to each and all of the said types of gasoline.

PAR. 4. In such competition between the sellers of ETHYL gasoline and the sellers of gasoline to which no tetraethyl lead or ETHYL has been added, one of the controlling influences on the purchasing public, is the proper opinion as to the comparative value, desirability, effectiveness and safety of ETHYL gasoline, as compared with either

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“ordinary,” “straight run” gasoline or “cracked” gasoline to none of which ETHYL has been added.

So-called ETHYL gasoline has been widely used in the United States for the last ten years, and its desirability and effectiveness in increasing power and eliminating “knock” is well known and understood by the purchasing public, and it has been found to be entirely safe when used as a motor fuel, the use for which it is intended. It is no more poisonous or dangerous than any other form of gasoline used for that purpose. Notices are placed on all gasoline pumps from which ETHYL gasoline is sold, in order that purchasers may be warned not to use it for cleaning or other purposes.

The respondent, as a manufacturer and seller of gasoline which, prior to the filing of the complaint in this proceeding, did not contain tetraethyl lead or ETHYL, was interested and engaged in presenting to the purchasing public all available reasons or arguments against or tending to lessen the desirability, effectiveness and safety of gasoline treated with Tetraethyl lead or ETHYL.

The use of the said ETHYL gasoline destroys to the extent of the use thereof, the demand for or sale of “straight run” and “cracked” gasoline, such as is manufactured and sold by the respondent, and the respondent prior to filing the complaint in this proceeding, was therefore, interested in an attempt to create public sentiment adverse to the use of gasoline containing tetraethyl lead or ETHYL in order that a greater demand might exist for gasoline not so treated.

PAR. 5. Respondent distributes its said product to the ultimate purchasers or consumers thereof, largely through wholesale dealers, jobbers, and retail merchants. In aid of its sales to such dealers, or ultimate dealers, for ultimate use by the consuming public, and for the purpose of creating a demand for its own products, in preference to gasoline containing chemicals such as tetraethyl or ETHYL, which, prior to filing the complaint in this proceeding, it did not manufacture or sell, respondent caused advertisements to be issued and published in newspapers, magazines, and other publications of wide circulation among the general public of the United States. These advertisements contain statements, among others, such as the following:

WHAT'S CUSHING GOT THAT'S SO NEW

Cushing's plant is new—it's 1935 from stem to stern. We thought it about time that today's motor fuels caught up with today's motor cars. We never believed gasoline had to be doped—and we're anti-narcotic now, so rather than sell you an artificially pep'ed-up product we've built a plant that's turning out an un-doped high octane gasoline that's a world beater—

CUSHING'S A NEW AND SAFER ANTI-KNOCK MOTOR FUEL! NOT JUST ANOTHER GASOLINE

There's been plenty of new gasoline, and CUSHING'S not making claims we can't deliver—so we've guaranteed our new high octane anti-knock motor fuel, because we know it's pure undoped power. We could have offered you an artificially pep'ed-up product—instead we have spent thousands of dollars on a new plant to bring you a gasoline that's as new as today's cars. It stands on its own merits and needs no dangerous chemicals—hence you can offer it to your customers without doubt or fear.

NEW! WE'LL SAY CUSHING'S GASOLINE IS AS NEW AS TODAY'S CARS.

WHAT DO YOU MEAN ANTI-KNOCK! WITH CUSHING'S NEW GASOLINE WE NOT ONLY MEAN IT—WE GUARANTEE IT!

Cushing's new gasoline needs no BEWARE signs. It's safe.

You don't want to endanger the life of your customers—you DO when you use a poisonously doped gasoline, but you DON'T when you offer them Cushing's.

When we saw the handwriting on the wall we might have gone out of the room and mixed up a doped-up gasoline—but we could have hardly put the name CUSHING on such a product, so we have spent thousands of dollars on a new plant to bring you a high octane and anti-knock motor fuel so good we guarantee it.

But that's the only way we know how to give you a gasoline of real performance—not artificially doped-up.

It stands on its own merits, and needs no dangerous chemicals.

By said means, respondent has made exaggerated statements to the general public, for the purpose of promoting the sale of its own products by lessening the consumption by the purchasing public of gasoline containing tetraethyl lead or ETHYL, which it did not manufacture, or sell prior to the summer of 1936.

PAR. 6. The statements above set forth, together with others of similar import and effect, serve to unfairly discourage the purchase of gasoline treated with tetraethyl lead or ETHYL fluid, by leading the public to believe:

1. That gasoline other than respondent's is not safe;
2. That gasoline which contains tetraethyl lead or ETHYL is not safe;
3. That gasoline to which a chemical has been added for the purpose of eliminating "knock" is dangerous to the life or health of the purchaser or user thereof;
4. That gasoline to which chemicals have been added is poisonous, but that the gasoline of respondent is not;
5. That gasoline to which a chemical has been added to increase its power and to eliminate "knock" is doped, and therefore unsafe for use by the consuming public, whereas the gasoline of the respondent is superior to chemically treated gasoline;
6. That gasoline treated with tetraethyl lead or ETHYL, which is the only or usual chemical used commercially for admixture with gas-

oline to eliminate "knock" and to increase its power, is a dangerous dope, a narcotic, and injurious to the life or health of purchasers, users and the general public;

7. That gasoline made by the "cracking" process is superior to gasoline to which ETHYL or tetraethyl lead has been added.

PAR. 7. The treatment of "straight run" or "ordinary" gasoline, as manufactured commercially either by the distillation or skimming method, or by the cracking method, by adding thereto tetraethyl lead or ETHYL, results in the creation of a high grade anti-knock gasoline, commonly known as ETHYL gasoline, which functions in an exceedingly high and efficient manner as fuel for gasoline motors. Said ETHYL gasoline is entirely safe to the health of persons operating said motors, and to the public in general, when used as a motor fuel, and is not narcotic in its effect, or a poisonous dope, or dangerous to the life or health of a customer, purchaser, user, or the general public.

Respondent's refineries at Blackwell and Cushing, Okla., have a daily capacity of approximately 6,200 barrels of crude oil per day by the "distillation" process. In addition to this, its plant at Cushing has a daily capacity of 2,000 barrels per day, produced by the "cracking" process. Respondent's production capacity for "cracked" gasoline is, therefore, approximately one-third of its capacity for producing "straight run" gasoline by the distillation process.

Only a portion, therefore, of the gasoline produced by the respondent is made by the cracking process, or by its new plant or refinery, or by a new addition to an old refinery, the balance and greater part, being made by straight distillation process, one of the oldest processes known in the petroleum refining industry.

PAR. 8. The aforesaid representation, made by respondent in its advertising, as above described, have the tendency to mislead, and have misled retailers, and other dealers in gasoline and a substantial portion of the purchasing public, into the erroneous beliefs that said statements and representations, or any of them, as set forth in paragraph 5 above, are true and that gasoline treated with tetraethyl lead or other chemicals to increase its power or to eliminate "knock" is undesirable, inefficient, doped, harmful, poisonous, narcotic in its effect, and dangerous to the health or life of customers when used for the purpose for which gasoline motor fuel is intended; and that all of the gasoline manufactured by respondent is high test, or high octane gasoline obtained by a new "cracking" process which is safe and is superior to ETHYL gasoline or gasoline to which tetraethyl lead has been added, or to straight run gasoline.

Further, said representations have the tendency to induce the public to purchase gasoline not so chemically treated, because of such erroneous beliefs, brought about as hereinabove set out, and to unfairly divert trade to the sellers of straight or ordinary gasoline and to the sellers of "cracked" gasoline, including the respondent, and its customers, from sellers of gasoline treated with tetraethyl lead or ETHYL. As a result 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.

PAR. 9. Gasoline of sundry competitors of respondents likewise engaged in commerce as herein set out who use both the "distillation" and "cracking" processes in the manufacture of their products, 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 gasoline but without such false and fictitious representations as to the "newness" of their product and without representing that all of their gasoline is "high test" or "high octane" or superior to all other gasoline, when such is not the case, and without unfairly disparaging the products of manufacturers of gasoline who add tetraethyl lead or ETHYL to their product for the purpose of eliminating "knock" and increasing its power.

CONCLUSION

The aforesaid acts and practices of the respondent, Cushing Refining & Gasoline 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, and the agreed stipulation of facts entered into between the respondent herein, Cushing Refining & Gasoline Co., by its attorney of record, 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

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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, Cushing Refining & Gasoline Co., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its gasoline in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That gasoline to which tetraethyl lead, or ETHYL fluid has been added for the purpose of processing said gasoline, is a narcotic or has narcotic effects, is "doped up" or is poisonous, unsafe or dangerous to the life or health of persons using the same for motor fuel;

2. Using any language calculated to intimate or suggest that gasoline treated with tetraethyl lead or ETHYL fluid is unsafe for sale to or use by the public as a motor fuel, in the manner prescribed by law;

3. That all of the gasoline produced by it is manufactured by the "cracking" process;

4. That all of the gasoline produced by it is made by a new process and consists of what is commonly known as "high test," "high octane" or "anti knock" gasoline and that all of its gasoline is superior as motor fuel to that type of gasoline commonly known as "ETHYL" gasoline;

5. That gasoline made by the "cracking" process is superior as a motor fuel to gasoline of equal octane value to which tetraethyl lead or "ETHYL" has been added.

It is hereby further ordered, That the respondent Cushing Refining & Gasoline Co., a corporation, shall within 60 days from the date of the serving upon it of this order, file with the Commission, its report in writing stating the manner and form in which it shall have complied with this order.

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IN THE MATTER OF

JOSEPH LEWIN, TRADING AS LEEV-NO-RING CHEMICAL
COMPANY

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

Docket 2924. Complaint, Sept. 17, 1936—Decision, Feb. 17, 1937

Where an individual, engaged in preparation of cleaning fluid, and offer and sale thereof—

Caused his trade name, including words "Leev-No-Ring" to appear on labels affixed to containers of his product, and featured same in circulars, folders, and other forms of printed matter published and circulated by him among the general public, and represented that his said fluids could be used safely and without injury to the most delicate fabrics or materials, and would remove all grease spots instantly and without injury to such fabrics, and would not in any instance leave a ring, facts being his said product, used on fabrics dyed with non-fast or fugitive dyes, did affect colors thereof by causing same to bleed or run, and in case of certain fabrics did leave appearance of a mark or ring thereon;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers thereof into belief that said fluids could be used safely and without injury and with results claimed therefor, as above set forth, and to induce purchase of his said products in such erroneous beliefs, and with effect of thereby diverting trade to him from competitors, including those who, as manufacturers, compounders, sellers, and distributors of like and similar products, truthfully advertise and represent the nature, merit, and value of their respective products, or do not advertise and represent that the same have merit or value which they do not possess; 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. Joseph C. Fehr for the Commission.

Mr. Clyde L. Rogers, of Washington, D. C. and *Mr. David S. Andron*, 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 Joseph Lewin 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. Joseph Lewin, hereinafter referred to as respondent, is an individual trading as Leev-No-Ring Chemical Company, having his office and principal place of business located at 207 West 17th Street, in the city of New York, in the State of New York. Respondent for more than one year last past has been, and still is, engaged in the preparation of Cleaning Fluids and offering said products 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 products are sold, respondent transports or causes the same to be transported from his 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 one year last past, and still is, a constant current of trade and commerce in said products so compounded 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 individuals, and with partnerships, corporations, and firms engaged in the manufacture and compounding 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 his business, as aforesaid, the respondent, in soliciting the sale of and selling his cleaning fluids and for the purpose of creating a demand upon the part of the consuming public for said products, adopted as and for a trade name under which to carry on business the words, "Leev-No-Ring Chemical Company." Respondent causes and for more than one year last past has caused said trade name containing the hyphenated words "Leev-No-Ring" to appear on labels affixed to the containers of his products. Said trade name is also featured in circulars, folders, and other forms of printed matter relating to such products which respondent issues, publishes, and circulates and has issued, published, and circulated to and among the general public of the United States. The respondent makes and has made to the general public many other unfair, false, and misleading statements with reference to the value and merits of his said products, a portion of which are as follows:

LEE-NO-RING The Perfect Cleaning Fluid **NON-INJURIOUS** To The Most Delicate Materials.

LEE-NO-RING is safe on silks and artificial silks as well as on all delicate fabrics. Dries thoroughly leaving **NO-RING**.

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Removes all grease spots instantly without injury to the most delicate fabric.
Will not injure the most delicate fabrics.

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 products into the belief:

(a) That the respondent's cleaning fluids can be used safely and without injury to the most delicate fabrics or materials;

(b) That respondent's cleaning fluids when used will remove all grease spots instantly without injury to the most delicate fabrics;

(c) That the respondent's cleaning fluids when used will not in any instance leave a ring;

whereas, in truth and in fact, respondent's said products when used on fabrics dyed with certain kinds of dye, such as non-fast or fugitive dyes, does affect the colors of such fabrics by causing the same to bleed or run. Nor is it true, as represented, that the use of respondent's said products on certain fabrics does not result in the appearance of a mark or ring on such fabrics. In truth and in fact, in either or in both of these ways such fabrics are in fact injured by the use of respondent's said products thereon.

PAR. 4. There are among the competitors of the respondent in interstate commerce manufacturers, compounders, 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 such competitors of the respondent manufacturers compounders and distributors of like and similar products who do not advertise and otherwise represent that such products have merit or value which they do not have.

PAR. 5. 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 3 hereof and into the purchase of respondent's products in such beliefs. Thereby trade is diverted by respondent from respondent's competitors in interstate commerce referred to in paragraph 4 and as a consequence thereof substantial injury is done by respondent to competition in interstate commerce.

PAR. 6. 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 17, 1936, issued, and on September 21, 1936, served its complaint in this proceeding upon respondent, Joseph Lewin, 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, 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. Joseph Lewin, hereinafter referred to as respondent, is an individual trading as Leev-No-Ring Chemical Company. His office and principal place of business is located at 207 West 17th Street, in the city of New York, in the State of New York. For more than one year last past he has been, and still is, doing business under the name and style of Leev-No-Ring Chemical Company. In the operation of this business he has been and is engaged in the preparation of cleaning fluids and offers and has offered said products for sale and sells 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, respondent transports or causes the same to be transported from his 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, and in the District of Columbia. There has been for more than one year last past, and there still is, a constant current of trade and commerce in said products so compounded by respondent, between and among the various States of the United States, and in the District of Columbia. Respondent is now, and for

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more than one year last past has been, in substantial competition with other individuals, and with partnerships, corporations, and firms engaged in the manufacture and compounding 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 his business, as aforesaid, the respondent, in soliciting the sale of and selling his cleaning fluids and for the purpose of creating a demand upon the part of the consuming public for said products, adopted as and for a trade name under which to carry on business the words, "Leev-No-Ring Chemical Company." Respondent causes and for more than one year last past has caused said trade name containing the hyphenated words "Leev-No-Ring" to appear on labels affixed to the containers of his product. Said trade name is also featured in circulars, folders, and other forms of printed matter relating to such products which respondent issues, publishes and circulates and has issued, published, and circulated to and among the general public of the United States. The respondent makes and has made to the general public many other deceptive and misleading statements with reference to the value and merits of his said products. Among the claims thus advertised by respondent for the purpose of inducing members of the public to purchase his products, are the following:

LEE-V-NO-RING The Perfect Cleaning Fluid NON-INJURIOUS To The Most Delicate Materials.

LEE-V-NO-RING is safe on silks and artificial silks as well as on all delicate fabrics. Dries thoroughly leaving NO-RING.

Removes all grease spots instantly without injury to the most delicate fabric.

Will not injure the most delicate fabrics.

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 products into the belief:

(a) That the respondent's cleaning fluids can be used safely and without injury to the most delicate fabrics or materials;

(b) That respondent's cleaning fluids when used will remove all grease spots instantly without injury to the most delicate fabrics;

(c) That the respondent's cleaning fluids when used will not in any instance leave a ring;

In truth and in fact, respondent's said products when used on fabrics dyed with certain kinds of dye, such as non-fast or fugitive dyes, does affect the colors of such fabrics by causing the same to bleed or run. Nor is it true, as represented, that the use of respondent's said products on certain fabrics does not result in the appearance of

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a mark or ring on such fabrics. In truth and in fact, in either or in both of these ways such fabrics are in fact injured by the use of respondent's said products thereon.

PAR. 4. There are among the competitors of the respondent in commerce as herein set out, manufacturers, compounders, sellers 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 such competitors of the respondent, manufacturers, compounders, sellers and distributors of like and similar products who do not advertise and otherwise represent that such products have merit or value which they do not have.

PAR. 5. 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 3 hereof and into the purchase of respondent's products in such beliefs. Thereby trade is diverted by respondent from respondent's competitors in interstate commerce referred to in paragraph 4 and as a consequence thereof substantial injury is done by respondent to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, Joseph Lewin, 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 January 26, 1937, 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, Joseph Lewin, trading as Leev-No-Ring Chemical Company, his representatives, agents, and em-

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ployees, in connection with the offering for sale, sale, and distribution of his cleaning fluids in interstate commerce or in the District of Columbia do forthwith cease and desist from:

Representing through the use of the phrase "Leev-No-Ring" in its trade name, on its stationery, advertising matter or on the labels attached to the containers in which it sells and ships its said cleaning fluid, or in any other manner by words or phrases of like import that:

(a) The respondent's cleaning fluids can be used safely and without injury to the most delicate fabrics or materials;

(b) Respondent's cleaning fluids when used will remove all grease spots instantly without injury to the most delicate fabrics;

(c) The respondent's cleaning fluids when used will not in any instance leave a ring;

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.

IN THE MATTER OF
GULF COAST OIL COMPANY OF MISSISSIPPI, INC., AND
ANTHONY PACIERA

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

Docket 2860. Complaint, June 30, 1936—Decision, Mar. 3, 1937

Where a corporation, long engaged in sale and distribution of gasoline and motor oils in bulk to retail dealers for resale and to consumers for use in States of Louisiana, Mississippi, and Alabama, had built up, as Gulf Refining Company, a wide reputation and extensive good-will among users of its products, and said products were well and favorably known to public generally, and sign, in form of metal disk colored orange and bearing the one word "Gulf" in large black or dark blue shaded letters, and usually suspended in front of stations selling its products and on its equipment generally, constituted special feature of its advertising, used to great advantage for many years, and prospective customers had long been urged, through various mediums, to buy "At the Sign of The Orange Disk", and printed reproduction thereof was used to identify all its products and was painted upon its tanks, trucks and other equipment in letters of same character and color as those on the disk itself, and where its said products included brands designated by it as "Gulf Supreme Motor Oil" and "Gulf-pride Oil", and said names had long been featured by it in all forms of its advertising, at great expense, and were definitely associated with and formed an important part of general public's conception of it and its products, as similarly had been featured and was associated, etc., name of its "Gulf No-Nox Ethyl," under and by which name it designated "ethyl" gas composed of mixture of gasoline and tetraethyl lead, in common with other competitors who used word "ethyl" as part of their brand names under which they offered their respective "ethyl," 75 octane, or better, premium, and well and favorably known gasolines to consuming public; and thereafter a corporate competitor engaged in sale and distribution of gasoline and motor oils to dealers purchasing in bulk for resale and to consumers for use, and in supplying filling stations which it operated in Louisiana, Mississippi, and Alabama in substantial competition with said first-named corporation and with others similarly engaged, and the president of said corporate competitor, in active charge of its affairs and controller and director of all its policies and business operations, and originator of the various forms of advertising and business methods adopted by such competitor—

- (a) Featured in all of said competitor's display advertising and on signs at various of its stations and on gasoline pumps, trucks, and other equipment, word "Gulf," either alone or in printed letters substantially larger than those of other words in connection with which used, and invariably in shaded letters of same type and color, substantially, as those used by said first-named corporation in its printing and use of word "Gulf," and extensively advertised as "Gulf Supreme Gasoline" one brand, and in its advertising thereof on signs posted in and about the various filling stations,

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illuminated at night, frequently, featured word "Gulf," with letters thereof twice as large as other two words, and word "Supreme" in "quotations," and, at times, with its own corporate name of "Gulf Coast Oil Company of Mississippi" in letters about one-third size of words "Supreme" and "Gasoline," and word "Gulf" in same type and coloring as those used by said first-named corporation, and advertised said "Gulf Supreme Gasoline" through radio broadcast programs capable, in case of some, of being heard over entire United States, without mention, as a rule, of its own corporate name in course thereof, in which listeners were advised of location of stations at which its said products might be obtained, and designated and advertised extensively in newspapers of interstate circulation and in other ways its so-called "Gulf Ether Gasoline," name of which was featured on gasoline pumps located at its various stations in aforesaid States, and made use of terms "Pride of the People" and "Gulf 'Pride' Motor Oil" in designation and advertisement of certain oils sold by it, notwithstanding fact neither Gulf Refining Company nor Ethyl Gasoline Corporation had given their permission to said competitor and its aforesaid president to use terms "Gulf," "Gulf Supreme Motor Oil," "Gulfpride Oil," "Gulf No-Nox Ethyl Gasoline" or "Ether" in designating the various gasoline and motor oil products of said corporate competitor and its said president, manager and controller;

With capacity and tendency, by reason of said acts and practices of said corporate competitor and its said president in imitating and simulating products of said first-named corporation and of other distributors selling various types of "Ethyl" gasoline, through such colorable imitations and simulations of aforesaid trade names and brand names for various gasolines and motor oils sold by said first-named corporation over a period of many years, and, in aforesaid use of term "Ether," of registered trade name "Ethyl" of said Ethyl Gasoline Corporation and its various licensees, to confuse and mislead trade and public generally with respect to nature, quality, and origin of various products sold by such corporate competitor, and with result that, under ordinary conditions prevailing in usual course of business in sale of gasolines and motor oils, members of public might be induced, by reason of such simulation and imitation of trade names and trade marks, to buy said corporate competitor's gasoline, motor oil and other products as and for such products distributed and sold by said first-named corporation, its agents and dealers, or as and for gasoline distributed by competitors of it and licensees of said Ethyl Gasoline Corporation; and

(b) Represented, in all of their advertising, radio broadcasts, newspaper advertising, and otherwise, that said corporate competitor's "Gulf Ether Gasoline" tested 70 octanes and was equivalent to high test premium gasoline and to "Ethyl" gasoline for which premium is charged, facts being its said product, principal type of gasoline eventually sold by it, was produced by adding small quantities of commercial ether to ordinary gasoline, and that the small and insignificant amount of ether added did not affect gasoline involved to any noticeable extent and was not beneficial thereto and did not increase value, potency or power thereof, make same any more beneficial to automobile motors, or decrease tendency thereof to knock or detonate, and was not comparable in efficiency to gasoline to which tetraethyl lead has been added in such quantities as to raise octane rating thereof to 75, but, on contrary, disclosed ratings ranging, at different times and tests, from 66 to 68 or 69;

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With tendency and capacity to mislead a substantial portion of purchasing public into erroneous beliefs that said representations were true and that said "Gulf Ether Gasoline" was comparable in value to and gave equal performance with various types of high test premium gasoline and ethyl gasoline, and with result, as a direct consequence of such mistaken and erroneous beliefs, induced by such acts and representations, that a number of the consuming public purchased a substantial volume of said "Gulf Ether Gasoline" and trade was unfairly diverted to said corporate competitor and its aforesaid president and manager from competitors engaged in business of distributing and selling various types of high test premium and ethyl gasolines, and who truthfully advertise their products, and from competitors engaged in distribution and sale of ordinary grades of gasoline who truthfully advertise, as to both quality and efficiency of performance, their respective products:

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.

Titche & Titche, of New Orleans, La., 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 Gulf Coast Oil Company of Mississippi, Inc., a corporation, and Anthony Paciera, an individual, hereinafter designated as respondents, are now, and have 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, Gulf Coast Oil Company of Mississippi, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Mississippi, with its principal office and place of business at 3331 St. Charles Avenue, in the city of New Orleans, State of Louisiana. Respondent, Anthony Paciera, residing in the city of New Orleans, State of Louisiana, is the president of the respondent corporation and is actively in charge of said corporation and directs and controls all of its policies and operations. He is the originator of the various forms of advertising and business methods which have been adopted and followed by the respondent corporation. Respondents are now, and have been since on or about January 1, 1933, engaged in the business of selling and

distributing gasoline, kerosene, motor oil, and similar products, in bulk to dealers purchasing for resale and to consumers for use.

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said gasoline, kerosene, and motor oil, when sold, to be transported from their office and principal place of business, or from their storage tanks located in the State of Louisiana, to purchasers thereof located at various points in other States of the United States. There is now, and has been at all times since the organization of respondent corporation, a constant current of trade and commerce in said gasoline, kerosene and motor oil, so distributed and sold by the respondents, 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 corporations, firms, and individuals, likewise engaged in the business of distributing and selling gasoline, kerosene and motor oil, in bulk to retail dealers for resale and to consumers for use, in commerce among and between the various States of the United States.

PAR. 4. During all the time since the organization and incorporation of respondent corporation, and for many years prior thereto, the Gulf Refining Company, a corporation, maintaining its headquarters in Pittsburgh, State of Pennsylvania, and one of the competitors referred to in paragraph 3 hereof, has been engaged in the distribution and sale of gasoline, kerosene and motor oil, in bulk to retail dealers for resale and to consumers for use, particularly in the States of Louisiana, Mississippi, and Alabama. Since its organization, and for a period of more than thirty years, said Gulf Refining Company has built up a wide reputation and extensive good-will among the users of the products it sells and said products are well known to the public generally.

Early in its business career, the Gulf Refining Company adopted the colors yellow or orange as the colors of its plants and equipment generally, including its filling stations, some of which are owned by it, some of which are merely operated by it, and some of which merely sell its products. The uniform color of its stations and equipment became identified with the company and grew to be an important part of its plan of advertising. A special feature of its advertising that has been used to great advantage is a sign, in the form of a metal disk, colored orange and bearing the one word "GULF" in black or dark blue shaded letters. The sign is usually suspended in front of the stations selling the products of the company and prospective customers have been urged through various mediums, over a period of many years, to buy—"At the

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Sign of the Orange Disk." The printed reproduction of the disk is the trade-mark used to identify all the products of the company and is painted upon its tanks, trucks and other equipment. For a period of at least ten years, all of the storage tanks, gasoline pumps, tank trucks, and the woodwork of the filling stations owned by the company, have been painted a uniform shade of orange, the same as that of the disk above referred to and described. The petroleum products distributed and sold by the Gulf Refining Company are certain brands of gasoline and motor oil designated by it as "Gulf Supreme Motor Oil," "Gulfpride Oil," "Gulf Ethyl Gasoline," and "No-Nox Ethyl Gasoline." These products, and the names by which they are designated, have for a long time past, and are now, featured by the company in all forms of its advertising and are definitely associated with and form an important part of the general public's conception of the Gulf Refining Company and its products.

The gasoline sold by the Gulf Refining Company under the names "Gulf Ethyl Gasoline" and "No-Nox Ethyl Gasoline" are composed of a mixture of ordinary gasoline and tetraethyl lead. Tetraethyl lead is added to the ordinary gasoline for the purpose of increasing the efficiency of such ordinary gasoline as a fuel for modern type motors.

Gasoline to which tetraethyl lead has been added is also extensively advertised and sold by other competitors of the respondents and the use of the word "Ethyl" in advertising and designating said gasoline products, to which tetraethyl lead has been added, forms a distinctive and valuable advertising asset. The superior quality of, and the superior performance given by, various types of "Ethyl" gasoline, are well known to, and appreciated by, the consuming public generally.

PAR. 5. Since about January 1, 1933, the respondents have caused the corporate respondent's stations, gasoline pumps, tank trucks, and other equipment, to be painted the same shade of orange color as that used by the Gulf Refining Company over a period of many years, as herein set out in paragraph 4. Respondents have also featured, and continue to feature, in all of the corporate respondent's display advertising, the word "GULF," either alone or in print substantially larger than that of the other words in connection with which it is used. The word is written always in shaded letters of the same type and is printed in black or deep blue colors substantially the same as the letters and colors used, as herein set out, by said Gulf Refining Company. Respondents have also made use of an orange colored disk similar to that described as having been used by the Gulf Refining Company for many years, as part of corporate respondent's

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equipment, in their stations and have their trade-mark or insignia painted on their pumps, tank trucks, and other equipment. This disk bears printed thereon in prominent letters the one word "GULF," written in letters similar to those described with reference to the respondents' use of the same word on all of their other equipment. Respondents have also made use of a disk, the upper half of which disk is colored the same shade of orange as that used by the Gulf Refining Company and the lower half colored black.

Respondents have also extensively advertised one brand of the corporate respondent's gasoline products as "Gulf Supreme Gasoline." The name of this brand of gasoline is featured on signs posted in and about the various filling stations and is painted on the gasoline pumps and other equipment. The word "Supreme" on these signs is emphasized generally by enclosing the said word in quotation marks. The advertising of this brand of gasoline has been, and now is, conducted further by means of radio broadcasts from stations of sufficient power to carry the programs emanating therefrom to, into and through States of the United States other than the State of Louisiana, so as to be received and heard by radio listeners residing in said other States. In all or in some of said broadcasts, the corporate respondent's name is not mentioned. The broadcast is devoted entirely to advertising the brand "Gulf Supreme Gasoline" and calling attention to the location of gasoline stations at which it may be obtained. On signs prominently displayed at all of its stations, the corporate respondent has made use of the word "GULF" in letters much larger than all other letters on the sign and has used the words "Supreme Gasoline" in letters also larger than the remaining words on the sign. The respondents' corporate name, Gulf Coast Oil Company of Mississippi, Inc., is displayed on said sign in letters considerably smaller and less prominently displayed than the other words herein referred to.

One of the principal types of gasoline sold by the corporate respondent is designated and advertised extensively as "Gulf Ether Gasoline." The gasoline pumps at the corporate respondent's various stations are painted the uniform orange color similar to that used by the Gulf Refining Company with the following words printed thereon—"Gulf Ether Gasoline." The "Gulf Ether Gasoline" is produced by adding a small quantity of ether to a tank car of approximately 8,000 gallons of ordinary gasoline. The amount of ether added to said gasoline forms a small and insignificant part of the total volume of said gasoline when mixed and is not added in sufficient quantities to materially or substantially affect said gasoline in any beneficial manner.

Respondents sell the gasoline designated by them as "Gulf Ether Gasoline" as and for "Ethyl Gasoline," though said gasoline does not perform with the same efficiency as gasoline to which tetraethyl lead has been added, as herein set out in paragraph 4, and is inferior in quality and in performance to "Gulf Ethyl Gasoline" and "Gulf No-Nox Ethyl Gasoline." The word "ether" when used in conjunction with the words "Gulf" and "Gasoline" is a colorable imitation and simulation of the term "Ethyl Gasoline" as rightfully used by many of the competitors of the respondents.

The respondents have also made use of the terms "Pride of the People" and "Gulf 'Pride' motor oil" to designate types of motor oil sold by the corporate respondent. Signs and equipment, including oil containers, oil pumps, tank wagons, and other equipment, display the term "Gulf Coast Oil Company—Pride of the People." Certain of the corporate respondent's tank wagons also display, printed in large letters thereon, the words "Gulf Pride Oil Company." Respondents have also advertised certain of their motor oil products as "Gulf 'Pride' motor oil" in newspapers of general circulation throughout the various States of the United States.

PAR. 6. The Gulf Refining Company has spent large sums of money in painting all of its stations, pumps, tank trucks, and other equipment, a uniform shade of orange and in extensively advertising, through newspapers, advertising booklets, radio broadcasts, and through other advertising media, its products such as "Gulf Supreme Motor Oil," "Gulfpride Oil," "Gulf Ethyl Gasoline," and "No-Nox Ethyl Gasoline." All of said terms and brand names, and said orange color scheme, are well and favorably known to the purchasing public and are associated with the equipment and products of said Gulf Refining Company by said purchasing public and form assets of great value to it. It has neither given its permission to the respondents for the use of said color scheme in painting stations, pumps, tank trucks, or other equipment, nor has it given its consent to the use of the terms "Gulf Supreme Motor Oil," "Gulfpride Oil," "Gulf Ethyl Gasoline," and "No-Nox Ethyl Gasoline" in designating the respondent's various gasoline and motor oil products.

The use by the respondents of said orange color scheme in painting their stations, pumps, tank trucks, and other equipment, and the use of the terms or brand names "Gulf," "Gulf Supreme Gasoline," "Gulf Ether Gasoline," "Pride of the People," "Gulf Coast Motor Oil," "Gulf Pride Oil Company," and "Gulf 'Pride' Motor Oil," are such as to be colorable imitation and simulations of the color scheme adopted and used over a period of many years by the Gulf Refining

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Company and of the products advertised and sold by the Gulf Refining Company over a like period.

PAR. 7. The acts and practices of the respondents, as hereinabove detailed, are such as to cause the corporate respondent's stations, pumps, tank trucks, and other equipment, to be imitations and simulations, in many particulars, of the stations, pumps, tank trucks, and other equipment, of the Gulf Refining Company and are of such a character as to cause the corporate respondent's products to imitate and simulate the products of the Gulf Refining Company and other competitors of the respondents selling various types of ethyl gasoline. The acts and practices of the respondents, and their imitation of the equipment and products of their competitors, have the capacity and tendency to confuse, deceive and mislead the trade and the public generally, under the ordinary conditions prevailing in the usual course of business, in the sale of gasoline, motor oil and similar products, and as a result thereof members of the trade and of the public may be and they are induced, by reason of such imitation and simulation, to buy the corporate respondent's gasoline, motor oil, and other products, in the belief that they are purchasing gasoline, motor oil, and other products, distributed and sold by the Gulf Refining Company, its agents and vendees, and by other competitors of the respondents. As a result thereof, trade has been unfairly diverted from respondents' competitors and from dealers in the products of respondents' competitors, to the respondents and to the dealers in their products, all to the injury of the public and to the injury of competition, in commerce among and between the various States of the United States.

PAR. 8. Various types of gasoline perform with varying degrees of efficiency. The quality or grade of gasoline, with respect to eliminating knocking or "detonation," is susceptible of measurement and determination. This standard of measurement is expressed in terms of octane value. The gasoline having the highest octane rating is considered by the trade, and the purchasing public, to be the best and commands a higher price or premium accordingly.

Gasolines to which tetraethyl lead is added, and which are sold to the trade and public as ethyl gasoline, have an octane rating of not less than 75.

The respondents, in all of their advertising, radio broadcasts, newspapers, and otherwise, represent that "Gulf Ether Gasoline" tests 70 octane and is equivalent to high-test premium gasoline and to ethyl gasoline for which a premium is charged. In truth and in fact, respondents' "Gulf Ether Gasoline" does not test 70 octane and is not

comparable to either ethyl gasoline or other high-test premium gasolines in performance and in eliminating or reducing knocking and detonation. The amount of ether contained in respondent corporation's "Gulf Ether Gasoline" is so small as to not materially improve either the starting ability or to appreciably affect the detonating tendency of the base gasoline to which the ether is added. The ether added to the respondents' gasoline does not materially contribute in any way so as to increase the efficiency of the performance of such gasoline when used.

PAR. 9. The false and misleading statements and representations made by the respondents, with reference to the quality of the corporate respondent's "Gulf Ether Gasoline" and its effectiveness in use, as hereinabove set out, in offering for sale and selling said "Gulf Ether Gasoline," were, and are, calculated to, and had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true, and that said "Gulf Ether Gasoline" is comparable in value to and gives equal performance with, various types of high-test gasolines and ethyl gasoline. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondents, a number of the consuming public have purchased a substantial volume of corporate respondent's "Gulf Ether Gasoline" with the result that trade has been unfairly diverted to the respondents from competitors engaged in the business of distributing and selling various types of high-test gasolines and ethyl gasolines, and who truthfully advertise their products, and also from competitors engaged in the distribution and sale of ordinary grades of gasoline, who truthfully advertise their respective products, both as to quality and efficiency of performance. As a result thereof, substantial injury has been, and is now being, done by respondents in competition, in commerce among and between the various states.

PAR. 10. 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 Com-

mission, 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 the respondents, Gulf Coast Oil Company of Mississippi, Inc., and Anthony Paciera, 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 J. T. Welch, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Bernard Titche, Jr., attorney for the respondents; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, on February 17, 1937, the respondents filed a motion for permission to withdraw the answer theretofore filed and to substitute therefor an answer admitting all of the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. The Commission, by order entered herein, granted respondents' motion, and said substitute answer was duly filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, testimony and other evidence and said substitute answer 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. Gulf Coast Oil Company of Mississippi, is a corporation organized, existing and doing business under the laws of the State of Mississippi. Its principal office and place of business is located at 3331 St. Charles Avenue, in the city of New Orleans, La. Anthony Paciera is a resident of the city of New Orleans, La., and is president of the corporate respondent. He is actively in charge of its affairs and directs and controls all of its policies and business operations. He is the originator of the various forms of advertising and business methods which have been adopted and followed by the corporate respondent. Since about January 1, 1933, the respondents have been continuously engaged in the business of selling and distributing gasoline and motor oils both to dealers purchasing in bulk for resale and to consumers for use. The present customers of the corporate respondent who purchase these products for resale to the consuming

public are: Hospital Grocery, Gulfport, Miss.; Smith Brothers, Landon, Miss.; and Weider Service Station, Ocean Springs, Miss. The corporate respondent also operates a number of automobile service stations, commonly known as filling stations, in the city of New Orleans, La., and in ten or fifteen other cities or towns in that State. It also operates stations in the cities of Biloxi, St. Louis, Picayune, Poplarville, and Hattiesburg in the State of Mississippi, and in the cities of Mobile and Birmingham in the State of Alabama.

PAR. 2. The corporate respondent causes said gasoline and motor oils, when sold, to be transported from its office and principal place of business, or from its storage tanks located in the State of Louisiana, or from the refinery or other seller from whom it purchases said products, to the purchasers thereof located at various points in States of the United States other than the State of Louisiana or other than the State of origin of said shipment. When dealers, purchasing for resale, order gasoline or motor oils from the corporate respondent, said products are delivered to said purchasers from the corporate respondent's storage tanks located in the State of Louisiana by trucks owned and operated by the corporate respondent. The total business done by the corporate respondent with dealers purchasing for resale amounts to approximately \$1,000 per month. The corporate respondent supplies the filling stations which it operates in the States of Louisiana, Mississippi, and Alabama with gasoline and motor oils, either through tank trucks operated by it which withdraw gasoline from its storage tanks in the State of Louisiana and deliver said products to the respective stations, or through shipments of railroad tank car lots of said products to the respective stations. Whenever a railroad tank car shipment is made to one of said stations, the shipment originates at the refinery in the State of Louisiana and is shipped direct from such seller's place of business to the respective stations, some of which are located in Mississippi and others of which are located in the State of Alabama.

PAR. 3. The respondents are engaged in substantial competition with other corporations, firms, and individuals likewise engaged in the business of distributing and selling gasoline and motor oils in bulk to retail dealers for resale and to consumers for use, in commerce among and between the various States of the United States. The respondents' monthly sale of gasoline amounts to approximately 300,000 gallons.

PAR. 4. Among the respondents' competitors is the Gulf Refining Company, a corporation, which is also engaged in the sale and distribution of gasoline and motor oils in bulk to retail dealers for resale and to consumers for use in the States of Louisiana, Mississippi, and

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Alabama. Since 1905 the Gulf Refining Company has built up a wide reputation and extensive good-will among the users of the products which it sells and said products are well and favorably known to the public generally.

A special feature of its advertising that has been used to a great advantage for a period of many years is a sign in the form of a metal disk, colored orange and bearing the one word "Gulf" in large black or dark blue shaded letters. The sign is usually suspended in front of the stations selling the products of the company and on its equipment generally. Prospective customers have been urged through various mediums, over a period of many years, to buy—"At the Sign of The Orange Disk." The printed reproduction of the disk is the trade mark used to identify all the products of the company and is painted upon its tanks, trucks, and other equipment. For a period of at least ten years all of the storage tanks, gasoline pumps, tank trucks, and equipment of the filling stations owned by the company have had the word "Gulf" printed thereon in letters of the same character and color as those on the disk above referred to and described.

The petroleum products distributed and sold by the Gulf Refining Company include certain brands of gasoline and motor oils designated by it as "Gulf Supreme Motor Oil," "Gulfpride Oil," and "Gulf No-Nox Ethyl Gasoline." The names by which these products are designated have been for a long time featured by the Gulf Refining Company in all forms of its advertising at great expense and are definitely associated with and form an important part of the general public's conception of the Gulf Refining Company and its products. The gasoline designated as "Gulf No-Nox Ethyl" sold by it is composed of a mixture of ordinary gasoline and tetraethyl lead which is added to the gasoline for the purpose of increasing the efficiency of such gasoline as a fuel for modern type automobile motors. Gasoline to which tetraethyl lead has been added is also extensively advertised and sold by other competitors of the respondents who make use of the word "Ethyl," either alone or in conjunction with their own respective trade or corporate names, in advertising and designating their respective gasoline products. The use of the word "Ethyl" to describe a certain type of gasoline, to wit: ordinary gasoline to which tetraethyl lead has been added in sufficient quantities to raise the rating of said gasoline to a minimum of seventy-five (75) octanes, forms a distinctive and valuable advertising asset as the superior quality of and superior performance given by various types of "Ethyl" gasoline are well known to, and appreciated by, the con-

suming public generally who pay a premium to obtain gasoline of that character.

Many of respondents' competitors who sell gasoline to which tetraethyl lead has been added as described herein, make use of the word "Ethyl" as part of the brand name under which their respective gasolines are sold and they display the word "Ethyl," either alone or in conjunction with their respective trade names on the various pumps from which said gasolines are dispensed. The pumps used by the Gulf Refining Company, its agents and dealers generally in dispensing gasoline of this type bear the words "Gulf No-Nox Ethyl Gasoline."

PAR. 5. Since about January 1, 1933, the corporate respondent has featured in all of its display advertising, on signs at various of its stations, on gasoline pumps, trucks and other equipment, the word "GULF," either alone or in printed letters substantially larger than those of the other words in connection with which it is used. The word "GULF" is always printed in shaded letters of the same type and black or deep blue color substantially the same as the letters and colors used by the said Gulf Refining Company in its printing and use of the word "GULF."

Respondents have also extensively advertised one brand of the corporate respondents gasoline products as "Gulf Supreme Gasoline." The name of this brand of gasoline is featured on signs posted in and about the various filling stations. These signs are about two and one-half feet high and eight to ten feet long, and are placed on a standard so that the sign is high enough up to give clearance to cars passing thereunder, and is, at many stations, illuminated by electric lights at night. On these signs the word "GULF" appears in letters twice as large as the words "Supreme" and "Gasoline." The word "Supreme" on these signs is emphasized generally by enclosing said word in quotation marks. The respondents' corporate name, Gulf Coast Oil Company of Mississippi, Inc., sometimes appears on said signs in letters approximately one-third the size of the lettering in the words "Supreme" and "Gasoline." The word Gulf is printed in letters of the same type and with the same coloring as used by the Gulf Refining Company in its printing and use of the word "GULF." The advertising of respondents' "Gulf Supreme Gasoline" has been conducted further by means of radio broadcasts over radio stations WSMB and WWL. Both of these stations are of sufficient power to carry the programs emanating therefrom to, into and through States of the United States other than the State of Louisiana. Station WWL is a powerful station and its program can be heard all over the United States. Respondents'

various broadcasts are devoted entirely to advertising the gasoline designated as "Gulf Supreme Gasoline" and call attention to the location of stations at which it may be obtained. The respondent's corporate name is not generally mentioned in these broadcasts.

The principal type of gasoline now sold by the corporate respondent is designated and advertised extensively in newspapers having an interstate circulation and in other ways as "Gulf Ether Gasoline." Gasoline pumps at the respondents' various filling stations located in the States of Louisiana, Mississippi, and Alabama have printed thereon in large letters the words "Gulf Ether Gasoline." This particular type of gasoline is produced by adding small quantities, approximately eight (8) gallons, of commercial ether to a tank car of approximately 8,000 gallons of ordinary gasoline. The amount of ether added to said gasoline forms a small and insignificant part of the total volume of said gasoline when mixed. The addition of such a small amount of commercial ether fluid, a highly volatile gas, to ordinary gasoline does not affect said gasoline to any noticeable extent and is not beneficial to said gasoline. The addition of ether in such quantities does not increase the value, potency or power of said gasoline. The use of such quantity of commercial ether added to ordinary gasoline does not make said gasoline any more beneficial to automobile motors and does not decrease the tendency of the motor to knock or detonate. Gasoline to which such quantity of ether fluid has been added does not perform with comparable efficiency to gasoline to which tetraethyl lead has been added in such quantities as to raise the octane rating to 75.

The word "Ether" when used in connection with the word "Gulf" and "Gasoline" is a colorable imitation and simulation of the term "Gulf No-Nox Ethyl Gasoline" and of the term "Ethyl Gasoline" as rightfully used by the Gulf Refining Company and many of the competitors of the respondents.

The respondents have also made use of the terms "Pride of the People" and "Gulf 'Pride' Motor Oil" to designate certain types of motor oil sold by the corporate respondent. Certain of the corporate respondent's signs and equipment, including oil containers and oil pumps display the term "Pride of the People."

The respondents have widely advertised the corporate respondent's "Gulf Ether Gasoline" and its "Pride of the People" and "Gulf 'Pride'" lubricating oils in newspapers of general circulation throughout the States of Louisiana, Mississippi, and Alabama.

PAR. 6. Neither the Gulf Refining Company nor the Ethyl Gasoline Corporation have given their permission to the respondents to use, in the manner herein set out, or in any other manner, the terms

"GULF," "Gulf Supreme Motor Oil," "Gulfpride Oil," "Gulf No-Nox Ethyl Gasoline," or "ETHYL" in designating the respondents' various gasoline and motor oil products.

The use by the respondents in the manner described herein of the brand name "GULF" and of the terms "Gulf Supreme Gasoline," "Gulf Ether Gasoline," and "Pride of the People," and "Gulf 'Pride' Motor Oil" is such as to be colorable imitations and simulations of the aforesaid trade name of the Gulf Refining Company and its brand names for various gasolines and motor oils sold by it over a period of many years and the use of the term "Ether" in describing corporate respondent's gasoline is such as to be a colorable imitation and simulation of the registered trade name "ETHYL" as used by the Ethyl Gasoline Corporation and its various licensees.

PAR. 7. The acts and practices of the respondents, as detailed hereinabove, in imitating and simulating the products of the Gulf Refining Company and of other distributors selling various types of "ETHYL" gasoline has the capacity and tendency to confuse and mislead the trade and the public generally with respect to the nature, quality, and origin of the various products sold by the corporate respondent. Under the ordinary conditions prevailing in the usual course of business in the sale of gasolines and motor oils the acts and practices of the respondents are such that members of the public may be induced, by reason of such simulation and imitation of trade-marks and trade names as herein set out, to buy the corporate respondent's gasoline, motor oil, and other products in the belief that they are purchasing gasoline, motor oil, and other products distributed and sold by the Gulf Refining Company, its agents and dealers or gasoline distributed by other competitors of the respondents who are licensees of the Ethyl Gasoline Corporation.

PAR. 8. Various types of gasoline perform with varying degrees of efficiency. The quality or grade of gasoline, with respect to eliminating motor knock or decreasing the tendency of the motor to detonate, is susceptible of measurement and determination. This standard of measurement is expressed in terms of octane value. The gasoline having the highest octane rating is considered by the trade, and the purchasing public, to be the best and commands a higher price or premium accordingly. Gasolines to which tetraethyl lead is added, and which are sold to the trade and public as "ETHYL" gasoline have an octane rating of not less than 75 octanes.

The respondents, in all of their advertising, radio broadcasts, newspaper advertising, and otherwise, represent that the corporate respondent's "Gulf Ether Gasoline" tests 70 octanes and is equivalent

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to high test premium gasoline and to "ETHYL" gasoline for which a premium is charged. The gasoline sold by the corporate respondent at the time the hearings were conducted in August, 1936, and prior thereto, did not always have the same octane rating. Different lots of gasoline purchased by the corporate respondents for resale varied in octane value from 66 octanes up to 68 or 69 octanes. The greater percentage of the purchases made were of 66 to 68 octane gasoline. Gasoline having an octane rating of 70 or less is not comparable to either "ETHYL" or to other high test premium gasoline in performance or in elimination or reduction of motor knocks and detonation. The amount of ether added to respondents' 66 to 68 octane gasoline is sufficient to raise the octane rating as much as one point.

PAR. 9. The statements and representations made by the respondents with respect to the quality of the corporate respondent's "Gulf Ether Gasoline" and its effectiveness in use, in offering for sale and selling said "Gulf Ether Gasoline" were calculated to, and had and now have, the tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous beliefs that said representations are true and that said "Gulf Ether Gasoline" is comparable in value to, and gives equal performance with, various types of high test premium gasoline and "Ethyl" gasoline.

As a direct consequence of the mistaken and erroneous beliefs induced by the aforesaid acts and representations of the respondents, a number of the consuming public have purchased a substantial volume of corporate respondent's "Gulf Ether Gasoline" with the result that trade has been unfairly diverted to the respondents from competitors engaged in the business of distributing and selling various types of high test premium gasolines and "ETHYL" gasolines and who truthfully advertise their products and also from competitors engaged in the distribution and sale of ordinary grades of gasoline, who truthfully advertise their respective products, both as to quality and efficiency of performance.

CONCLUSION

The aforesaid acts and practices of the respondents, Gulf Coast Oil Company of Mississippi, Inc., and Anthony Paciera, 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."

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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, testimony and other evidence taken in support thereof and upon the answer filed herein on February 17, 1937, by the respondents, Gulf Coast Oil Company of Mississippi, Inc., and Anthony Paciera, admitting all the material allegations of the complaint to be true and waiving the taking of further testimony and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusions 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, Gulf Coast Oil Company of Mississippi, a corporation, its officers, and Anthony Paciera, an individual, and their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of gasoline, motor oils, and other petroleum products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, in their advertising or in any other manner, by use of the trade name "ETHYL," or by use of the word "Ether," or any other word or words closely simulating the trade name "ETHYL," either alone or in conjunction with any other word or words, or by use of any other means or device, that the gasoline sold by respondents contains tetraethyl lead or "ETHYL" fluid or that the respondents are licensees of the Ethyl Gasoline Corporation;
2. Representing, through use of the words or brand names "GULF," "Gulfpride," "Gulf 'Pride'," "Gulf Supreme" and "Pride of the People," or any other words closely simulating the aforesaid trade or brand names, either alone or in conjunction with any other word or words, or through the use of any symbol, term, or device, that respondents gasoline and motor oil products are those of the Gulf Refining Company;
3. Representing, directly or indirectly, through any means or device that respondents' gasoline products have an octane rating higher than they actually possess;
4. Representing, directly or by implication, through any means or device, that respondents' gasoline products are the equal in elimination or reduction of motor knocks, detonation, or performance to

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"premium" gasolines having octane ratings of 75 or more, or to gasoline products which in fact have a higher octane rating than respondents' gasoline and from comparing respondents' gasoline to "premium" gasolines having a higher octane rating than respondents' gasoline without specifically stating the respective ratings of each gasoline;

5. Using the word "Gulf" alone or in conjunction with any other word or words as a brand or trade name for their gasoline or motor oil products, or in advertising, or in any other manner, unless the word "Gulf" shall have the word "Coast" placed in close proximity thereto in letters of the same type and size and of equal prominence.

Provided, however, That the respondents are not hereby prohibited from using their entire corporate name or from using any trade or brand name which includes the words "Gulf Coast," in any manner so long as the use thereof does not conflict with section 5 hereof, or from using a yellow or orange color scheme on their stations, gasoline pumps, and other equipment.

It is further ordered, That the respondents shall, within 60 days of 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
PLANTATION CHOCOLATE COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2777. Complaint, Apr. 21, 1936—Decision, Mar. 4, 1937

Where a corporation, engaged in manufacture and sale of "straight" goods candy and of so-called "break-and-take" assortments, principal trade demand for which comes from the small retailers, with stores in many instances near schools and patronized by school children, and sale and distribution of which candy, affording with sale thereof to public opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children, principal consumers or purchasers of such type of candy and largest class by far thereof, 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 selling of which in the market of the other, i. e., the "straight" goods has been followed by marked decrease in sales of such "straight" candy due principally to gambling or lottery feature connected with so-called "break-and-take" merchandise—

Sold to wholesale and retail dealers its so-called "Here-Tiz" assortments, composed of a number of small penny pieces of chocolate-covered candy of uniform size and shape, the color of the concealed centers of a small number of which differed from that of the majority thereof, together with a number of larger pieces of candy to be given as prizes to those procuring one of said pieces, colored center of which differed, as aforesaid, from majority thereof, and also together with a still larger piece, to which purchaser of last piece of aforesaid chocolate-covered candies was entitled without charge; so assembled and packed that such assortments might be, and were, displayed and sold to consuming public by numerous retail dealers purchasers thereof in accordance with above-described plan, and with knowledge and intent that such assortments could and would thus be resold to public by retail dealers by lot or chance without alteration, addition, or rearrangement, as above set forth, 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, especially among children, 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 some of whom, for such reasons, refuse to sell candy so packed and assembled that it can be resold to public by lot or chance;

With result that some competitors began sale and distribution of candy for resale to public as above set forth, to meet competition of those manufacturers who thus sold and distributed their candy, for which product as thus sold there is demand; sales of "straight" candy of aforesaid refusing competitors who can compete on even terms only by giving same or similar devices to retailers, showed a continued decrease; public and competitors were prejudiced and injured, and trade was diverted from latter to it, and

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there was a restraint upon and a detriment to the freedom of fair and legitimate competition in industry involved:

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.

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 Plantation Chocolate Co., 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 the State of Pennsylvania with its principal office and place of business located at 3150 Janney Street, 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, jobbers, and retail dealers, located at points in the various States of the United States and causes and has caused its 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 since on or about December 1935, to wholesale and retail dealers 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, 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 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 a still larger piece 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 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, 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 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 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 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 April 21, 1936, issued and served its complaint in this proceeding upon the respondent, Plantation Chocolate Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent filed no answer thereto, but 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 said testimony and other evidence were duly recorded and filed in the office of the Commission. Respondent was not represented by counsel and offered no testimony or other evidence.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, and brief of counsel for the Commission 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 respondent, Plantation Chocolate Co., Inc., is a corporation organized under the laws of the State of Pennsylvania, with its principal office and place of business located at 3150 Janney Street, Philadelphia, Pa. Respondent is now, and for several years last past has been engaged in the manufacture of candy in Philadelphia, Pa., and in the sale and distribution of said candy to retail and wholesale dealers located in the State of Pennsylvania and in the majority of 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 Philadelphia, Pa., to purchasers thereof in Pennsylvania and 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 was an assortment designated as "Here Tiz," composed of a number of small chocolate covered pieces of candy of uniform size and shape, together with a number of larger pieces of candy and one still larger piece of candy. The larger pieces of candy and the largest piece of candy were given as prizes to the purchasers or consumers of said chocolate covered candies, in the following manner:

The majority of the said chocolate covered candies in said assortment had white centers, but a small number of said chocolate covered candies had pink centers. The color of the centers of the said chocolate covered candies was effectively concealed from purchasers and prospective purchasers until a selection had been made and the particular piece of candy broken open. The said chocolate covered candies retailed at the piece of 1¢ each, but the purchaser or consumer who procured one of the said candies having a pink center was entitled to receive, and was given free of charge, one of the larger pieces of candy. The purchaser of the last piece of said chocolate covered candy was entitled to receive, and was given free of charge, the largest piece of candy in said assortment. The larger pieces of candy in said assortment were thus distributed to purchasers of the small chocolate covered candies wholly by lot or chance.

PAR. 3. Candy assortments, involving the lot or chance feature, as described in paragraph 2 above, are generally referred to in the candy trade or industry as "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. 4. Numerous retail dealers have purchased assortments as described in paragraph 2 above, direct from respondent or from wholesale dealers and jobbers who in turn have purchased said assortments from respondent. Such retail dealers displayed said assortments for sale to the public as packed and assembled by the respondent, and the candy contained in said assortments was sold and distributed to the consuming public in accordance with the above described sales plan.

PAR. 5. All sales made by respondent were absolute sales, and respondent retained no control over the goods after they were delivered to the retail dealers or the wholesale dealers and jobbers. The assortments were packed in such manner that they could be displayed and offered for sale, and were 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 method 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 paragraph 2, respondent had knowledge that the said candy would be resold to the purchasing public by retail dealers by lot or chance, and it packed and assembled such candy in the way and manner described so that it might, 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 and have refused 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" 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 assortments are principally children, and because of the lottery or gambling feature connected with the "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" candy when the two types of assortments are displayed side by side.

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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" 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. 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" 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" candy.

PAR. 9. An officer of the respondent corporation was called as a witness and testified, and the Commission finds, that the total volume of respondent's business has been approximately \$175,000 annually, and that while the major part of respondent's business was the sale of "straight" merchandise, yet the exact proportions were not shown.

PAR. 10. 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 the public policy.

CONCLUSION

The aforesaid acts and practices of respondent, Plantation Chocolate Co., 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, testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and brief of counsel for the Commission; and the Commis-

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sion 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, Plantation Chocolate Co., 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 shall, within 30 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
EUCLID 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 2882. Complaint, July 28, 1936—Decision, Mar. 4, 1937

Where a corporation, engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and some of which consisted of a number of penny pieces of uniform size and shape, the concealed color of the centers of a small number of which differed from that of the majority thereof, together with a number of large bars to be given as prizes to purchasers of those pieces colored centers of which differed, as aforesaid, from the majority—

Sold to wholesalers and to retailers, for display and resale to 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, contrary to public policy long recognized by the common law and criminal statutes and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled or otherwise arranged and packed for sale to purchasing public as to involve a game of chance, or to adopt and use any method involving such a game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, 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 thereby induced to purchase such candy thus packed and sold by it in preference to that offered and sold by said competitors who do not use same or equivalent methods; and with tendency and capacity, because of said game of chance, to divert to it trade from its competitors, as aforesaid, exclude from such trade all competitors who are unwilling to and do not use such or an equivalent method because unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors as use same or an equivalent method, deprive 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 method:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Philip S. Ehrlich, of San Francisco, Calif., 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 Euclid 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, Euclid Candy Company, is a corporation organized and operating under the laws of the State of California, with its principal office and place of business located at 715 Battery Street, San Francisco, Calif. 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 San Francisco, Calif., 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 centers of the same color, but a small number of said pieces of candy have different colored centers; 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 with the center 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 purchaser of the last piece of candy of said uniform size also receives a large bar of candy. The color of the centers of 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 broken. 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.

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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 with 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 28, 1936, issued and served its complaint in this proceeding upon the respondent, Euclid Candy Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 4, 1936, The Euclid Candy Co. of California, Inc., filed its answer

dated August 31, 1936, in which answer it stated that it was the respondent designated in the complaint as Euclid Candy Company and admitted all the material allegations of the complaint to be true and stated that it 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 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 respondent, The Euclid Candy Co. of California, Inc., named in the complaint as Euclid Candy Company, is a corporation organized and operating under the laws of the State of California, with its principal office and place of business located at 715 Battery Street, San Francisco, Calif. 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 San Francisco, Calif., 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 centers of the same color, but a small number of said pieces of candy have different colored centers; 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 with the center 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 purchaser of the last piece of candy of said uniform size also receives a large bar of candy. The color of the centers of 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 broken. 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 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 in such a manner 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 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, The Euclid Candy Co. of California, Inc., named in the complaint as Euclid Candy 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

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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."

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, 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, The Euclid Candy Co. of California, Inc., named in the complaint as Euclid Candy Company, its officers, representatives, agents, and employees, in the offering for sale, sale, and distribution in interstate commerce of candy, do cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers and 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 and 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 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 purchasers procuring pieces of candy with a center of a particular color.

It is further ordered, That the respondent herein 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.

Complaint

IN THE MATTER OF
NATIONAL KREAM 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 2901. Complaint, Aug. 19, 1936—Decision, Mar. 4, 1937

Where a corporation, engaged in jobbing foodstuffs—

Sold a large variety of flavoring extracts, upon the bottle labels of which there were set forth an apparent depiction of an Italian coat-of-arms and various Italian words, indicating and implying to members of purchasing public that said extracts were prepared, compounded, and packaged by the National Chemical Laboratory, at Milan, Italy, and were imported into the United States, and that they had been awarded first prize at certain exhibitions in Milan and Florence, Italy, in competition with other flavoring extracts there exhibited; facts being said extracts were compounded and packaged in the State of New York by an American manufacturer, and said various representations were false;

With effect of misleading large number of Italian Americans who prefer, as superior to such products produced in this country, those produced abroad, into the belief that they were buying such imported and preferred extracts of Italian origin; and with capacity and tendency to mislead and deceive purchasing public into belief that said extracts, thus labeled, were compounded and packaged abroad and imported into this country, and to induce such public, acting in such erroneous beliefs, to buy its said products, and thereby unfairly divert trade to it from its competitors who rightfully and truthfully represent their merchandise, and do not in anywise falsely represent the same; 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. Astor Hogg for the Commission.

Mr. Henry Duke, of Long Island City, 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 National Kream Company, Inc., 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

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thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAFII 1. Said respondent, National Kream Company, Inc., is a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business at 360 Furman Street, Borough of Brooklyn, in the city and State of New York. Respondent is now and, for more than one year last past, has been, engaged in the business of a jobber of foodstuffs, including a variety of flavoring extracts. Respondent sells and distributes said products in commerce between and among the various States of the United States and the District of Columbia; 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.

PAR. 2. 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 corporations, individuals, partnerships, and firms engaged in the business of selling and distributing foodstuffs and flavoring extracts in 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, the respondent sells a large variety of flavoring extracts. To the bottles which contain said flavoring extract are affixed labels, containing a reproduction of what appears to be an Italian coat of arms and the following wording:

Brevetto No. C135—Registration 352

Estratti-Bertola

Insuperabili

Premiati-alle Esposizioni

Milano e Firenze—1903

ROSOLIO ROSA

Laboratorio-Chimico

Nazionale

Milano

Italia

PRODOTTI IMPORTATI

Agenti Generali

Paramount Sales Co.

N. Y. U. S. A.

½ Oz.

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The translation for the foregoing Italian wording is as follows:

Diploma No. C135—Registration 352

BERTOLA EXTRACT

Incomparable

First Prize at the Expositions

in Milan and Florence—1903

ROSOLIO ROSA

National Chemical Laboratory

Milan Italy

Imported Products

General Agents

Paramount Sales Co.,

N. Y. U. S. A.

½ Oz.

Said representations made upon the labels, as aforesaid, indicate and imply to the members of the purchasing public that the said flavoring extracts are prepared, compounded and packaged by the National Chemical laboratory at Milan, in Italy, and are imported into the United States. Said language further implies that the said product was awarded first prize at certain expositions in the cities of Milan and Florence, Italy, in competition with other flavoring extracts there exhibited. In truth and in fact, said flavoring extracts are not prepared, compounded and packaged by a National Chemical Laboratory in Milan, Italy, and are not imported into the United States; they were not exhibited at any Italian exposition, and were awarded no medals or other prizes; but, on the contrary, said flavoring extracts are prepared, compounded and packaged in the State of New York by an American manufacturer.

There is a large number of Italian-Americans among the purchasing public who show a preference for goods produced abroad, under the belief that they are superior to those produced in this country, said belief prevailing particularly in extracts and the like. These purchasers are led to believe, because of the statements contained on the label and the fact that said label is printed in the Italian language, that they are buying an imported extract of superior merit to the domestic product. There are among respondent's competitors many who sell both the domestic and imported products, and who, in the course and conduct of their business, honestly and truthfully represent their merchandise.

PAR. 4. The above and foregoing representations, as shown by the labels used by respondent, as described in paragraph 3, have the ca-

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capacity and tendency to, and do mislead and deceive the purchasing public into the belief that the said flavoring extracts so labeled are prepared, compounded and packaged abroad, and imported into the United States, and have the capacity and tendency to, and do induce the said purchasing public, acting in such erroneous belief, to purchase respondent's product, thereby diverting trade to the respondent from those of its competitors who do not misrepresent and falsely label their products; and in this manner respondent does substantial injury to competition in interstate commerce.

PAR. 5. The above acts and things done or 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 of Section 5 of "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 other purposes," the Federal Trade Commission, on the 19th day of August 1936, issued and served its complaint in this proceeding upon respondent, National Kream Company, Inc., a corporation, charging it with 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 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 Henry M. Duke, 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 and answer thereto, testimony and other evidence, and brief in support of the complaint (respondent's counsel having waived the filing of 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

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makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Kream Company, Inc., is a corporation organized and existing under the laws of the State of New York. Its office and principal place of business is located at 360 Furman Street, Borough of Brooklyn, in the city of New York in said State. For more than one year last past, respondent has been engaged in the business of jobbing food stuffs, including a variety of flavoring extracts. It sells and distributes said products in commerce between and among the various States of the United States and the District of Columbia, causing said products when sold, to be shipped 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. 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 partnerships, firms, and individuals engaged in the business of selling and distributing food stuffs and flavoring extracts 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 as aforesaid, respondent sells and has sold a large variety of flavoring extracts. To the bottles which contain said flavoring extracts are affixed labels containing a reproduction of what appears to be an Italian coat-of-arms and the following words:

Brevetto No. C135—Registration 352

Estratti-Bertola

Insuperabili

Premiati-alle Esposizioni

Milano e Firenze—1903

ROSOLIO ROSA

Laboratorio-Chimico

Nazionale

Milano

Italia

PRODOTTI IMPORTATI

Agenti Generali

Paramount Sales Co.

N.Y. U.S.A.

½ Oz.

The English translation of the foregoing Italian wording is as follows:

Diploma No. C135—Registration 352

BERTOLA EXTRACT

Incomparable

First Prize at the Expositions

in Milan and Florence—1903

ROSOLIO ROSA

National Chemical Laboratory

Milan Italy

Imported Products

General Agents

Paramount Sales Co.,

N. Y. U. S. A.

½ Oz.

PAR. 3. The representations made upon the labels as set forth in paragraph 2 hereof indicate and imply to the members of the purchasing public that the said flavoring extracts are prepared, compounded and packaged by the National Chemical Laboratory, at Milan, Italy, and are imported into the United States. Said language further indicates and implies that the said extracts were awarded first prize at certain expositions held in the cities of Milan and Florence, Italy, in competition with other flavoring extracts there exhibited. The representations made by respondent are false and misleading in that said flavoring extracts are not and were not prepared, compounded or packaged by National Chemical Laboratory of Milan, Italy, and are not and were not imported into the United States from any foreign country. They were not exhibited at any Italian exposition and were awarded no medals or other prizes. As a matter of fact, said flavoring extracts are and were prepared, compounded, and packaged in the State of New York by an American manufacturer.

PAR. 4. There are a large number of Italian Americans among the purchasing public who have and show a preference for flavoring extracts produced abroad under the belief that they are superior to those produced in this country. These purchasers are led to believe because of the statements contained on the labels and the fact that the said labels are printed in the Italian language, that they are buying imported extracts of Italian origin for which they have a preference.

PAR. 5. The above and foregoing representations, as shown by the labels used by respondent as described in paragraph 2 hereof, have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said flavoring extracts so labeled are

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and were prepared, compounded and packaged abroad, and imported into the United States; and have the capacity and tendency to induce the said purchasing public acting under such erroneous beliefs to purchase respondent's products, thereby unfairly diverting trade to the respondent from its competitors who rightfully and truthfully represent their merchandise and who do not in any wise falsely represent their products; and in this manner, respondent does substantial injury to competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent, National Kream 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, 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 of the Commission filed herein (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."

It is ordered, That the respondent, National Kream Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of flavoring extracts or compounds in interstate commerce and in the District of Columbia, do cease and desist

1. From directly or indirectly advertising, designating or representing, through the use of words of any foreign language, or symbols, or picturizations, or through any other means or in any manner, that flavoring extracts or compounds manufactured or compounded in the United States are manufactured or produced in Italy or in any other foreign country and imported into the United States;

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2. From directly or indirectly advertising, designating or representing, through the use of words, symbols or picturizations falsely indicating its flavoring extracts or compounds were exhibited at any exposition or awarded a prize at any such exposition, that such products are of superior merit.

It is further ordered, That the respondent shall, within 30 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 this order.

Syllabus

IN THE MATTER OF
KALO INOCULANT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2745. Complaint, Mar. 14, 1936—Decision, Mar. 10, 1937*

Where a corporation engaged in the sale and distribution of legume seed inoculants consisting of nitrogen-fixing bacteria in a humus base, under trade name "Humogerm," to wholesalers, retailers, and jobbers of seed, and through them, ultimately, to growers of leguminous crops who mix such inoculants with legume seed to promote growth of said crops and enrich soil in which same were grown; in advertising its said "Humogerm" in national and State farm magazines and in circulars, pamphlets, price lists, and other advertising matter distributed and circulated among its customers and prospective customers and furnished to its wholesale and retail customers to be passed on to the purchasing public, and through its labels, as the case might be—

- (a) Represented to its said wholesale and retail customers, and supplied them with the means of representing to the ultimate purchaser, that its said containers were packed with a definite, ascertainable, minimum number of nitrogen-fixing bacteria, facts being that at time in question company from which it made its purchases and which mixed bacteria with humus base before shipping same in bulk to it, did not definitely ascertain definite number of such bacteria put in any given quantity of humus, and such numbers as were put in were subject to constant change during course of shipment, repackaging, and sale to ultimate purchaser;
- (b) Represented through words "Guaranteed packed with" that each and every can of its said product contained a specified, definite, minimum number of living legume bacteria throughout the entire course of the distribution of said product and up to expiration date appearing on label of can, facts being there is no way known to science by which exact number of legume organisms can be determined in a can of inoculant as of the time the same reaches the farmer and no concern can truthfully guarantee that its product will, at that time, contain a definitely specified minimum number of such bacteria, and it did not know that there were present in its containers number and type of nitrogen-fixing bacteria stated and represented on its labels, and such number had not been and could not accurately be ascertained;
- (c) Represented that its said product contained fifty percent more nitrogen-fixing bacteria than that of any other inoculant, and that its said product cost three and one-third cents per billion bacteria, facts being that number of bacteria in each can constantly varied, depending upon conditions to which can had been exposed, lack of uniformity in mixing, shipping in bulk and repackaging, and that, while use of a sufficient quantity of bacteria to produce adequate nodulation is essential, measurement of the relative values of competing commercial inoculants cannot truthfully be based on

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the respective number of bacteria contained therein in relation to the price charged and paid therefor; and

- (d) Represented that, through use of the patent lid on its container, its product reached the ultimate purchasers in such condition that the nitrogen-fixing bacteria therein contained were more virile or efficacious than those sold by competitors, and that, through use of aforesaid patent lid on its containers, molds or other contamination were effectively prevented, facts being that many of its competitors provide and maintain equal virility and efficacy in their legume inoculants through other and similar means, and that humus, in which the bacteria are mixed and packed, is nonsterile and may and does have many other kinds and strains of bacteria, including molds;

With effect of misleading and deceiving dealers and purchasing public, who were induced by reliance upon the truth of such representations to buy said "Humogerm" in preference to other legume inoculants which were competitive both as to price and quality, and of thereby diverting trade to it from its competitors, including those who do not, in their advertising or labels, misrepresent the quantity of bacteria contained therein or that such numbers can be ascertained accurately, or otherwise, by false and misleading statements, induce and promote the sale of said products, or in any manner misrepresent the kind, condition, character, cost or efficacy of such competitive products:

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. PGad B. Morehouse for the Commission.

Mr. Joseph K. Moyer and *Mr. Craig L. Reddish*, of Washington, D. C., and *Mr. J. LeRoy Adair*, of Quincy, Ill., for respondent.

COMPLAINT ¹

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Kalo Inoculant 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 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 in September 1934, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of

¹ Extended quotation in Par. 2 of the complaint, from respondent's advertising matter with respect to its said product, "Humogerm," is set forth in the findings, *infra*, at page 814, and is omitted from the complaint as published in the interest of brevity.

business in the city of Quincy, in said State. It now is, and since its organization has been engaged in the sale and distribution of nitrogen-fixing bacteria with a humus base, packed in tin cans, under the trade name "Humogerm," to wholesalers, retailers, and jobbers of seed, and through them, ultimately, to growers of leguminous crops who mix the contents of said cans with the legume seed for the purposes of promoting the growth of said crops and enriching the soil in which said crops are grown. The aforesaid bacteria are micro-organisms known as "bacilli," "radicicola" and "rhizobia," which when mixed and planted with the seed, form nodules on the roots of the growing legume, resulting in the extraction of nitrogen from the air instead of from the soil, and the fixation of such nitrogen in the plant and surrounding soil, thereby substantially stimulating the growth of the legume crop. Respondent purchases in bulk the humus containing such bacteria from the Earp-Thomas Laboratories Corporation of Bloomfield, N. J., repackages it in small tin containers and sells the same in constant course of trade and commerce between and among the various States of the United States. In the course and conduct of its business it causes the said product, when sold to be shipped from its place of business in the city of Quincy, State of Illinois, into and through various States of the United States to the purchasers thereof. In the course and conduct of its said business, respondent now is and since the date of its organization has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution in interstate commerce of products used for similar purposes and of other commercial legume inoculators.

PAR. 2. In the course and conduct of its business as aforesaid, respondent, in soliciting the sale of and selling its said product "Humogerm" in interstate commerce, caused and causes the same to be advertised in national and state farm magazines and in circulars, pamphlets, price lists, and other advertising matter which it distributes and circulates among its customers and prospective customers. It also furnishes such advertising matter to its wholesale and retail customers to be passed on to the purchasing public to induce and promote the sales of its said product. In such advertising matter respondent makes the following representations and furnishes its wholesale and retail vendees with the means of making the same representations of fact as follows:²

²The extended quotation of respondent's advertising which follows at this point is set forth in Par. 3 of the findings, *infra*, at page 814, and is omitted from the complaint as published in the interest of brevity.

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Respondent's aforesaid product is packed in small round cans in six varieties, one variety for each type of legume seed with each variety in three sizes varying from four ounces to 2½ pounds. The size of each can is stated thereon in terms of the amount of seed which that particular can will inoculate. Each can is sealed with a small pinhole in the top to admit air. All cans are labelled in the same manner with the exception of the culture number, the amount of seed to be inoculated and the number of bacteria placed in the can as follows:

HUMOGERM Nitrogen Fixing Bacteria Prepared by Earp-Thomas Laboratories Exclusively for KALO INOCULANT CO., QUINCY, ILL.

On the reverse side of each can appears the following wording:

GUARANTEE

HUMOGERM is guaranteed packed with the number and type of high-bred nitrogen-fixing bacteria shown on the label, more than sufficient to inoculate the number of seeds specified. Because of conditions beyond our control field results can naturally not be guaranteed.

The top of each can contains the number of legume germs, the bushel size can being labelled as follows:

This Can Packed With Over 15 BILLION LEGUME GERMS

Each size can contains a similar statement as to the number of germs in proportion to the one bushel size. The culture numbers, size of the can, germ count and retail price appear in the following table:

Culture No.	Size		Price
	Bushel	Billion	
1 and 2.....	½	7½	\$0.35
1 and 2.....	1	15	.50
1 and 2.....	2½	37½	1.00
3, 5, 7, and 9.....	1	7½	.35
3, 5, 7, and 9.....	2	15	.50
3, 5, 7, and 9.....	5	37½	1.00

PAR. 3. By means of the statements above set out in paragraph 2 hereof, respondent misrepresents to its wholesale and retail customers and furnishes them with the means of misrepresenting to the ultimate purchaser as follows:

(a) That its said containers are packed with a definite ascertainable minimum number of nitrogen-fixing bacteria when such is not the case, but in truth and in fact the Earp-Thomas Laboratories Corporation which mixed the bacteria with the humus base before shipping

it in bulk to respondent, does not definitely ascertain the definite minimum number of such bacteria put in any given quantity of humus, and such numbers as are put in said humus are subject to constant change during the course of shipment and repackaging and sale to the ultimate purchaser.

(b) That each and every can of its said product contains a specified definite minimum number of living legume bacteria throughout the entire course of the distribution period of said product and up to the expiration date thereof appearing on the label of said can, when such is not the fact, and respondent does not know that its containers contain the number and type of nitrogen-fixing bacteria as stated and represented on its labels, the number of which bacteria has not been and can not be accurately ascertained.

(c) That its product contains 50% more nitrogen-fixing bacteria and that the bacteria count of each can of its product is 50% higher than that of any other inoculant when such is not the fact and such misrepresentation is a false disparagement of the products of respondent's competitors.

(d) That its said product costs $3\frac{1}{3}\phi$ per billion bacteria when such is not the fact, but the number of bacteria in each can constantly varies depending upon the conditions to which the can has been exposed, lack of uniformity in mixing, shipping in bulk and in repackaging, and when the measurement of the relative values of competing commercial inoculators can not truthfully be based on the respective number of bacteria contained therein in relation to the price charged and paid therefor.

(e) That by the use of the patent lid on its containers its product reaches the ultimate purchasers in such condition that the nitrogen-fixing bacteria therein contained are more virile or efficacious than those sold by competitors, when in truth and in fact many of its competitors by other and similar means provide for and maintain equal virility and efficacy in their legume inoculators.

(f) That by the use of the aforesaid patent lid on its containers, molds or other contamination is effectively prevented when in truth and in fact the humus in which the said bacteria are mixed and packed is non-sterile and may and does have many other kinds and strains of bacteria, including molds.

PAR. 4. There are among the competitors of respondent engaged in the sale and distribution of legume inoculators, as mentioned in paragraph 1 hereof, corporations, firms, partnerships and individuals who, in soliciting the sale of and selling their said products in interstate commerce, do not, in their advertising, or labels, misrepresent the

quantity of bacteria contained therein, or that such numbers can be accurately ascertained; or otherwise, by false and misleading statements, induce and promote the sale of their said products.

PAR. 5. The representations by respondent as set forth in paragraphs 2 and 3 hereof and each of them have the capacity and tendency to and do mislead and deceive dealers and the purchasing public who, relying upon the truth of the said representations, are thereby induced to purchase "Humogerm" in preference to other legume inoculants which are competitive both as to price and quality, thus diverting trade to respondent from its competitors who do not in the aforesaid or in any other manner misrepresent the kind, condition, character, cost or efficacy of such competitive products.

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 March 14, 1936, issued and served its complaint in this proceeding upon respondent Kalo Inoculant 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 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. Norwood, an examiner of the Commission theretofore duly designated by it, and no testimony or other evidence was introduced on behalf of respondent in opposition thereto. Whereupon respondent, by its attorney J. LeRoy Adair submitted a motion for leave to withdraw its said answer and to substitute therefor an answer admitting all of the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which said motion, by order entered herein, the Commission granted, and the said substitute answer and testimony and other evidence were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the

said complaint, testimony, other evidence and the substituted answer, 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 corporation, Kalo Inoculant Company, was organized in September 1934, under the laws of the State of Illinois, and has its principal office and place of business at 1007 Main Street, in the city of Quincy in said State. It is now, and since its organization, has been engaged in the sale and distribution of legume seed inoculants consisting of nitrogen-fixing bacteria in a humus base, under the trade name "Humogerm," to wholesalers, retailers, and jobbers of seed, and through them, ultimately, to growers of leguminous crops who mix such inoculants with legume seed for the purposes of promoting the growth of said crops and enriching the soil in which said crops are grown. The aforesaid bacteria are micro-organisms known to science as "bacilli radiculicola" and "rhizobia," which, when of proper virility and mixed with the seed in sufficient quantities to inoculate the same, form nodules on the roots of the growing legume, resulting in the extraction of nitrogen from the air, instead of from the soil, and the fixation of such nitrogen in the plant and surrounding soil, thereby substantially stimulating the growth of the legume crop.

From September 1934 until approximately July 1, 1935, the Kalo Company, an Illinois corporation of which this respondent is a wholly controlled subsidiary selling agent, purchased the aforesaid product in bulk from the Earp-Thomas Laboratories Corporation of Bloomfield, N. J., where it was produced in the following manner:

Mother cultures of each type of legume organism were grown in small bottles of agar jelly, these having been developed some twenty years ago by Doctor Earp-Thomas. From these small amounts of culture were introduced into a series of thirty-two ounce bottles, some containing liquid media, some solid media; the solid media being the standard agar jelly. These bottles and their contents were sterilized by being placed in an autoclave at high temperature, which kills all organisms. After the cultures were introduced the large bottles were permitted to incubate for a period of eight days to three months, depending on the amount of Humogerm to be produced. At this time the bacteria would have grown and multiplied to the highest number, and the contents of six of the bottles containing the agar media, and three of those containing the liquid media were introduced

into each one hundred pounds of humus. From the examination of the laboratory and processes used it definitely appeared that the cultures were sterile and pure at the time they were mixed with the humus. The humus was then permitted to dry for several days, and when in moist condition was placed, prior to about April 1935 in "Bemis" or burlap bags, and for a time thereafter into waterproof airtight paper-lined bags and shipped to the Kalo Company. Tests were made by the Earp-Thomas Laboratories from time to time of sample thirty-two ounce bottles, and in that way an estimate was by Earp-Thomas Laboratories made of the number packed into each one hundred pounds of humus. The estimate therefrom being made as a definite amount of the humus was placed in each can by the Kalo Company. In addition to the tests on the thirty-two ounce bottles, the Kalo Inoculant Company returned one can from each batch of humus, consisting of from eight to twenty bags, to the Earp-Thomas Corporation for testing purposes. Then tests of those samples were made by the plate count method for the number of organisms, and by the Wilson test, to determine sufficient nodulation.

The Wilson test consists of an actual demonstration of the inoculating efficiency (or lack of it) on growing legume plants under controlled conditions, the alleged inoculant being mixed with the seeds, which are then planted, and the ensuing growth of the plants and the number of root nodules checked and recorded.

It took four days for the samples to reach the Earp-Thomas Laboratories, four to eight days to make the plate count, and two or more days to notify the distributor of the results. A period of over two weeks thus sometimes elapsed between the time the humus was received by the Kalo Inoculant Company and the time when the condition was made known by the tests. By that time most of the product might have been packed and sold by the Kalo Company. The Wilson test took from three to six weeks, so that the results of such test were not effective to prevent the sale of any humus found thereby to be unsatisfactory. During the season from the fall of 1934 to April 1935, a total of approximately thirty-eight thousand five hundred pounds of the product was shipped to the Kalo Company, and of this amount eleven hundred pounds were returned, as unsatisfactory as the result of the test made. This occurred during the time Bemis bags were in use.

In July 1935, the Earp-Thomas Laboratories Corporation employed an additional bacteriologist at Bloomfield, N. J., whose duties consisted chiefly of growing, checking, rechecking, and counting the bacteria which was shipped to the Kalo Company in sealed labora-

tory jars in which the bacteria continued to grow after leaving the laboratory. On September 1, 1936, respondent changed its entire method of obtaining and preparing its product for distribution and sale and employed a competent bacteriologist at its plant in Quincy, Ill., who is in complete charge of the production of bacteria for respondent's inoculant, and since that time respondent has not obtained such bacteria in any form from the aforesaid Earp-Thomas Laboratories Corporation in New Jersey.

Since September 1936, respondent's product has been prepared for distribution and sale at Quincy, Ill., under the complete supervision of such bacteriologist who first determines the type of the bacteria through original strains used for inoculating the agar cultures. An aqueous suspension is prepared from the agar cultures contained in thousands of thirty-two ounce bottles, and after the bacteria are washed off the agar into the said liquid suspension contained in five gallon cans, their number is by him ascertained by what is known as the Petroff-Hauser method. This method consists of a direct count and is a scientifically approved method of making a count of pure cultures of any type of bacteria, having been in use for several years. The liquid or aqueous suspension is thoroughly stirred, a sample removed, a proper dilution made, and the organisms, which are contained in a small chamber on a plate, directly counted under a microscope. Whereas the bacteriological plate count counts the colonies that develop from the organisms in solution after a necessary period of incubation, it is not necessary to wait for colonies to form to make the count by the Petroff-Hauser method. By such method, respondent, since its adoption, can and does ascertain with a reasonable degree of certainty the number of bacteria in each 5 gallon can of liquid suspension, two of which are thoroughly mixed with each 200 lbs. of humus, and respondent can therefrom compute with reasonable accuracy the minimum number of organisms with which the small 4 ounce to 2½ lb. cans are packed for sale and distribution. However, after packing, respondent cannot know with any certainty whatever, for the reasons below set out, the minimum number of such organisms at any other time than when packed.

PAR. 2. Legumes or Leguminosae are one of the plant families having separate visible structural characteristics. Consisting of thousands of plants, the ones of particular economic and agricultural importance are the alfalfa and sweet clover group, the common clover group, such as red mammoth, alsike, and white, the pea group, the field bean group, and the soy bean group. Legume crops are of value to the farmer by virtue of an ability to utilize free nitrogen

resources of the air, and, if inoculated, will have a higher nitrogen content than otherwise, and thus both stimulate themselves and increase the fertility of the soil. Also such crops are valuable by reason of their ability to survive drouth and to grow under extremely unfavorable conditions.

It has been ascertained that about four-fifths of the air by volume is nitrogen and that this nitrogen may be transferred successfully from the air to the soil by what is known as nitrogen fixation.

There are thousands of micro-organisms in various soils. Some of such micro-organisms are radicle bacillus, actinomycetes, azotobacter, fungi, molds, etc. One of these soil organisms was discovered in 1897 in Germany and a Mr. Reiche, in 1908, brought the knowledge of it to America. This bacterium is known to scientists as "bacillus radicle", and "rhizobium".

These bacteria, when mixed with legume seed before sowing, have the peculiar property of being able to infect the root of the plant. When the root is so infected a rapid increase of cell structure takes place becoming visible in time and this is called a nodule. The physiological relationship then taking place between the plant and the nodule results in the stimulation of the plant and an increase in the nitrogen content of the plant and thus the farmer, who has an inoculated legume crop, is obtaining a very valuable chemical element for the soil instead of depleting the nitrogen resources of the soil. This is what is known as nitrogen fixation or symbiosis. Symbiosis means merely a mutual exchange of the plant's carbohydrates and sugar produced by rain, sunlight and air, for the nitrogen fixation produced by bacterial infection and sometimes this is called symbiotic nitrogen fixation.

For the different groups of legumes above enumerated, different species of bacillus radicle have been isolated by the bacteriologists through experimentation, finally selecting the particular species best suited to growth upon the host plant of each particular group.

Owing to the non-sterile character of the media into which the radicle or rhizobium are packed for commercial purposes, the inoculant when packed contains many other bacteria and micro-organisms foreign thereto, such as actinomycetes, azotobacter, fungi or molds which begin to absorb the food contained in the media, increasing in numbers very greatly during the first few weeks and thereafter, by reason of many factors such as depletion of food supplies, excreta, contaminating conflicts, etc., the radicle or rhizobium begin rapidly to die so that after a period of approximately 23

weeks, even under proper conditions, the aforesaid increase is totally obliterated and the curve of viability or longevity of the proper germ content of the can is still decreasing. Therefore, according to the expert bacteriological testimony, one would not expect after a period of 105 to 160 days to find over ten per cent of the original number alive in an unsealed container.

The containers used by all concerns distributing commercial inoculants admit air either through a small pin hole or through the porous material of the container itself, and respondent's container has a patented air vent in the lid thereof for the purpose of preventing any outside contamination or molds entering the can after packing. There is no way known to science by which the exact number of legume organisms can be determined in a can of inoculants as of the time the same reaches the farmer, and no concern can truthfully guarantee that its product will at that time contain a definitely specified minimum number of such bacteria. Furthermore, while it is essential that there be a sufficient quantity of bacteria when used to produce adequate nodulation, the measurement of the relative values of competing commercial inoculants cannot truthfully be based solely upon the respective number of bacteria contained therein in relation to the price charged and paid therefor.

PAR. 3. Respondent causes its said product when sold to be shipped from its place of business in the city of Quincy, State of Illinois, into and through various States of the United States to the purchasers thereof. In the course and conduct of its said business, respondent now is and since the date of its organization has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution in interstate commerce of products used for similar purposes and of other commercial legume inoculators.

In the course and conduct of its business as aforesaid, respondent, in soliciting the sale of and selling its said product "Humogerm" in interstate commerce, caused and causes the same to be advertised in national and state farm magazines and in circulars, pamphlets, price lists, and other advertising matter which it distributes and circulates among its customers and prospective customers. It also furnishes such advertising matter to its wholesale and retail customers to be passed on to the purchasing public to induce and promote the sales of its said product. In such advertising matter respondent makes the following representations and furnishes its whole-

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sale and retail vendees with the means of making the same representations of fact as follows:

(a) MAKE MORE PROFIT with HUMOGERM 50% MORE NITROGEN FIXING BACTERIA

The Bacteria count on each can of HUMOGERM is 50% higher than that of any other inoculant, FIFTEEN BILLION PER SMALL SEED BUSHEL.

AT A NEW LOW PRICE

The same high quality of culture which formerly sold for over \$1.00 per bushel is now sold at a popular low price to furnish to the farmer

HIGH-BRED SELECTED BACTERIA AT 3½ CENTS PER BILLION thus making HUMOGERM by far the greatest value on the market today, and the lowest priced inoculant to use.

In addition, HUMOGERM now comes in a new modern package, with a beautiful three color varnished label, retaining the exclusive Earp-Thomas patent lid which provides air, which nitrogen fixing bacteria must have to live and grow, also protects against molds and other outside contamination, and retains the necessary moisture.

PROTECT YOUR SEEDS, YOUR CUSTOMERS, YOUR PROFIT

Even poor seed inoculated with HUMOGERM may produce better than untreated good seed. Good seed inoculated with HUMOGERM builds more business and profit for you.

KALO INOCULANT COMPANY

Quincy, Illinois.

Sell HUMOGERM with each lot of legume seed, and increase your customers' satisfaction. Recommend this superior culture because it actually delivers more live virile bacteria to the grower at planting time.

HUMOGERM is fresh for your protection.

Each can is dated to insure the grower receiving fresh, live virile, NITROGEN FIXING BACTERIA and may be exchanged for new HUMOGERM when the dating expires.

It is furnished in the following culture groups

- No. 1. For Red, Mammoth, Alsike, Crimson and White Clovers.
 - No. 2. For Alfalfa, all Sweet Clover, Hubam and Bur Clovers.
 - No. 3. For all Vetches, Field and Garden Peas, Austrian Winter Peas, Broad Beans, Sweet Peas, Perennial Peas.
 - No. 5. For Garden Peas and Beans, Sweet Peas, Field Beans, Navy Beans, Scarlet Runner Beans.
 - No. 7. For Cow Peas, Peanuts, Lima Beans, Velvet Beans, Lespedeza.
 - No. 9. For Soy Beans (any variety).
- GARDEN SIZE.** For Sweet Peas, Garden Peas or Beans, Lupines.
Now 50 Cents Per Bushel (small seeds)

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(The price the farmer wants to pay:)

	<i>Dealer price dozen</i>	<i>Retail price each</i>
Cultures 1 & 2 (Small seeds)		
½ bu. (for 30 lbs. seed)-----	\$2. 80	\$0. 35
1 bu. (for 60 lbs. seed)-----	4. 00	. 50
2½ bu. (for 150 lbs. seed)-----	8. 00	1. 00
Cultures 3-5-7 & 9 (Large seeds)		
1 bu. (for 60 lbs. seed)-----	2. 80	. 35
2 bu. (for 120 lbs. seed)-----	4. 00	. 50
5 bu. (for 300 lbs. seed)-----	8. 00	1. 00
Garden Size-----	1. 20	. 15

ALL LEGUMES

SHOULD BE

INOCULATED

with

Earp-Thomas Process

Moist Powder

HUMOGERM

A Humus Base Legume Inoculant

With 50% More Nitrogen

Fixing Bacteria

(The bacteria count on each can of HUMOGERM is 50% higher than that of any other inoculant.)

Fifteen Billion Per Small Seed Bushel

AT NEW LOWER PRICE

You can now secure the same high quality of culture which formerly sold as high as \$1.40 per bushel at a new popular price so that your cost is only

31/3 CENTS PER BILLION HIGH-BRED SELECTED BACTERIA which are in live, virile condition when received by you, having been packed in the patent Earp-Thomas package which admits air, which nitrogen fixing bacteria must have to live and grow, but prevents molds and other outside contamination while preserving the necessary moisture.

INOCULATE ALL LEGUMES

Even poor seed inoculated with HUMOGERM may produce better than good seed not inoculated. Good seed inoculated with this culture increase your crops and make you a handsome extra profit.

THERE IS NO ACCEPTABLE SUBSTITUTE FOR HUMOGERM

* * * * *

FRESH—for your protection. Each can of HUMOGERM is dated to insure you receiving fresh, live, virile Nitrogen Fixing Bacteria.

Respondent's aforesaid product is packed in small round cans in six varieties, one variety for each type of legume seed with each variety in three sizes varying from four ounces to 2½ pounds. The size of each can is stated thereon in terms of the amount of seed which that

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particular can will inoculate. Each can is sealed with a small pinhole in the top to admit the air. All cans are labelled in the same manner with the exception of the culture number, the amount of seed to be inoculated and the number of bacteria placed in the can as follows:

HUMOGERM Nitrogen Fixing Bacteria Prepared by Earp-Thomas Laboratories Exclusively for KALO INOCULENT CO., QUINCY, ILL.

On the reverse side of each can appears the following wording:

GUARANTEE

HUMOGERM is guaranteed packed with the number and type of high-bred nitrogen-fixing bacteria shown on the label, more than sufficient to inoculate the number of seeds specified. Because of conditions beyond our control field results can naturally not be guaranteed.

The top of each can contains the number of legume germs, the bushel size can being labelled as follows:

This Can Packed With Over 15 BILLION LEGUME GERMS

Each size can contains a similar statement as to the number of germs in proportion to the one bushel size. The culture numbers, size of the can, germ count and retail price appear in the following table:

Culture No.	Size	Germ count	Price
	<i>Bushel</i>	<i>Billion</i>	
1 and 2.....	1 1/2	7 1/2	\$0.35
1 and 2.....	1	15	.50
1 and 2.....	2 1/2	37 1/2	1.00
3, 5, 7, and 9.....	1	7 1/2	.35
3, 5, 7, and 9.....	2	15	.50
3, 5, 7, and 9.....	5	37 1/2	1.00

PAR. 4. Prior to September 1, 1936, by means of the statements above set out and other similar advertising matter and labelling which have not been discontinued, respondent misrepresented to its wholesale and retail customers and furnished them with the means of misrepresenting to the ultimate purchaser as follows:

(a) That its said containers were packed with a definite ascertainable minimum number of nitrogen-fixing bacteria when such, until July 15, 1935, was not the case, but in truth and in fact the Earp-Thomas Laboratories Corporation which mixed the bacteria with the humus base before shipping it in bulk to respondent, did not definitely ascertain the definite minimum number of such bacteria put in any given quantity of humus, and such numbers as were put in said humus were subject to constant change during the course of shipment, repackaging, and sale to the ultimate purchaser.

And by means of the foregoing statements and similar statements in its advertising on its cans, respondent has misrepresented and now misrepresents to its wholesale and retail customers and furnishes them with the means of misrepresenting to the ultimate purchaser as follows:

(b) That each and every can of its said product contains a specified definite minimum number of living legume bacteria throughout the entire course of the distribution period of said product and up to the expiration date hereof appearing on the label of said can, when such is not the fact, and respondent does not know that its containers contain the number and type of nitrogen-fixing bacteria as stated and represented on its labels, the number of which bacteria has not been and can not be accurately ascertained.

(c) That its product contains 50% more nitrogen-fixing bacteria and that the bacteria count of each can of its product is 50% higher than that of any other inoculant when such is not the fact and such misrepresentation is a false disparagement of the products of respondent's competitors.

(d) That its said product costs $3\frac{1}{3}\text{¢}$ per billion bacteria when such is not the fact, but the number of bacteria in each can constantly varies depending upon the conditions to which the can has been exposed, lack of uniformity in mixing, shipping in bulk and in repackaging, and when the measurement of the relative values of competing commercial inoculators cannot truthfully be based on the respective number of bacteria contained therein in relation to the price charged and paid therefor.

(e) That by the use of the patent lid on its containers its product reaches the ultimate purchasers in such condition that the nitrogen-fixing bacteria therein contained are more virile or efficacious than those sold by competitors, when in truth and in fact many of its competitors by other and similar means provide for and maintain equal virility and efficacy in their legume inoculators.

(f) That by the use of the aforesaid patent lid on its containers, molds or other contamination are effectively prevented when in truth and in fact the humus in which the said bacteria are mixed and packed is non-sterile and may and does have many other kinds and strains of bacteria, including molds.

PAR. 5. There are among the competitors of respondent engaged in the sale and distribution of legume inoculators, as above mentioned, corporations, firms, partnerships, and individuals who, in soliciting the sale of and selling their said products in interstate commerce, do not, in their advertising, or labels, misrepresent the quantity of

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bacteria contained therein, or that such numbers can be accurately ascertained; or otherwise, by false and misleading statements, induce and promote the sale of their said products.

PAR. 6. The representations by respondent as set forth above, and each of them have the capacity and tendency to and do mislead and deceive dealers and the purchasing public, who, relying upon the truth of the said representations, are thereby induced to purchase "Humogerm" in preference to other legume inoculants which are competitive both as to price and quality, thus diverting trade to respondent from its competitors who do not in the aforesaid or in any other manner misrepresent the kind, condition, character, cost or efficacy of such competitive products.

CONCLUSION

The aforesaid acts and practices of the respondent, Kalo Inoculant 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 in support of the allegations of the complaint introduced by PGad B. Morehouse, Attorney for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it, and upon the answer of the respondent filed herein, dated February 1, 1937, 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, Kalo Inoculant Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of Humogerm, a nitrogen-fixing bacteria used as a legume inoculant in interstate commerce, do forthwith cease and desist from representing:

(a) That the containers in which said product is sold are packed with fifteen billion (15,000,000,000) legume germs, or any other

definitely specified quantity or number and type of such germs, unless and until such definitely specified quantity or number has been scientifically ascertained by a controlled bacteriological count made by a competent bacteriologist, using scientifically approved method or methods;

(b) By the words, "Guaranteed packed with," a definitely specified number and type of nitrogen-fixing bacteria, or words or phrases of like import, that such definitely specified number of such type of nitrogen-fixing bacteria is in the container at any time other than the time when said container was packed;

(c) That merely by reason of the germ count so specified being a higher count than that specified on any other legume inoculant, such other legume inoculant is inferior to respondent's product;

(d) That its product costs $3\frac{1}{3}$ cents per billion bacteria or any other definite statement of the cost thereof per billion, or any other similar unit, not based upon the ascertainment of the number of such bacteria in each container as of the time when packed; or advertising the cost per unit of germ count in such manner as to import or imply that the relative values of commercial legume inoculants are dependent entirely upon the said cost per unit.

(e) That competitive products not using the Earp-Thomas patented lid are thereby subject to molds or contamination, or that the use of such patented lid by respondent effectually prevents other than outside contamination or molds from entering the can after packing;

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
PIKE-HANSEN, INC.

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

Docket 2938. Complaint, Oct. 2, 1936—Decision, Mar. 10, 1937

Where a corporation engaged in the offer and sale of men's clothing through some five hundred traveling salesmen whom it equipped with order blanks containing spaces for the individual measurements of each purchaser and with samples of materials for purchaser's selections as to color, weave, and quality of material from which the suit or other garment was to be made, and price of which varied according to quality of material selected, and who solicited and accepted orders for such clothing, taking purchaser's measurements and recording such and other information regarding his weight, height, etc., on the order blank, and forwarding same and collecting substantial part of agreed purchase price at time of acceptance of order, with balance payable upon delivery; and such agents or representatives, as case might be—

- (a) Represented and implied to prospective purchasers of its said clothing that it would make for and deliver to them made-to-measure or tailor-made garments made from material of the color, weave and quality selected from the samples exhibited, notwithstanding fact that garments delivered, in many instances, were not made-to-measure or tailor-made, as understood by purchasing public, did not fit in same manner as do such garments, due to lack of experience or skill on the part of its salesmen and its employees in making up the same, and, in some instances, did not fit at all or with any reasonable relation to individual to whom delivered, and, in many instances, were so cut and constructed that it was not possible for expert tailors to alter same so as to make them fit, and its failure and refusal to return purchase money received from such purchasers or to deliver to them garments that would fit;
- (b) Represented to purchasers of its said clothing that it would make for and deliver to them garments from materials of the color, weave, and quality selected by such purchasers from samples furnished to its salesmen or exhibited to such purchasers, notwithstanding fact, in many instances, it did not deliver to purchaser garment thus made, but delivered one made from material which it had substituted for that selected by purchaser and which was different in color and weave from and inferior in quality to material selected, and failure and refusal in such instances to return purchase money received or deliver garment made from material selected; and
- (c) Represented, in soliciting sale of its said clothing, to many prospective purchasers, that delivery would be made to them by salesmen or agent in person, so as to afford them opportunity to inspect the garment ordered as to material from which made and as to fit, prior to payment of balance of purchase money due it, notwithstanding fact garment was shipped to purchaser by parcel post, cash on delivery for balance of purchase money, no inspection was permitted, and its failure and refusal to return purchase price received or permit inspection before delivery;

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With effect of misleading and deceiving many purchasers and causing them erroneously to believe that garments sold by it were made-to-measure or tailor-made, as understood by purchasing public, that garments would be made from materials selected by purchasers and be delivered by person taking order, and that inspection would be permitted prior to payment of balance as aforesaid, and of causing many prospective purchasers, because of such erroneous beliefs, to buy clothing from it, and of thereby unfairly diverting trade in commerce to it from its competitors who do not use acts, practices and methods employed by it; to their substantial injury and that of the public:

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

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 Pike-Hansen, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Pike-Hansen, Inc., is a corporation existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 1113 North Franklin Street, in the city of Chicago, State of Illinois.

Respondent is now, and has been for several years last past, engaged in the business of offering for sale and selling men's clothing through salesmen or agents who travel throughout the United States soliciting and accepting orders for such clothing.

Respondent causes said clothing, when sold, to be transported from its said place of business in the city of Chicago, State of Illinois, into and across the several States of the United States to the purchasers thereof located at various points in the said several States of the United States other than the State of Illinois.

Respondent, in the course and conduct of its business in said commerce as aforesaid, is in substantial competition with other corporations and with associations, partnerships, and persons engaged in commerce between and among the several States of the United States in the business of selling and distributing men's clothing. Among the competitors of the respondent are many who sell their clothing in said commerce through salesmen or agents and who do not use

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the acts, practices, and methods in the sale thereof used by the respondent in the sale of its clothing as hereinafter alleged.

PAR. 2. Respondent, in the course and conduct of its business as aforesaid, employs approximately 500 salesmen or agents located throughout the several States of the United States to solicit and accept orders for its said clothing. These salesmen or agents are equipped by the respondent with order blanks, containing spaces for the taking of the individual measurements of each purchaser, and with samples of materials from which the purchasers make selections as to color, weave, and quality of the material from which the suit or other garment ordered is to be made. The prices at which said clothing is sold vary according to the quality of the material selected and said salesmen or agents collect from the purchasers of said clothing a substantial part of the agreed purchase price at the time the order is accepted and the balance of the purchase price is to be paid when the purchase is delivered. When a salesman or agent sells a garment, such salesman or agent takes the measurements of the purchaser and places this and other information regarding the weight, height, general build and appearance, etc. of the purchaser, together with a number identifying the material selected by the purchaser on the said order blank, and forwards the same to the respondent at its said place of business in Chicago, Ill., where the garment ordered is purportedly made from the material selected to the individual measurements of the purchaser of the garment.

PAR. 3. Made-to-measure or tailor-made clothing is understood by the trade and purchasing public generally to be and mean garments which are cut and made to the individual measurements of the person for whom intended. In order to make a made-to-measure or tailor-made garment as understood by the trade and purchasing public, it is necessary and essential that a person, experienced and skilled in taking and making measurements for such garments, measure the person for whom the garment is to be made, so as to convey to the tailor actually making the garment accurate and exact measurements and the information regarding the weight, height, general build and appearance, etc. of the person measured. To secure this information with any degree of accuracy and exactness requires experience and skill on the part of the person taking or making the measurements. There exists among the purchasing public the belief that made-to-measure or tailor-made garments fit with more accuracy than do garments which are not so made and there exists a preference on the part of a substantial portion of the purchasing public for made-to-measure or tailor-made garments.

PAR. 4. Respondent, in the course and conduct of its business and by the means and in the manner aforesaid, represents and implies to prospective purchasers of its said clothing that it will make for, and deliver to, purchasers of its clothing made-to-measure or tailor-made garments made from materials of the color, weave, and quality selected by purchasers from the samples exhibited by its salesmen or agents. In truth and in fact, in many instances, the garments delivered by the respondent to purchasers are not made-to-measure or tailor-made garments, as that term is understood by the purchasing public as above alleged. Because of the lack of experience and skill on the part of its salesmen or agents in making and taking measurements and securing accurate information regarding the weight, height, general build and appearance, etc. of purchasers or because of the lack of skill on the part of its workmen in making the garments, the garments delivered do not fit in the same manner as do made-to-measure or tailor-made garments and in some instances do not fit at all or with any reasonable relation to the individual to whom they are delivered. In many instances, the garments delivered to purchasers are so cut and constructed that it is not possible for expert tailors by alteration to make them fit and the respondent fails and refuses to return the purchase money received from the purchasers of said garments or to deliver to them garments that will fit.

PAR. 5. Respondent, in the course and conduct of its business as aforesaid, represents to purchasers of its said clothing that it will make for, and deliver to, them garments made from materials of the color, weave, and quality selected by such purchasers from the samples furnished to its salesmen or agents by the respondent and by said salesmen or agents exhibited to said purchasers.

In truth and fact, in many instances, the respondent does not deliver to a purchaser a garment made from the material selected by such purchaser, but delivers a garment made from a material which it has substituted for the material selected by the purchaser and which is different in color and weave from, and inferior in quality to, the material selected by the customer. The respondent in such instances fails and refuses to return the purchase money received or to deliver a garment made from the material selected.

PAR. 6. Respondent's salesmen or agents, in soliciting the sale of its said clothing and for the purpose of inducing prospective purchasers to purchase said clothing, represent to many such prospective purchasers that delivery will be made to them by the salesman or agent in person so as to afford purchasers an opportunity to inspect the garment ordered as to the material from which made and as

to its fit prior to the time payment is made of the balance of the purchase money due the respondent. In truth and fact, in many such instances, the garment is shipped to the purchaser by parcel post, cash on delivery for the balance of the purchase money, and no inspection is permitted; and the respondent fails and refuses to return the purchase money received or to permit inspection of the garment before delivery is made.

PAR. 7. The aforesaid acts, practices, and methods of the respondent have the capacity and tendency to and do mislead and deceive many purchasers and cause them erroneously to believe that the garments sold by the respondent are made-to-measure or tailor-made garments, as those terms are understood by the purchasing public; that the garments ordered will be made from the materials selected by the purchasers and will be delivered by the person taking the order, and that inspection will be permitted prior to the payment of the balance of the purchase money to the respondent. Said acts, practices, and methods have the capacity and tendency to and do cause many prospective purchasers, because of said erroneous beliefs, to purchase clothing from the respondent, thereby unfairly diverting trade in said commerce to the respondent from its competitors who do not use the acts, practices, and methods used by the respondent, to the substantial injury of said competitors and to the injury of the public.

PAR. 8. The above alleged acts, practices, and methods 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 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."

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 2, 1936, issued its complaint in this proceeding against Pike-Hansen, 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, 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, Pike-Hansen, Inc., is a corporation existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 1113 North Franklin Street, in the city of Chicago, State of Illinois, and it is now, and has been for several years last past, engaged in the business of offering for sale and selling men's clothing through salesmen or agents who travel throughout the United States soliciting and accepting orders for such clothing. Respondent causes said clothing, when sold, to be transported from its place of business in Chicago, Ill., to the purchasers thereof located at various points in the States of the United States other than the State of Illinois.

Respondent is in substantial competition with other corporations and with associations, partnerships, and persons engaged in commerce between and among the several States of the United States in the business of selling and distributing men's clothing. Among the competitors of the respondent are many who sell their clothing in said commerce through salesmen or agents and who do not use the acts, practices, and methods in the sale thereof used by the respondent in the sale of its clothing as hereinafter set out.

PAR. 2. Respondent, in the course and conduct of its business as aforesaid, employs approximately 500 salesmen or agents located at various points throughout the United States to solicit and accept orders for its said clothing. These salesmen or agents are equipped by the respondent with order blanks, containing spaces for the taking of the individual measurements of each purchaser, and with samples of materials from which the purchasers make selections as to color, weave, and quality of the material from which the suit or other garment ordered is to be made. The prices at which said clothing is sold vary according to the quality of the material selected and said salesmen or agents collect from the purchasers of

said clothing a substantial part of the agreed purchase price at the time the order is accepted and the balance of the purchase price is to be paid when the purchase is delivered. When a salesman or agent sells a garment such salesman or agent takes the measurements of the purchaser and places this and other information regarding the weight, height, general build and appearance, etc., of the purchaser, together with a number identifying the material selected by the purchaser on the said order blank, and forwards the same to the respondent at its said place of business in Chicago, Ill., where the garment ordered is purportedly made from the material selected to the individual measurements of the purchaser of the garment.

PAR. 3. Made-to-measure or tailor-made clothing is understood by the trade and purchasing public generally to be and mean garments which are cut and made to the individual measurements of the person for whom intended. In order to make a made-to-measure or tailor-made garment as understood by the trade and purchasing public, it is necessary and essential that a person experienced and skilled in taking and making measurements for such garments, measure the person for whom the garment is to be made, so as to convey to the tailor actually making the garment accurate and exact measurements and information regarding the weight, height, general build and appearance, of the person for whom the garment is to be made. To secure this information with any degree of accuracy and exactness requires experience and skill on the part of the person taking the measurements. There exists among the purchasing public the belief that made-to-measure or tailor-made garments fit with more accuracy than do garments which are not so made and there exists a preference on the part of a substantial portion of the purchasing public for made-to-measure or tailor-made garments.

PAR. 4. Respondent represents and implies to prospective purchasers of its said clothing that it will make for, and deliver to, purchasers of its clothing made-to-measure or tailor-made garments made from material of the color, weave, and quality selected by purchasers from the samples exhibited by its salesmen or agents. In truth and in fact, in many instances, the garments delivered by the respondent to purchasers are not made-to-measure or tailor-made garments, as that term is understood by the purchasing public. Because of the lack of experience and skill on the part of its salesmen or agents in making and taking measurements and securing accurate information regarding the weight, height, general build and appearance of purchasers or because of the lack of skill on the part of its workmen in making the garments, the garments delivered do not fit in the same manner as do made-to-measure or

tailor-made garments and in some instances do not fit at all or with any reasonable relation to the individual to whom they are delivered. In many instances, the garments delivered to purchasers are so cut and constructed that it is not possible for expert tailors by alteration to make them fit and the respondent fails and refuses to return the purchase money received from the purchasers of said garments or to deliver to them garments that will fit.

PAR. 5. Respondent represents to purchasers of its said clothing that it will make for, and deliver to, them garments from materials of the color, weave, and quality selected by such purchasers from the samples furnished to its salesmen or agents exhibited to said purchasers.

In truth and fact, in many instances, the respondent does not deliver to a purchaser a garment made from the material selected by such purchaser, but delivers a garment made from a material which it has substituted for the material selected by the purchaser, and which is different in color and weave from, and inferior in quality to, the material selected by the customer. The respondent in such instances fails and refuses to return the purchase money received or to deliver a garment made from the material selected.

PAR. 6. Respondent's salesmen, or agents, in soliciting the sale of its said clothing and for the purpose of inducing prospective purchasers to purchase said clothing, represent to many such prospective purchasers that delivery will be made to them by the salesmen or agent in person so as to afford purchasers an opportunity to inspect the garment ordered as to the material from which made and as to its fit prior to the time payment is made of the balance of the purchase money due the respondent. In truth and fact, in many such instances, the garment is shipped to the purchaser by parcel post, cash on delivery for the balance of the purchase money, and no inspection is permitted; and the respondent fails and refuses to return the purchase money received or to permit inspection of the garment before delivery is made.

PAR. 7. The aforesaid acts, practices, and methods of the respondent have the capacity and tendency to and do mislead and deceive many purchasers and cause them erroneously to believe that the garments sold by the respondent are made-to-measure or tailor-made garments as those terms are understood by the purchasing public; that the garments ordered will be made from the materials selected by the purchasers and will be delivered by the person taking the order, and that inspection will be permitted prior to the payment of the balance of the purchase money to the respondent. Said acts, practices, and methods have the capacity and tendency to and

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do cause many prospective purchasers, because of said erroneous beliefs, to purchase clothing from the respondent, thereby unfairly diverting trade in said commerce to the respondent from its competitors who do not use the acts, practices, and methods used 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 Pike-Hansen, 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 filed herein on February 24, 1937, 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, Pike-Hansen, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of clothing for men in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That clothing sold by it is made-to-measure or tailor-made, unless and until such clothing is actually and accurately made by competent tailors to fit the customer in accordance with his correct measurements taken by a person who is competent to take such measurements;

2. That it will make clothing from materials of the color, weave and quality selected by customers from samples exhibited, unless and until the clothing is made from material of the color, weave and quality selected;

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3. That customers will be afforded an opportunity to inspect clothing purchased prior to the time full payment for the clothing is made, unless and until such inspection is permitted.

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
MUTUAL STORES, INC.

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

Docket 2550. Complaint, Sept. 12, 1935—Decision, Mar. 25, 1937

Where a corporation engaged in the general business of merchandising in the District of Columbia, and in operating two stores therein, perfected a number of years theretofore chiefly to engage in purchase and resale at retail of surplus, reject and refuse goods procured from the Army and Navy, which (1) were sold in substantial quantities thereby during the early 1920's, but sale of which (2) began to be curtailed sharply about 1927 and during the two or three years immediately preceding, because of exhaustion of the supplies thereof, and which (3) since 1932 were not available in any substantial quantity through retail stores of type operated by it, and since 1935 and 1936, virtually not at all—

Placed its corporate name, with words "Men's Wear," "Shoes," etc., and "Army and Navy Goods," in large and conspicuous signs about its mercantile establishment and in other advertising literature, notwithstanding facts aforesaid, and that at no time since its organization had it ever procured or possessed any quantity of such surplus, reject and refuse goods in excess of five percent of its total inventory;

With the result that various members of the purchasing public formed the conclusion or received the impression and belief from words "Army and Navy" that goods to be purchased in its stores were substantially all, if not all, procured from the Army and Navy, and were of the quality and nature used thereby, and that by reason of such fact a better quality merchandise at substantial savings in price was obtained from its said stores, and substantial number of such members were induced, by virtue of such beliefs or impressions, to make purchases of and from it, and with tendency and capacity thus to mislead and deceive such members, and with effect of unfairly diverting trade to it from its competitors who sell and offer to sell merchandise identical with bulk of its inventory and procured, like it, from same source and ordinary marts of trade, but who do not make use of such misleading and deceptive practice; to be substantial injury of substantial competition in said District:

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. Alden S. Bradley for the Commission.

Mr. Alfred M. Schwartz, of Washington, D. C., 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 the Mutual Stores, 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. The said respondent, Mutual Stores, Inc., is a corporation organized and existing under and by virtue of the laws of the District of Columbia, and having and maintaining its principal office and place of business in the city of Washington, in the District of Columbia, and said respondent is now and has been for at least one year previous hereto, engaged in the general business of merchandising.

During the course of merchandising on the part of the respondent, the said respondent has maintained a constant and current course of commerce within the District of Columbia and has sold and has caused to be sold various and different articles of merchandise in which the respondent deals to various dealers and members of the purchasing public within the District of Columbia, in connection with and in the course of which sales respondent has caused and still causes merchandise in which it deals to be transported from its place of business into and through the various parts of the District of Columbia to purchasers located therein.

In the course and conduct of its aforesaid business, respondent is and has been in substantial competition with other individuals, co-partnerships, and corporations engaged in the selling and transportation of like merchandise within the District of Columbia.

PAR. 2. For the period last above related, said respondent has operated under the corporate name of Mutual Stores, Inc., and during the course and conduct of its business has advertised and caused to be advertised by it through the medium of certain legends, signs and symbols falsely indicating and suggesting by inference that the said respondent does, in fact, deal exclusively in goods supplied by the Army and Navy Departments of the United States Government, when, in fact, it does not.

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The following statement was contained in the advertisements of the respondent:

MUTUAL STORES, INC.**Army and Navy Goods****Men's Wear—Shoes. Sport Goods—Luggage**

The said respondent further caused to be listed under the classified heading of the telephone directory of the city of Washington, District of Columbia, the name of its business, the telephone number of the same and the further descriptive words "Army and Navy Goods Business."

The practices of respondent 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 the respondent are derived from the Army and Navy Departments of the United States Government when in fact they are not. In truth and in fact none of the stock of merchandise of said respondent is purchased from the Army and Navy or at any Army and Navy surplus or refuse goods sales. The small amount of such Army and Navy goods carried by said respondent, if any, is bought from jobbers, wholesalers, and others who buy at such Army and Navy refuse goods sales. The remainder of the said respondent's stock of merchandise consists of the usual stock found in general merchandise establishments and is purchased in the marts of commerce in which the general merchant buys his stock of goods. The said respondent is in no way connected with the Army and Navy, and the major portion of the stocks of goods, wares, and merchandise as offered for sale by respondent consists of ordinary goods, wares, and merchandise as derived from the common marts of trade and not from the Army and Navy Departments of the United States, except solely goods not readily marketable and which have been purchased by the respondent some years previously hereto and which said goods are in minute quantities.

PAR. 3. There are among the competitors of said respondent individuals, partnerships, copartnerships, and corporations engaged in the sale and distribution of like and similar materials and merchandise within the District of Columbia, which said individuals, partnerships, copartnerships and corporations do not misrepresent their merchandise by the use of a false and misleading advertisement or advertisements as to the source of origin or the quality of material so advertised.

PAR. 4. The acts alleged to have been done by the respondent are all to the injury and prejudice of the public and of a substantial

number of the competitors of the 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 September 12, 1935, issued and served its complaint in this proceeding upon respondent Mutual Stores, 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 Alden S. Bradley, 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 Alfred M. Schwartz, attorney for the respondent, 643 Munsey Building, Washington, D. C.; 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 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, Mutual Stores, Inc., is a corporation existing under and by virtue of the laws of the District of Columbia and having and maintaining its principal office and place of business in the city of Washington in the District of Columbia. It is now, and has been for more than two years, engaged in the general business of merchandising. Respondent operates two stores in the city of Washington, in the District of Columbia, one located at 9th and E Streets, N. W. and the other located at 9th and D Streets, NW.

PAR. 2. The present corporation was perfected in 1928, by one Nathan Shapiro and Herbert Silverstone, chiefly for the purpose of engaging

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in the purchase and resale at retail of surplus, reject, and refuse goods procured from the Army and Naval Departments of the United States Government. Since the date of its organization the respondent has been unable to secure from said Army and Navy Departments of the United States Government or from other sources a substantial quantity of surplus, reject, or refuse goods and has never and does not now procure or possess any quantity of such goods in excess of 15 percent of its total inventory.

PAR. 3. During the years 1922, 1923, and 1924, the Army and Navy Departments of the United States Government sold, or were responsible for the sale of, a substantial quantity of surplus, reject, and refuse goods; but about the year 1927 and the two or three years immediately prior thereto began sharply to curtail, because of the exhaustion of the supply of such goods, the sale of surplus, reject, and refuse goods; and since the year 1932 there has not been available for sale and offered for sale for resale through retail stores of the type operated by the respondent any substantial quantity of surplus, reject, and refuse goods from the Army and Navy Departments of the United States Government. During the years 1935 and 1936 virtually no goods fit for resale in retail stores, such as those operated by the respondent, have been offered for sale by these Departments.

The goods formerly offered for sale by the Army and Navy Departments of the United States Government were ultimately purchased for the conduct of retail stores and for sale to the retail trade by the respondent and various persons, partnerships, and other corporations engaged in the conduct of retail mercantile establishments approximately identical with the mercantile establishments of the respondents.

The inventory of the respondent reflects the decrease in the surplus, refuse, and reject goods of the Army and Navy Departments of the United States Government offered for sale in that its inventory has never revealed more than 10 to 15 percent of its goods as being surplus, refuse, or reject goods from the Army and Navy Departments of the United States.

PAR. 4. There are no goods now being offered, nor, since the year 1932, have there been any substantial amount of goods offered for sale by the Army or Navy Department of the United States Government suitable for resale in retail establishments similar to those operated by the respondent.

PAR. 5. The respondent caused its merchandise to be advertised by placing its corporate name "Mutual Stores, Inc." "Men's Wear," "Shoes," "Sport Goods," "Luggage," and "Army and Navy Goods" in large and conspicuous signs about its mercantile establishment located

at 9th & D Streets, NW., Washington, D. C. and in other advertising literature.

PAR. 6. Various members of the purchasing public upon observing the words "Army and Navy" in connection with the advertising of the respondent have formed the conclusion, or received the impression and belief, that the goods to be purchased in respondent's stores were substantially all, if not all, procured from the Army and Navy Departments of the United States Government; that the goods were of the quality and nature used by said Departments; that, by reason of the fact that such goods were procured from the Army and Navy Departments of the United States Government, a better quality merchandise at a substantial savings in price was obtainable from the respondent's stores. A substantial number of such members of the purchasing public have been induced, by virtue of such beliefs or impressions, to make purchases of and from the respondent.

PAR. 7. The use by the respondent of the words "Army" and "Navy" in connection with its corporate name, in its advertisements as above described, has the tendency and capacity to mislead and deceive members of the purchasing public into the false impressions and beliefs as set forth in paragraph 6 hereof.

PAR. 8. The use of the words "Army" and "Navy" by the respondents in its advertising as above set out unfairly diverts trade to it from its competitors who sell and offer to sell merchandise identical with the bulk of the inventory of the respondent, and procured from the same source, i. e., the ordinary marts of trade, but who do not make use of such misleading and deceptive practice, and has caused and now causes substantial injury to substantial competition within the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Mutual Stores, 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 entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it,

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in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Alden S. Bradley, counsel for the Commission, and by Alfred M. Schwartz, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Mutual Stores, Inc., in connection with the conduct of its mercantile establishment within the District of Columbia, cease and desist from:

Using the words "Army and Navy," or either of them as descriptive of or with reference to any merchandise advertised and offered for sale or sold to the public, unless in fact the words "Army and Navy," or either of them, be used specifically in connection and conjunction with particular merchandise actually procured directly or indirectly, from the Army and Navy Departments of the United States Government.

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

M. F. FOLEY COMPANY

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

Docket 2752. Complaint, Mar. 30, 1936—Decision, Mar. 25, 1937

Where a corporation engaged in sale and distribution at wholesale of fish and other sea food—

Advertised a certain species of fish offered and sold by it, in price lists or bulletins distributed among customers and prospective customers, as "Deep Sea Whitefish Fillets," or as "Fresh Cusk Fillets (Deep Sea Whitefish)," or as "Deep Sea Whitefish Fillets (Cusk)," or as "D. S. Whitefish Fillets," notwithstanding fact said species, or cusk, as known to trade, was not that fresh water, Great Lakes species referred to by trade and consuming public as "Lake Erie whitefish," "Lake Superior whitefish," and "Selkirk whitefish," and also "whitefish," and so advertised and sold and known to such trade and public, and preferred to said salt water species, on the part of a substantial portion of such and purchasing public;

With effect of misleading and deceiving customer and prospective customer members thereof into erroneous belief that said representations were true, and that its said product, thus represented, was the fresh water whitefish, and with result that a substantial number of such customers and prospective customers and purchasing public bought its said product in such belief, and trade was unfairly diverted to it from its competitors, who do not misrepresent the nature and kind of their respective products; all to the 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. Daniel J. Murphy for the Commission.

Mr. Thomas H. Walsh, 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 M. F. Foley 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 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:

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PARAGRAPH 1. The respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal place of business located at corner, Friend and Union Streets in the city of Boston, in the State of Massachusetts. It is now, and for some time past has been, engaged as a wholesaler in the sale and distribution of fish and other sea foods in commerce between and among the various States of the United States. It causes and has caused the said products, when sold, to be shipped from its place of business in the State of Massachusetts to purchasers thereof located in a State or States other than the State of Massachusetts. In the course and conduct of its business respondent was at all times herein referred to in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, the respondent, in soliciting the sale of and selling its products in interstate commerce, caused the same to be advertised by means of price lists or bulletins distributed in interstate commerce among customers and prospective customers, and in which advertising matter certain species of the fish offered for sale and sold by the said respondent were variously designated, represented and referred to as "Deep Sea Whitefish Fillets," or as "Fresh Cusk Fillets (Deep Sea Whitefish), or as "Deep Sea Whitefish Fillets (Cusk)." Invoices distributed by the said respondent in interstate commerce alluded to said species as "D. S. Whitefish Fillet," when in truth and in fact said species were not that species of food fish known as "whitefish," but were species of food fish other than whitefish.

PAR. 3. There is a preference on the part of a substantial portion of the purchasing and consuming public for that species of food fish genuinely known as "whitefish" which is confined chiefly to the Great Lakes, rather than for that species of food fish found in the Atlantic Ocean and erroneously termed "whitefish."

PAR. 4. The representations by said respondent, as set forth in paragraph 2 hereof, are calculated to, and do, have the capacity and tendency to, and do, mislead and deceive customers and prospective customers of respondent and the purchasing public into the erroneous belief that the said representations made are true, and that the product so represented is of the species of food fish genuinely known as "whitefish," and to cause a substantial number of such customers, prospective customers and the purchasing public, acting on such belief, to buy said respondent's product, thereby diverting trade to

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said respondent from its competitors who do not misrepresent the nature and kind of their products, and thereby doing substantial injury to substantial competition in interstate commerce.

PAR. 5. 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 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 30, 1936, issued and served its complaint in this proceeding upon respondent M. F. Foley 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 Daniel J. Murphy, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Thomas H. Walsh, 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 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, M. F. Foley Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal place of business located in the city of Boston in the said Commonwealth. It is now, and for some time past has been, engaged as a

wholesaler in the sale and distribution of fish and other sea food in commerce between and among the various States of the United States. It causes, and has caused, the said products, when sold, to be shipped from its place of business in the State of Massachusetts to the purchasers thereof located in various States of the United States other than the State of Massachusetts.

PAR. 2. In the course and conduct of its business the respondent was at all times herein referred to in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of similar products in commerce among and between the various States of the United States.

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 products in commerce, as herein described, causes the same to be advertised by means of price lists or bulletins distributed in said commerce among customers and prospective customers, in which advertising matter certain species of the fish offered for sale, and sold, by the said respondent were variously designated, represented, and referred to as "Deep Sea Whitefish Fillets," or as "Fresh Cusk Fillets (Deep Sea Whitefish)," or as "Deep Sea Whitefish Fillets (Cusk)," or as "D. S. Whitefish Fillets." For a number of years fish of a species of fresh water fish found chiefly in the Great Lakes region of the United States have been advertised, sold, and known as "whitefish." They are referred to by the trade and the consuming public as "Lake Erie whitefish," "Lake Superior whitefish," and "Selkirk whitefish," and also "whitefish." The fish designated, represented, and described by the respondent in the manner above set forth were not fish of the species of fresh water fish found chiefly in the Great Lakes region of the United States and advertised, sold, and known to the trade and consuming public as "Lake Erie whitefish," "Lake Superior whitefish," "Selkirk whitefish," and "whitefish," but were fish of a species of salt water fish known to the trade as "cusk." There is a preference on the part of a substantial portion of the purchasing and consuming public for that species of fresh water fish known as "whitefish," rather than for that species of salt water fish known as "cusk."

PAR. 4. The representations made by said respondent, as set forth in paragraph 3 hereof, are concluded to, and do, have the capacity and tendency to, and do, mislead and deceive customers and prospective customers of respondent, the same being members of the purchasing public, into the erroneous belief that the said representations are true, and that the product so represented is of the species of fresh water fish known as "whitefish." A substantial number of

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such customers, prospective customers, and the purchasing public, acting on such belief, have bought said respondent's product. As a result thereof, trade has been unfairly diverted to said respondent from its competitors who do not misrepresent the nature and kind of their respective products, all to the injury of competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, M. F. Foley 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 John J. Keenan, 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 by Daniel J. Murphy, counsel for the Commission, and by Thomas H. Walsh, 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, M. F. Foley Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of fish and other sea foods in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, through the use of the word "whitefish," alone or in connection or conjunction with any other word or words, that fish of the species of salt water fish known and described as "cusk" are whitefish;

2. Representing, directly or indirectly, through the use of the word "whitefish," alone or in connection or conjunction with any other word or words, that fish of any species other than the species of fresh water fish found chiefly in the Great Lakes region of the United

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States and known to the trade and consuming public as "Lake Erie whitefish," "Lake Superior whitefish," "Selkirk whitefish," and "whitefish" are whitefish.

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
THE CLARK 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 2323. Complaint, Mar. 12, 1935—Decision, Mar. 19, 1937

Where a corporation engaged in the manufacture of air-seal type, ferrous metal burial vaults and in the sale thereof to jobbers and funeral directors and undertakers, in competition with those engaged in sale and transportation of metal, stone, concrete, cement and other burial vaults in commerce between and among the various States—

- (a) Represented through warranties issued by it and through advertisements in periodicals of wide interstate circulation, and through booklets, circulars, pamphlets, letters, photographs, testimonials, and other advertising matter, and through its customers, authorized by it so to state in the sale and promotion of sale of its said vaults, that same would remain waterproof and airtight under ground for fifty years, and were so warranted, and that they were made of rust and corrosion resisting metal, proof against moisture and crumbling, and were waterproof and airtight and verminproof, and, buried, had an impenetrable seal and would afford positive and permanent protection to the coffin and body encased therein; and
- (b) Made use of "warranties" or "guarantees" in connection with sale and offer of its said vaults, which were issued by it through the jobber or funeral director and were intended to be, and in many cases were, delivered to ultimate purchasers of said product, and which guaranteed same for fifty years against entrance of water due to defective construction, rust or corrosion, and undertook therein to replace any vault, without cost to purchaser, found defective within the terms of such warranty within such fifty-year period, etc.;

The facts being that, while its said vaults were manufactured by it of highly refined grades of metal of high quality, made as carefully, accurately and thoroughly as possible by exact control of furnacing operations to make the best ferrous metal, that would resist, but not prevent, corrosion and tend to increase durability of such metals for a longer period of time than if impurities had not been removed therefrom, and said metals, by their very nature and texture, would not permit passage of water or air unless punctured, broken or partially destroyed by corrosion, said vaults, by virtue of the circumstances involved, would not, nevertheless, be entirely without moisture after burial, all soils are more or less corrosive and will eventually cause all ferrous metals to pit or corrode, and water, frequently present in graves due to many conditions, will, when present, touch said vaults and in time produce rust, beginning of corrosion, which, once started, will usually continue until puncture of metal, and said vaults were not rust or corrosion proof or rust or corrosion resistant to the extent

¹ Count 2 of the complaint alleging violation of the National Industrial Recovery Act dismissed November 9, 1935.

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that they would never rust or corrode after burial, nor wholly proof against moisture, or against crumbling after burial, conjunction of conditions, as respects airseal principle employed in vaults in question, which does not always exist, must obtain in order for same to provide protection from entering water, and said vaults were not waterproof in the sense that no water whatsoever could enter same, nor impenetrable, except for period prior to the puncture of the metal by rust and corrosion or other causes, depending, in variable conditions, on character of soil and climatic and other conditions prevailing in territory involved, and were not airtight or verminproof, and would not give lasting protection to contents thereof for any known period of time;

With capacity and tendency to induce public to purchase and use its said vaults in the belief that such statements and representations were true, and unfairly to divert trade to it from its aforesaid competitors:

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

Mr. E. J. Hornibrook for the Commission.

Sharp, Schooler, Toland & Herbert, of Columbus, 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 Clark 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 is the Clark Grave Vault Company, 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 Columbus in said State. It is now and has been for several years last past engaged in the business of manufacturing, and selling metal grave vaults used to encase coffins for the burial of the dead to purchasers thereof, many of whom reside outside of the State of Ohio, and when orders are received therefor they are filled by respondent by shipping the same from the said

city of Columbus 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 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 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 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, the following false and misleading claims, statements and representations as to respondent's said vaults are made:

That the said grave vaults will remain waterproof and airtight when placed under ground for a period of fifty (50) years; that they afford positive and permanent protection to the coffin and body encased therein; that Clark created the waterproof, all-metal vault with its impenetrable air-seal; that the Clark vault is an accepted part of the modern burial service; that it is complete and lasting protection; that it assures comfort and peace of mind to those who must "carry on"; that Clark's vaults are made of specially processed, rust and corrosion resisting metal which is proof against moisture and against crumbling; that each Clark vault is critically tested under 5,000 pounds of water for air- and water-tightness, and is warranted for fifty (50) years or more.

(B) Respondent issues with each vault, for delivery to ultimate purchasers thereof, and they are so delivered, a written, purported warranty which provides in substance that every Clark vault is submitted to a rigid test by being completely submerged under two and one-half (2½) tons of water to prove that it is absolutely water- and air-tight, and that:

In consideration of the purchase and payment for the vault with which this warranty is issued, to be indorsed hereon as indicated below, THE CLARK GRAVE VAULT COMPANY does hereby warrant such vault for a period of fifty (50) years from the date of purchase indorsed hereon below against water

entering such vault from the grave due to defective construction, rust or corrosion.

Any such vault found to be defective within the terms of this warranty will be replaced within said fifty-year period without cost to the purchaser. It is understood that cinders and other highly corrosive material must not be used in filling grave and that vault must be buried level.

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 watertight or airtight for a period of fifty (50) years or any definite period when buried under ground; that respondent's said vaults when buried under ground do not always afford positive or permanent protection to the body or coffin encased therein; that the air-seal of respondent's vaults is not impenetrable; that the Clark vault is not an accepted part of the modern funeral service; that the Clark vault does not afford complete and lasting protection; that the Clark vaults are not made of rust and corrosion resisting metal; that the metal of which Clark's vaults are made is not proof against crumpling; that the tests made of the Clark 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; 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 corrode in a period of from three (3) to ten (10) years, and in others from ten (10) to twenty (20) years; that respondent's said vaults have not been tested under ground for a period of fifty (50) years, nor has the metal of which they are made been so tested; that respondent's said vaults will corrode and pit so as to let water into them; that in many instances they will corrode and rust so as to cave in or collapse; that respondent's said vaults when buried under ground 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 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. The re-

spondent'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, weldings, and flanges thereof, or pin holes due to rust or corrosion, or due to collapse or bending of the vault.

These said warranties contain a clause to the effect that the Clark Grave Vault Company warrant such vaults for a period of fifty (50) years from the date of purchase thereof against water entering such vault from the grave due to defective construction, rust or corrosion. The exhumations of bodies after burial are so rare as to make these certificates or warranties 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.

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 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 Columbus 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 causes said products when so sold to be transported from its principal place

of business in the City of Columbus, 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, and between and among the States of the United States and in the District of Columbia:

PAR. 2. As grounds for this paragraph of its 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, as each and all of the allegations of same were set out in full in said 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 Supplies Industries, 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:

After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry, or supervision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the power of the Federal Trade Commission under such Act, as amended.

In Article IX of said Code, under the heading "Trade Practices," appears the following:

1. The following practices constitute unfair methods of competition and are prohibited:

* * * * *

(r) 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 holding by the Federal Trade Commission on complaint, finding, and order, that any practice or method is unfair; providing, that such adjudication or holding is not inconsistent with 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 such methods of competition herein alleged and described and has resorted to or indulged in the practice of misrepresentation in branding and labeling and selling, or advertising his said vaults in the manner hereinabove set forth.

The above alleged methods, acts, and practices of 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 Supplies Industry of the United States. Such violations 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.

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, The Clark 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 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 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, The Clark Grave Vault Company, is 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 Columbus, in said State. It is now, and has been for several years last past, engaged in the business of manufacturing and selling metal grave vaults, used to encase coffins for the burial of the dead, to purchasers thereof, many of whom reside outside of the State of Ohio. Orders received for such burial vaults are filled by respondent shipping the same from the said city of Columbus, in the State of Ohio, into and through other States of the United States to such purchasers.

PAR. 2. In the sale and transportation of its burial vaults, respondent is in competition with other individuals, copartnerships, and corporations engaged in the sale and transportation of metal, stone, concrete, cement, and other burial vaults in commerce between and among various States of the United States.

PAR. 3. Respondent sells and ships 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.

PAR. 4. Respondent has used advertisements in magazines having a wide interstate circulation, and has used booklets, circulars, pamphlets, letters, photographs, testimonials, and other advertising media, which it has circulated, or caused to be circulated, among its said customers and prospective customers, in which the statements and representations set forth and described in paragraph 5 hereof were made.

PAR. 5. In addition to the warranty described in paragraph 18 hereof, respondent's customers, prior to filing of complaint, used, and were authorized by respondent to use, in the sale and in the promotion of the sale of its said vaults, the following claims, statements, and representations as to its said vaults :

(a) Said grave vaults will remain water-proof and air-tight when placed underground for a period of fifty (50) years;

(b) Said grave vaults afford positive and permanent protection to the coffin and body incased therein;

(c) Clark created the water-proof, all-metal vault with its impenetrable air seal;

- (d) Clark vault is an accepted part of the modern burial service;
- (e) The Clark vault is a complete and lasting protection;
- (f) The Clark vault assures comfort and peace of mind to those who must "carry on";
- (g) Clark vaults are made of specially processed rust and corrosion-resisting metal, which is proof against moisture and against crumbling;
- (h) Each Clark vault is critically tested under 500 pounds of water for air- and water-tightness, and is warranted for 50 years or more.

PAR. 6. 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 a method of injecting certain fluids into the corpse for the purpose of delaying or retarding such decay and disintegration of the corpse for a temporary period of time, not permanently.

PAR. 7. Respondent's air-seal vaults are intended to protect the corpse, contained therein, during the life of the metal of which they are made, against accelerated decay and disintegration through damage produced or caused by water entering such vault and rising therein to such height as to touch the bottom of the casket.

PAR. 8. Respondent has been engaged in the manufacture and sale of air-seal type, sometimes commonly referred to as the "diving bell" principle, ferrous metal burial vaults, for about thirty-five (35) years. It is now using, and has used, 12 gauge Armco Ingot Iron, manufactured and processed by The American Rolling Mill Company, of Middletown, Ohio, and 12 gauge Keystone Copper Steel manufactured and processed by The American Sheet and Tinplate Company, of Pittsburgh, Pa. These metals purchased by the respondent, and used in the manufacture of its said vaults, are highly refined grades of metal, carefully made under the best modern scientifically controlled iron and 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 ferrous metal that will resist, but not prevent, corrosion in the sense that the high quality of these metals tends to retard and slow the rate of corrosion and tends to increase their durability under ground for a longer period of time than if the impurities were not removed from the metal and if the metal had not been so highly refined and freed from those impurities which accelerate the process of rusting or corrosion.

These metals, by their very nature and texture, will not permit the passage of water or air through them during the life thereof unless they are punctured, broken or partially destroyed by rust or corrosion.

PAR. 9. The dome of the vaults of respondent, before being placed upon the market, is tested by being submerged under six (6) feet of water in an upright position without the pan being placed under it,

to determine that there are no defects in its manufacture by which air is permitted to escape from, or water to enter through, the metal of which the dome is made. No vault is shipped by respondent until the dome of said vault has been so tested and found to have no defect in its material or its welds, by which air escapes from or water enters through said metal.

PAR. 10. Respondent's metal burial vaults, after burial, will not be entirely without moisture in them, because the human body, whether dead or alive, is composed largely of water and other fluids, and the air in the dome contains moisture; therefore, moisture to a certain extent will be present in every burial vault used in the burial of the dead.

PAR. 11. Respondent's vaults, made of ferrous metals, are not rust-proof, corrosionproof, rust resisting, or corrosion resisting to the extent that they will never rust or corrode after burial underground.

PAR. 12. Respondent's vaults, made of ferrous metals, are not always proof against moisture entering said vaults, or forever proof against crumbling after burial underground.

PAR. 13. Respondent's vault, made of ferrous metals, have not and will not always give positive, permanent, complete or lasting protection to the casket therein, or remain waterproof and airtight, under every burial condition, for any definitely known fixed or stated period of time.

PAR. 14. When the dome or hood of said vaults has been punctured, due to corrosion or other causes, they cease to be waterproof.

PAR. 15. Respondent's vaults after burial in the earth are not waterproof in the sense that no water whatsoever can enter within the vault underneath the bottom of the casket and are not impenetrable except for the period before rust and corrosion or other causes have punctured the metal, under every burial condition, as the life of metal burial vaults depends upon the character of the soil in which they are interred and upon the climatic and other conditions prevailing in the territory where interment is made.

Also, in order for said 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 in 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 successful operation of the air-seal principle of said vaults. Conditions Nos. 2 and 3 affect these air-seal vaults 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 within 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 vaults, and to touch the casket therein then such changes tend to damage the casket and the body contained therein.

PAR. 16. Respondent has ceased to use, and is not now using the terms "rust proof," "positive and permanent protection," "absolute protection," "absolute waterproof," and "complete and lasting protection."

PAR. 17. The respondent's vault, made of ferrous metals, is a receptacle consisting of two parts, (1) a pan or base and (2) a hood, dome or top, and is constructed and manufactured to operate on the principle of the diving bell or air-seal principle, when sealed by surface of water flowing across or rising to the edge or rim of the dome on all four sides, by which the air confined thereby in the inverted airtight dome resists and prevents the rise of the water level within the hood to a height sufficient to touch and damage the casket or its contents. It is constructed of one continuous piece of metal—made so by double welding. The pan or base, at the time of filing complaint, was made of one piece of metal, and consisted of a raised metal portion three (3) inches above the plane of the lower surface of a flat edge or flange, approximately $1\frac{1}{2}$ to $1\frac{3}{4}$ inches wide which extends entirely around the bottom of the vault and rests on the ground for support. The entire base resembles an inverted pan with holes pierced through it near its top edge. Raised portions, or bosses, hold the bottom of the casket $\frac{5}{8}$ of an inch above the top of the pan and $\frac{3}{8}$ inches above the grave floor. The bottom rim or flange of the hood, top or dome rests on this outside flange of the pan the thickness of the metal from the grave floor.

Respondent's vault is made on the same general principle as the air-seal vault made by the trade generally, including Gallion, Springfield, Champion, Perfection, National, and others, but varies in dimensions, workmanship, and design. This vault is not airtight until sealed by resisting water at a level flowing or standing across the bottom edge of dome from side to side and end to end, or at a level that reaches its highest point along the bottom edge of the vault. Water rising from the bottom of the grave compresses the air in the cavity, under the base and the dome or hood, and as the pressure of the outside water head increases the resistance of the compressed air in the dome or hood increases. Circulation of air from cavity under base into hood is provided by holes along the sides of and near the top of base, thereby there is but one body of air.

PAR. 18. The warranty issued by respondent at the time of the filing of the complaint herein is in the words and figures, following, to wit:

THE CLARK GRAVE VAULT COMPANY FIFTY YEAR WARRANTY

Superior Clark Grave Vaults made of Keystone copper steel or Armco Ingot Iron and to which the warranty below applies, may be identified by this imprint which appears on them, and which is our trademark of quality.

Every Clark Grave Vault—with bottom open is submitted to a rigid inspection and test by being completely submerged under two-and-one-half (2½) tons of water to prove it is absolutely water and airtight.

In consideration of the purchase and payment for the vault with which this warranty is issued, to be indorsed hereon as indicated below, The Clark Grave Vault Company does hereby warrant such vault for a period of fifty (50) years from the date of purchase indorsed hereon below against water entering such vault from the grave due to defective construction, rust or corrosion.

Any such vault found to be defective within the terms of this warranty will be replaced within said fifty-year period without cost to the purchaser. It is understood that cinders and other highly corrosive material must not be used in filling grave and that the vault must be buried level.

This warranty shall be valid only when dated and countersigned by funeral director at time of sale of such vault and nothing contained herein shall constitute a warranty on behalf of the company against damage to the casket from dehydration of the remains or any other cause not herein specifically mentioned.

In witness whereof, The Clark Grave Vault Company has hereunto subscribed its name by its President duly authorized thereunto by resolution of its Board of Directors.

The Clark Grave Vault Company
By Allen F. Beck, President.

Name of Purchaser _____
Funeral Director _____ Date _____
Interment of _____ in _____

The foregoing warranty is issued by respondent through the jobber of said vaults, or funeral directors, and is intended to be, and in many

cases is, delivered to ultimate purchasers thereof by funeral directors, undertakers, morticians, or other persons selling the vaults.

PAR. 19. Respondent's vault, after burial level in a grave approximately six feet deep, so long as the metal is not punctured by rust or corrosion, is intended to prevent the water level in the surrounding ground from rising within the dome of such vault to such a height as to reach, touch, or damage the casket and its contents. The dome of the vault is not intended to be, and never is, airtight in the sense that there is, and can be, no air in it.

PAR. 20. Water frequently appears in graves due to many conditions, including weather. Where cemeteries are located on flat or low ground, water often will be found in graves thereof, particularly during the rainy seasons. Water in graves will touch these said vaults, and in time will produce rust thereon.

PAR. 21. Rust is the beginning of corrosion. Corrosion, once started on the vault, will usually continue until the metal is punctured, at which time the hood or dome will admit water through the hole created by such puncture.

PAR. 22. All soils are more or less corrosive and will eventually cause all ferrous metals to pit or corrode.

PAR. 23. The following statements and representations made by the respondent, its agents, employees, and representatives, in connection with the offering for sale, or selling in interstate commerce, the types of air-seal burial vaults manufactured by it at the time of filing of complaint herein, in certificates of warranty and in advertising, that:

(1) They will remain waterproof and airtight when placed underground for a period of fifty years;

(2) They will afford positive and permanent protection to the coffin and body encased therein;

(3) They are waterproof and have an impenetrable seal, when buried;

(4) They give complete and lasting protection;

(5) Clark vaults are made of rust and corrosion resisting metal, which is proof against moisture and against crumbling;

(6) They are absolutely waterproof and airtight;

(7) The Clark Grave Vault Company does hereby warrant such vault for a period of fifty (50) years against water entering such vault due to rust or corrosion;

(8) That such vaults are airtight, vermin proof, or waterproof, and give lasting protection to the corpse therein contained for any definitely known fixed or stated period of time when used for burial purposes;

And other statements or representations of like import are deceptive and have and have had the capacity and tendency to induce the public to purchase and use respondent's vault under the belief that said statements and representations are true, and have and have

had the tendency and capacity 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, and 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 Clark Grave Vault Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of the types of air-seal burial vaults manufactured by it at the time of filing of complaint herein, or any type of burial vault made of ferrous metal, in interstate commerce or in the District of Columbia, forthwith cease and desist from:

1. Representing, in purported certificates of warranty, or guaranty, in advertising, or in any other manner, that its burial vaults, made of ferrous metal:

(a) Will remain waterproof and airtight when placed underground for a period of fifty (50) years, or for any fixed or stated period of time;

(b) Will afford positive and permanent protection to the coffin and body encased therein;

(c) Are waterproof and have an impenetrable seal, when buried;

(d) Will give complete and lasting protection;

(e) Are made of rust and corrosion resisting metal, which is proof against moisture and against crumbling;

(f) Are absolutely waterproof and airtight;

(g) Are warranted for a period of fifty (50) years against water entering such vault due to rust or corrosion;

(h) Are airtight, verminproof or waterproof, and give lasting protection to the corpse therein contained for any definitely known, fixed, or stated period of time, when used for burial purposes.

(2) From making other representations of like import; and

(3) 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.

IN THE MATTER OF
HAVANA-FLORIDA CIGAR COMPANY, INC.

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

Docket 2667. Complaint, Aug. 5, 1936¹—Decision, Mar. 29, 1937

Where the finest quality of cigar tobacco was grown in Cuba near Havana, and the word "Havana," or "Habana," had been used and understood since time immemorial by cigar purchasing and consuming public and cigar manufacturers and dealers of the United States as meaning said tobacco, which had long been imported therein and was widely and extensively there used and consumed in cigars made in whole, and in part only, from such tobacco, and which had the reputation, among the cigar consuming and purchasing public of the United States, as cigar tobacco of highest quality and excellence, with cigars made in whole or in part therefrom in large demand, and preferentially purchased by many cigar dealers and many of the consuming public, with many believing that use of such tobacco in cigars increases the quality and desirability thereof; and thereafter a corporation engaged in Florida in the manufacture, packing, branding, and labeling of various brands of cigars, for sale and distribution by it and its dealers to the purchasing and consuming public in the United States, through personal solicitation, circulars, and other communications with customers and prospective customers, and in competition with many who sell and distribute cigars composed in whole, and also cigars composed in part only, of Havana tobacco, and who rightfully and truthfully advertise, represent and label their said cigars as containing such tobacco, and with many who sell and distribute among the States cigars containing no such tobacco, but composed wholly of said product grown in the United States, or elsewhere than on the Island of Cuba, and who do not brand, label, advertise, or otherwise represent their said cigars as made of Havana or Cuban tobacco—

Sold and distributed, through personal solicitation of salesmen and through circulars and written correspondence, in large and substantial quantities, under such names and brands as "Garcia's Havana Smoker," cigars made by it to be sold at a price of two or five cents, and featured said name on the labels of the paper cigar bands and on various places upon the cigar boxes or containers in which sold in varying quantities, and so packed its two-for-five-cents "Hav-a-Good Cigar" in containers that word "Havana" in its corporate name appeared in juxtaposition with letters "Hav-a" of said last-named cigar's brand name, notwithstanding fact that cigars thus branded, labeled, and sold were made from a cheap grade of tobacco alleged to contain 1 percent of Cuban, but purchased ready-mixed from factories and dealers and consisting largely of clippings gathered from cigars in process of manufacture, and aforesaid cigars, thus branded, labeled, described, and advertised, contained no Havana tobacco nor tobacco grown on Island of Cuba in appreciable amount;

¹ Amended and supplemental.

With effect of misleading and deceiving a large and substantial number of the purchasing and consuming public into buying its aforesaid cigars in the erroneous belief that they were composed, in whole or in large part, of Havana tobacco, or that grown on said Island of Cuba, and of placing in the hands of its dealers and distributors an instrumentality through which they might and did mislead and deceive the purchasing public, and with result, from such false and misleading representations, that consuming public was injured and trade was diverted to it from aforesaid competitors; to their injury and that of retail dealers and to the substantial injury of substantial competition in commerce, and to the prejudice of the buying public:

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

Mr. Marshall Morgan for the Commission.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on December 20, 1935, issue its complaint herein charging and alleging that the respondent corporation 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, since the issuance of said complaint, has been advised that the respondent therein is, and has been, using unfair methods of competition in interstate commerce other than, and in addition to, those in relation to which the Commission issued its complaint aforesaid on December 20, 1935, in violation of the provisions of Section 5 of said Act;

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 Havana Florida Cigar Company, Inc., has been, and now is, using unfair methods of competition in interstate commerce in violation of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Havana Florida Cigar Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 501 North Madison Street, Quincy, Fla. Respondent is now and for more than three years last past has been engaged, as hereinafter described, in the business of manufacturing various brands of cigars and selling and distributing the same to dealers in various parts of the United States, more particularly in the States of Alabama, Tennessee, Georgia, and New York. The

said cigars are manufactured by respondent in Quincy, Fla., where they are packed, branded, and labeled by respondent for sale and distribution by it and by its dealer-customers to the purchasing and consuming public of the United States. In consummating such sales and in distributing such products, respondent causes the cigars so sold to be transported and delivered from its place of business in Quincy, Fla., through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of its business, the respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of cigars, and offering such products for sale in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. The cigar originated in the Spanish West Indies. The finest quality of tobacco for cigar purposes is grown in Cuba, not far from the city of Havana. The word "Havana," also spelled "Habana," is the name and designation of the tobacco grown on the Island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar-purchasing and consuming public of the United States, and by cigar manufacturers and dealers throughout the United States, as meaning and designating tobacco which has been grown on the Island of Cuba. Said tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured in whole and in part only from such tobacco. Such Havana tobacco has the reputation among the cigar consuming and purchasing public of the United States as being cigar tobacco of highest quality and excellence, and cigars made in whole or in part from said tobacco are in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco and have believed, and still believe, that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

The outer leaf, or wrapper, of a cigar comprises about five per cent of the entire cigar, while the filler and binder, constituting ninety-five per cent of the cigar, are the controlling factors in its size, strength, and flavor. The filler controls, primarily, the designed length, thickness, and shape of the cigar as rolled into a binder or binder wrapper of desired size. A dark cigar can be mild if it has a mild filler and binder, while a light colored cigar can be quite strong if the filler and binder are of a strong grade of leaf. The filler of the cheapest grades of cigars, such as "2 for 5's", is com-

posed principally of what is known as "scrap," being clippings from cigars in the process of manufacture.

PAR. 3. For a long period of years prior to the time respondent engaged in its said business, cigars composed wholly of Cuban tobacco were made in both Cuba and in the United States, and are now so made, for sale and consumption in the United States by manufacturers whose surname was "Garcia," and who respectively used and displayed, and still use and display, the said surname, either alone or in combination with the rest of their name, or with other words, on the bands of their cigars, or on the boxes or containers thereof, and on labels used in connection with the sale thereof.

For many years, persons in the cigar and tobacco trade, and many of the public purchasing cigars for consumption, have believed, and still believe, that cigars in connection with the sale of which the name "Garcia" so appeared or appears, were or are made by manufacturers named "Garcia," and of Cuban nationality or descent, and of Cuban grown tobacco exclusively, and that said cigars were and are of a quality superior to those made by many other manufacturers and superior in quality to cigars made wholly or in part of tobacco grown elsewhere than on the Island of Cuba, and in purchasing such cigars became accustomed to and still call for them either by the name of "Garcia" alone, or in combination with the remainder of the name of a manufacturer of that surname, or with the word "Havana," or other word or words denoting Cuban or Havana tobacco.

PAR. 4. In the course and conduct of respondent's business, as described in paragraph 1 hereof, sales of cigars are made and purchase orders therefor obtained through and as a result of the personal solicitation of salesmen, the use of circulars and by means of written correspondence and other communications with respondent's customers and prospective customers. The said cigars, manufactured, sold and distributed competitively by respondent in interstate commerce, as set forth in paragraph 1 hereof, are and for several years last past have been sold and distributed by respondent in large and substantial quantities, under such names and brands, among others, as "Garcia's Havana Smoker," a brand manufactured to be sold at a price of 2 for 5¢. The following hereinafter described brands and labels have been affixed by respondent to the said cigar and to the containers thereof. The labels attached to the cigars themselves consist of a paper band placed by respondent around each cigar and bearing conspicuously the words "Havana Garcia's Smokers," printed in letters of red upon a label of yellow. The containers for such cigars are the usual and customary cigar boxes or cigar containers of varying capaci-

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ties, holding from fifteen cigars up to fifty and a hundred. The labels and brands attached to each box or container have been designed and affixed thereto by respondent, and are as follows:

(1) Centered on the outside of the lid of the box is a label or brand bearing the words "GARCIA'S HAVANA SMOKER" in large black letters, on a background of brown. In the center, between the word "Garcia's" and the words "Havana Smoker", appear the following: "H. F. Co. Mild and Fragrant".

This same brand or label appears again on the inside of the top of the box, and in either of the two upper corners, printed on a black background, appears the legend "2 for 5¢".

On the outside of the box front, in black letters on a background of brown, appears the following: "Havana Smoker Claro 2 for 5¢".

This same wording is also found on either end of the larger boxes used by respondent in the sale and distribution of its above described cigars.

(2) Centered on the outside of another box or container is a band or label reading:

2 f 5¢
o
r

2 f 5¢
o
r

GARCIA'S SMOKERS
No Fancy Labels—Bands or Boxes
All the quality in the Cigars.

Said respondent also manufactures and sells the same or a similar brand under the name and designation:

Garcia Smoker Refills

Respondent also under the brand name "Hav-a-Good Cigar" sells two kinds of cigars, one made of genuine "Havana" tobacco, retailing for 5¢, and the other made wholly from domestic tobacco treated with a certain process hereinafter referred to and described, and retailing 2 for 5¢. The said cigars made of domestic tobacco, especially treated as aforesaid, are packed by respondent in a box in such a manner as to leave visible immediately to the left of the centered brand name, the first word of respondent's corporate name, that is, the word "Havana," the said word "Havana" being used in connection with, and appearing in juxtaposition with the first four letters of said brand name, that is, "Hav-a."

The said cigars, branded, labeled, and sold by respondent, respectively, as "Garcias Havana Smoker," "Garcias Smoker," "Garcia Smoker Refills," and the aforesaid "Hav-a-Good" brand made of domestic tobacco are and have been made from a cheap grade of

tobacco alleged to contain 1% of Cuban tobacco. Tobacco used for this type of cigar may be purchased ready mixed from factories and dealers, and consists largely of clippings gathered from cigars in the process of their manufacture.

PAR. 5. Respondent's use of the word "Havana" in its corporate name and as a brand or label or part of a brand or label for cigars, and its use of the words "Garcia's" and "Garcia" are alleged to be predicated by respondent upon the following facts and circumstances:

Respondent company is now and for sometime past has been located at Quincy, Fla. Respondent at one time employed as foreman of its Quincy factory a man by the name of Raymond Garcia, who had theretofore operated a cigar factory at Havana, Fla. Some two and one-half years ago Garcia discovered a process of treating domestic tobacco with a solution made in the following manner:

Stems of Havana tobacco remaining after the tobacco is stripped from the leaf, and technically known as "Petroli," are purchased in bulk at Tampa, Fla., by respondent. Quantities of these stems are placed in barrels and water is added. The mixture is then allowed to ferment for three weeks, the liquid forming in the barrel becoming a sort of tobacco brew or vinegar. A quantity of domestic tobacco is then sprayed with such liquid, after which the domestic tobacco is allowed to heat. After the tobacco thus sprayed and treated is heated, and carefully watched for a number of days, it is sprayed again, then heated again, until in the view of respondent it develops the "certain mellowness" and "true flavor of real Havana tobacco." Said domestic tobacco so treated is thereafter used respectively as wrappers, binders, and filler in the manufacture of cigars.

Said respondent, as a result of said spraying procedure, employs the word "Havana" in its corporate name and the words "Havana" and "Garcia's" and "Garcia" singularly and in combination as brands or labels for cigars manufactured by it and advertised and sold by it in commerce.

PAR. 6. In truth and fact respondent's cigars, branded, labeled, described, and advertised, respectively, as "Garcias Havana Smoker," "Garcias Smoker," "Garcia Smoker Refills," and "2 for 5¢ Hav-a-Good," and sold by the respondent and by dealers to the purchasing and consuming public, as hereinbefore described, do not contain Havana tobacco, nor tobacco grown on the Island of Cuba, in any appreciable amount, nor have they at any time contained such tobacco in any appreciable amount, but are, and have been, manufactured entirely from, and wholly composed of, tobacco grown elsewhere than on the Island of Cuba. The use of the word "Havana" in said designation "Garcia's Havana Smoker" in respondent's corporate name

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and in connection with respondent's "2 for 5¢ Hav-a-Good" brand, and the use of the words "Garcia's" and "Garcia" in said designations "Garcia's Havana Smoker," "Garcia Smoker," and "Garcia Smoker Refills" in branding, labeling, describing, and advertising said cigars containing no Havana tobacco, or no Havana tobacco in appreciable amount, as hereinabove set forth, is misleading and has, and has had, the capacity and tendency to, and does and did, mislead and deceive a large and substantial number of the purchasing and consuming public into purchasing said cigars in the erroneous belief that they are and were composed, in whole or in large part, of Havana tobacco, that is, tobacco grown on the Island of Cuba.

PAR. 7. Among the competitors of respondent, referred to in paragraph 1 hereof, there are many who sell and distribute, in competition with respondent, cigars composed in whole and also cigars composed in part only of Havana tobacco, and who rightfully and truthfully advertise, represent, sell, and label such cigars as containing said Havana tobacco. There are also many of said competitors who sell and distribute between and among the several states in competition with respondent cigars containing no Havana tobacco and being composed wholly of tobacco grown in the United States or elsewhere than on the Island of Cuba, and who do not brand, label, advertise, or otherwise represent that said cigars are made of Havana or Cuban tobacco. There are also among the individuals, firms, and corporations referred to above who are and have been in competition with the respondent, some whose names are not "Garcia," and some who manufacture and sell cigars made of tobacco part of which only is grown in Cuba, or of tobacco grown elsewhere than in Cuba, and who do not brand or label, and have not been branding or labeling, the cigars made by them or the containers thereof, with the words "Garcia's" or "Garcia."

Respondent's so-called "Garcias Havana Smoker," "Garcias Smoker," "Garcia Smoker Refills," and "2 for 5¢ Hav-a-Good" are displayed, offered for sale, and sold to the consuming public by respondent, and in and by cigar stores and other dealer-establishments in competition with the said cigars of competitors. The respondent's use of the word "Havana" and of the words "Garcia" and "Garcias," as hereinabove described, in relation to a cigar having no Havana tobacco, or no appreciable amount of Havana tobacco, is false and misleading. As a result of such false and misleading representations on the part of respondent the consuming public is being, and has been, injured, trade is being, and has been, diverted to respondent from such competitors in interstate commerce, and thereby substantial injury is done, and has been done, by the respondent to substan-

tial competition in interstate commerce, and there is, and has been, placed in the hands of respondent's dealers and distributors an instrument by means of which they mislead and deceive, and have misled and deceived, the purchasing public.

PÁR. 8. Said representations of respondent, contained in its brands, labels, advertisements, circulars, or other media through which the trade and consuming public are reached, have resulted in injury to respondent's competitors and to retail dealers and to the prejudice of the buying public, 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."

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 20, 1935, issued and thereafter served its original complaint in this proceeding on respondent, Havana-Florida Cigar Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said Act, and on August 5, 1936, issued and served its amended and supplemental complaint on the said 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 original complaint as aforesaid. After the issuance of said complaints and the filing of respondent's answer to the said amended and supplemental complaint, the Commission, on December 23, 1936, entered an order closing the case with respect to the use of the term "Garcia".¹ Thereafter, the Commission, by further order entered herein granted respondent's motion for permission to withdraw its said answer and to substitute therefor an answer admitting all the material allegations of the complaint as modified by the order of the Commission entered in this matter on December 24, 1936, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly

¹ Said order reads as follows:

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 case growing out of the amended and supplemental complaint hereinbefore issued on the 5th day of August, 1936, insofar as said case relates to the alleged unfair or misleading use of the word "Garcia" be, and the same hereby is, closed.

It is further ordered, That as to all other allegations growing out of the aforesaid amended and supplemental complaint, the case proceed to trial in accordance with the regular procedure of the Commission.

filed in the office of the Commission. Thereafter this proceeding came on for final hearing before the Commission on the said amended 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, Havana-Florida Cigar Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 501 North Madison St., Quincy, Fla. Respondent is now, and for more than 3 years last past has been engaged, as hereinafter described, in the business of manufacturing various brands of cigars and selling and distributing the same to dealers in various parts of the United States, and more particularly in the States of Alabama, Tennessee, Georgia, and New York. The said cigars are manufactured by respondent in Quincy, Fla., where they are packed, branded, and labeled by respondent for sale and distribution by it and by its dealer-customers to the purchasing and consuming public of the United States. In consummating such sales and in distributing such products respondent causes the cigars so sold to be transported and delivered from its place of business in Quincy, Fla., through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of its business, the respondent has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of cigars, and offering such products for sale in commerce, between and among the various States of the United States and within the District of Columbia.

PAR. 2. The cigar originated in the Spanish West Indies. The finest quality of tobacco for cigar purposes is grown in Cuba, not far from the city of Havana. The word "Havana," also spelled "Habana," is the name and designation of the tobacco grown on the Island of Cuba, which name and designation is and has been since time immemorial used and understood by the cigar-purchasing and consuming public of the United States, and by cigar manufacturers and dealers throughout the United States, as meaning and designating tobacco which has been grown on the Island of Cuba. Said tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured in

whole and in part only from such tobacco. Such Havana tobacco has the reputation among the cigar consuming and purchasing public of the United States as being cigar tobacco of highest quality and excellence, and cigars made in whole or in part from said tobacco are in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco and have believed, and still believe, that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

The outer leaf, or wrapper, of a cigar comprises about five percent of the entire cigar, while the filler and binder, constituting ninety-five percent of the cigar, are the controlling factors in its size, strength, and flavor. The filler controls, primarily, the designed length, thickness and shape of the cigar as rolled into a binder or binder wrapper of desired size. A dark cigar can be mild if it has a mild filler and binder, while a light-colored cigar can be quite strong if the filler and binder are of a strong grade of leaf. The filler of the cheapest grades of cigars, such as "2 for 5," is composed principally of which is known as "scrap," being clippings from cigars in the process of manufacture.

PAR. 3. In the course and conduct of respondent's business, as described in paragraph 1 hereof, sales of cigars are made and purchase orders therefor obtained through and as a result of the personal solicitation of salesmen, the use of circulars and by means of written correspondence and other communications with respondent's customers and prospective customers. The said cigars, manufactured, sold, and distributed competitively by respondent in interstate commerce, as set forth in paragraph 1 hereof, are and for several years last past have been sold and distributed by respondent in large and substantial quantities, under such names and brands, among others, as "Garcia's Havana Smoker," a brand manufactured to be sold at a price of 2 for 5¢. Brands and labels, as hereinafter described, have been affixed by respondent to the said cigar and to the containers thereof. The labels attached to the cigars themselves consist of a paper band placed by respondent around each cigar and bearing conspicuously the words "Havana Garcia's Smokers," printed in letters of red upon a label of yellow. The containers for such cigars are the usual and customary cigar boxes or cigar containers of varying capacities, holding from fifteen cigars up to fifty and a hundred. The labels and brands attached to the box or container of respondent's "Garcia's Havana Smoker" have been designed and affixed thereto by respondent, and are as follows:

Centered on the outside of the lid of the box is a label or brand bearing the words "GARCIA'S HAVANA SMOKER" in large black letters, on a background of brown. In the center, between the word "Garcia's" and the words "Havana Smoker," appear the following: "H. F. Co. Mild and Fragrant." This same brand or label appears again on the inside of the top of the box, and in either of the two upper corners, printed on a black background, appears the legend "2 for 5¢." On the outside of the box front, in black letters on a background of brown, appears the following: "Havana Smoker Claro 2 for 5¢." This same wording is also found on either end of the larger boxes used by respondent in the sale and distribution of its above-described cigars.

Respondent also under the brand name "Hav-a-Good Cigar" sells two kinds of cigars, one made of genuine "Havana" tobacco, retailing for 5¢, and the other made wholly from domestic tobacco and retailing 2 for 5¢. The said cigars made of domestic tobacco are packed by respondent in a box in such a manner as to leave visible immediately to the left of the centered brand name, the first word of respondent's corporate name, that is, the word "Havana," the said word "Havana" being used in connection with, and appearing in juxtaposition with the first four letters of said brand name, that is, "Hav-a."

The said cigars, branded, labeled, and sold by respondent, respectively, as "Garcia's Havana Smoker" and the 2 for 5¢ "Hav-a-Good" brand, are and have been made from a cheap grade of tobacco alleged to contain 1% of Cuban tobacco. Tobacco used for this type of cigar may be purchased ready-mixed from factories and dealers, and consists largely of clippings gathered from cigars in the process of their manufacture.

PAR. 4. In truth and fact respondent's cigars, branded, labeled, described, and advertised, respectively, as "Garcia's Havana Smoker," and "Hav-a-Good"—"2 for 5¢," and sold by the respondent and by dealers to the purchasing and consuming public, as hereinbefore described, do not contain Havana tobacco, nor tobacco grown on the Island of Cuba, in any appreciable amount, nor have they at any time contained such tobacco in any appreciable amount, but are, and have been, manufactured entirely from, and wholly composed of, tobacco grown elsewhere than on the Island of Cuba. The use of the word "Havana" in said brand designated as "Garcia's Havana Smoker" and as used on containers in front of and in conjunction with the word, words or expression "Hav-a-Good" as printed or appearing on the container of the 2 for 5¢ brand of such cigars in branding, labeling, describing, and advertising said cigars containing no Havana tobacco, or no Havana tobacco in appreciable

amount, as hereinabove set forth, is misleading and has, and has had, the capacity and tendency to, and does and did, mislead and deceive a large and substantial number of the purchasing and consuming public into purchasing said cigars in the erroneous belief that they are and were composed, in whole or in large part, of Havana tobacco, that is, tobacco grown on the Island of Cuba.

PAR. 5. Among the competitors of respondent, referred to in paragraph 1 hereof, there are many who sell and distribute, in competition with respondent, cigars composed in whole and also cigars composed in part only of Havana tobacco, and who rightfully and truthfully advertise, represent, sell, and label such cigars as containing said Havana tobacco. There are also many of said competitors who sell and distribute between and among the several states in competition with respondent cigars containing no Havana tobacco and being composed wholly of tobacco grown in the United States or elsewhere than on the Island of Cuba, and who do not brand, label, advertise, or otherwise represent that said cigars are made of Havana or Cuban tobacco.

Respondent's so-called "Garcia's Havana Smoker," and 2 for 5¢ "Hav-a-Good" brand are displayed, offered for sale, and sold to the consuming public by respondent, and in and by cigar stores and other dealer-establishments in competition with the said cigars of competitors. The respondent's use of the word "Havana" as hereinabove described, in relation to cigars having no Havana tobacco, or no appreciable amount of Havana tobacco, is false and misleading. As a result of such false and misleading representations on the part of respondent the consuming public is being, and has been, injured, trade is being, and has been, diverted to respondent from such competitors in interstate commerce, and thereby substantial injury is done, and has been done, by the respondent to substantial competition in interstate commerce, and there is, and has been, placed in the hands of respondent's dealers and distributors an instrument by means of which they mislead and deceive, and have misled and deceived, the purchasing public.

PAR. 6. Said representations of respondent, contained in its brands, labels, advertisements, or other media through which the trade and consuming public are reached, have resulted in injury to respondent's competitors and to retail dealers and to the prejudice of the buying public, 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."

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CONCLUSION

The aforesaid acts and practices of the respondent, Havana-Florida Cigar Company, Inc., 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 original and amended and supplemental complaints of the Commission and the answer filed herein on March 26, A. D., 1937, by the respondent admitting all the material allegations of said complaints, including the allegations of the said amended and supplemental complaint as amended by order of the Commission duly entered on December 23, 1936,¹ 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 said respondent, Havana-Florida Cigar Company, Inc., itself, its servants, employees, or agents, individual or corporate, in connection with the offering for sale, sale and distribution of cigars in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the word "Havana" as descriptive of cigars unless such cigars be made entirely from tobacco grown in the Island of Cuba.

2. Representing in any manner that cigars other than those manufactured entirely from tobacco grown in the Island of Cuba, are Havana cigars.

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.

¹ See footnote on page 865.

Syllabus

IN THE MATTER OF

DAVID F. KEMP, TRADING AS UNITED STATES SCHOOL
OF MUSIC

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

Docket 2943. Complaint, Oct. 15, 1936—Decision, Mar. 29, 1937

Where an individual engaged in the sale of correspondence courses for home study in playing various musical instruments, and in the sale, as incident thereto, of books, booklets, and other articles—

- (a) Represented, in advertising folders, pamphlets, circulars, letters, and other literature circulated to customers and prospective customers in the various States and in the District of Columbia, and in advertisements in periodicals of general circulation, that he had taught 700,000 pupils to play musical instruments, and that when a pupil enrolled in his said course he, the pupil, was assured of success, and that at the end of said course the average pupil was sufficiently proficient to pass a teacher's examination; and
- (b) Represented, as aforesaid, that no talent was necessary, and that any pupil could, through his said course, learn to play any musical instrument, and that all pupils, regardless of their degree of talent, could be taught to play an instrument in half the time usually required, and that an automatic finger control of his invention limbered, trained, or guided one's fingers so that they fell in the proper place automatically, and that a pupil, regardless of his talent, could quickly learn to play any jazz or classical selection and could play real tunes perfectly by note from the very start of the course, or at any point thereof;

Facts being that not all pupils studying his said course can play real tunes perfectly by note from the very start thereof, or at any other point therein, some measure of musical talent is generally necessary in order to enable a person to play a musical instrument, his said course is not such that a pupil can learn to play any such instrument without any musical talent, and aforesaid representations were otherwise exaggerated and false;

With capacity and tendency to deceive and mislead purchasers and prospective purchasers of his said correspondence lessons and courses of instruction, and to mislead a substantial portion of purchasing public into the erroneous belief that all said representations were true, and with result that a number of the consuming public, as a direct consequence of the mistaken and erroneous beliefs induced by such acts and representations, purchased substantial volume of said correspondence lessons and courses, and trade was unfairly diverted to him from competitors similarly engaged in sale and distribution of correspondence lessons and courses and who truthfully represent the effectiveness thereof and results to be obtained from their study; to the 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. Joseph C. Fehr for the Commission.

R. L. P. Wallace and Co., 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 David F. Kemp, trading as United States School of Music, 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, David F. Kemp, trading and doing business under the trade name United States School of Music, has his principal office and place of business located at 225 Fifth Avenue, in the city of New York, State of New York. He is now, and has been for a number of years, engaged in the business of distributing and selling, in commerce as herein set out, correspondence lessons and courses of instruction for home study in the art of playing various musical instruments to persons hereinafter referred to as pupils, and in selling to such pupils severally as incidental and accessory to the instruction in and to the learning, use and practice of such art, certain merchandise consisting of books, booklets, pamphlets, and other articles.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said courses of instruction and accessory material, when sold, to be transported from his principal place of business in the State of New York to the respective purchasers thereof located at various points in the States of the United States other than the State of New York. Respondent, has at all times, maintained a constant current of trade in said correspondence courses and said accessory materials, sold and distributed by him, in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his business, the respondent is now, and has been for many years, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling correspondence lessons and courses of instruction for home study in the art of playing various musical instruments, in commerce between and among the various States of the United States.

PAR. 4. In the course of the operation of said business, and for the purpose of inducing the purchase of his correspondence lessons and courses of instruction, respondent has printed and circulated through-

out the various States to customers and prospective customers, through the United States mails and otherwise, advertising folders, pamphlets, circulars, letters, and other literature, and has made use of advertisements in newspapers, magazines, and other periodicals of widespread and interstate circulation. In all of said advertisements, and other advertising literature above referred to, the respondent has caused his trade name United States School of Music to be conspicuously displayed, together with the following statements:

(a) We have taught 700,000 people to play—more than any other school on earth.

Learn to play the United States School of Music way—more than 700,000 have done so already.

(b) At the end of the course, our average pupil is ready to pass a teacher's examination.

(c) You can actually learn to play your favorite instrument two or three times faster, this amazing short cut way.

(d) Automatic finger control—our own invention—limbers, trains and guides your fingers so that they fall in the proper place almost automatically.

(e) Quickly learn to play any jazz or classical selection.

(f) Almost before you realize it, you are able to pick up any piece of music and play it.

From the very start, you are playing real tunes perfectly by note.

You actually learn real tunes right from the very start.

(g) No talent needed. Forget the old-fashioned idea that you need talent. Just read the list of instruments and decide which one you want to play and the United States School of Music will do the rest.

(h) When you enroll for an United States School of Music course you are assured of success.

All of said statements, together with many similar statements appearing in respondent's advertising literature, and in advertisements inserted in newspapers and magazines, as herein detailed, purport to be descriptive of respondent's courses of instruction and their effectiveness in teaching pupils how to play various musical instruments. In all of his advertising literature, including said newspaper and magazine advertising, respondent represents, through the statements and representations herein set out and other statements of similar import and effect, (1) that he has taught 700,000 pupils to play musical instruments; (2) that at the end of the course, the average pupil is sufficiently proficient to pass a teacher's examination; (3) that a pupil studying respondent's course of instruction can be taught to play a musical instrument in one-half the time usually required; (4) that an automatic finger control of respondent's own invention limbers, trains or guides one's fingers so that they fall in the proper place automatically; (5) that a pupil studying respondent's course of instruction will quickly learn to play any jazz or classical selection; (6) that any pupil studying respondent's course of instruction

can play real tunes perfectly by note from the very start of the course; (7) that no talent is necessary and that any pupil can, through respondent's course of instruction, learn to play any musical instrument; and (8) that when a pupil enrolls in the United States School of Music, he is assured of success.

PAR. 5. The representations made by the respondent, as herein set out in paragraph 4, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent has not taught 700,000 pupils through his courses of instruction and the average pupil completing the course is not ready to pass a teacher's examination without other training. The courses of instruction offered by the respondent are not such that all pupils can learn to play a musical instrument in *one-half* the time usually required. The respondent has not invented an automatic finger control that serves to limber, train or guide the pupil's fingers to such an extent that they automatically fall in the proper place on the instrument being played. All pupils studying respondent's course of instruction do not quickly learn to play any jazz or classical selection. Not all pupils studying respondent's course of instruction can play real tunes perfectly by note from the very start of the course. Some measure of musical talent is generally necessary in order to enable a person to play a musical instrument and respondent's course of instruction is not such that a pupil can learn to play any musical instrument without any musical talent. The mere enrollment in respondent's course of instruction is not sufficient to insure the pupil that he will successfully learn to play any musical instrument.

PAR. 6. There are among respondent's competitors many who distribute and sell correspondence lessons and courses of instruction for home study in the art of playing various musical instruments and who do not, in any way, misrepresent the character of said lessons or the result to be obtained from a study thereof.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent, as herein set out, in offering for sale and selling his correspondence lessons and courses of instruction were, and are, calculated to, and had, and now have, a capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that after taking said lessons and courses of instruction, a pupil is able to accomplish the results claimed by the respondent. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondent as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's correspondence lessons and courses of instruction with

the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling correspondence lessons and courses of instruction who truthfully represent the effectiveness of said lessons and courses of instruction and the results to be obtained from a study thereof. As a result, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States.

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 15th day of October, A. D., 1936, issued and served its complaint in this proceeding upon respondent, David F. Kemp, trading as United States School of Music, 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 said respondent's answer thereto a stipulation as to the facts was entered into by and between the respondent and W. T. Kelley, Chief Counsel for the Commission, 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; and by which stipulation it was further agreed that the Commission might proceed upon said statement of facts to issue its report stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments 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

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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, David F. Kemp, trading and doing business under the trade name United States School of Music, has his principal office and place of business located at 225 Fifth Avenue, in New York City, N. Y. He is now, and has been for forty years, engaged in the business of distributing and selling, in commerce as herein set out, correspondence lessons and courses of instruction for home study in the art of playing various musical instruments to persons hereinafter referred to as pupils, and in selling to such pupils severally as incidental and accessory to the instruction in and to the learning, use and practice of such art, certain merchandise consisting of books, booklets, pamphlets, and other articles.

PAR. 2. In the course and conduct of his business, as aforesaid, respondent causes said courses of instruction and accessory material, when sold, to be transported from his principal place of business in the State of New York to the respective purchasers thereof located at various points in the States of the United States other than the State of New York, and in the District of Columbia. Since the organization of the business, some forty years ago, more than 700,000 people have taken the courses. Respondent has at all times maintained a constant current of trade in said correspondence courses and said accessory materials, sold and distributed by him, in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 3. The respondent is now, and has been for many years, in substantial competition with other individuals and with firms, corporations, and partnerships likewise engaged in the business of distributing and selling correspondence lessons and courses of instruction for home study in the art of playing various musical instruments, in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. In directing the operation of his business, and for the purpose of inducing the purchase of his correspondence lessons and courses of instruction, respondent has printed and circulated to customers and prospective customers located in the various States and in the District of Columbia, through the United States mails and otherwise, advertising folders, pamphlets, circulars, letters, and other literature, and has also made use of advertisements in magazines of

general circulation throughout the United States. In all of the advertising literature above referred to, the respondent has caused his trade name, United States School of Music, to be conspicuously displayed, together with the following statements:

(a) We have taught 700,000 people to play—more than any other school on earth.

Learn to play the United States School of Music way—more than 700,000 have done so already.

(b) At the end of the course, our average pupil is ready to pass a teacher's examination.

(c) You can actually learn to play your favorite instrument two or three times faster, this amazing short cut way.

(d) Automatic finger control—our own invention—limbers, trains and guides your fingers so that they fall in the proper place almost automatically.

(e) Quickly learn to play any jazz or classical selection.

(f) From the very start, you are playing real tunes perfectly by note.

You actually learn real tunes right from the very start.

(g) No talent needed. Forget the old-fashioned idea that you need talent. Just read the list of instruments and decide which one you want to play and the United States School of Music will do the rest.

(h) When you enroll for an United States School of Music course you are assured of success.

Among the statements and representations made by the respondent since October 2, 1935, have been the following:

Learn to play the U. S. School of Music way. More than 700,000 have done so already.

Yes, you can actually learn to play your favorite instrument 2 to 3 times faster this amazing short-cut way.

PAR. 5. The statements and representations, as set forth in paragraph 4 hereof, and other similar thereto, serve as representations on the part of respondent to purchasers and prospective purchasers of his correspondence lessons and courses of instruction for home study in the art of playing various musical instruments as to the value of said courses and as to the results to be obtained by subscribers to said courses and have the capacity and tendency to lead purchasers and prospective purchasers of respondent's said correspondence lessons and courses of instruction into the mistaken beliefs: (1) that he has taught 700,000 pupils to play musical instruments; (2) that at the end of the course, the average pupil is sufficiently proficient to pass a teacher's examination; (3) that all pupils studying respondent's course of instruction, regardless of their degree of musical talent, can be taught to play a musical instrument in one-half the time usually required; (4) that an automatic finger control of respondent's own invention limbers, trains or guides one's fingers so that they fall in the proper place automatically; (5) that all pupils studying respondent's course of instruction will, regardless of their

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degree of musical talent, quickly learn to play any jazz or classical selection; (6) that all pupils studying respondent's course of instruction can, regardless of their degree of musical talent, play real tunes perfectly by note from the very start of the course; (7) that no talent is necessary and that any pupil can, through respondent's course of instruction, learn to play any musical instrument; and (8) that when a pupil enrolls in the United States School of Music, he is assured of success; and to purchase respondent's said correspondence lessons and courses of instruction for home study in the art of playing various musical instruments on account of such beliefs.

PAR. 6. The said statements and representations made by the respondent, as herein set out in paragraphs 4 and 5 are exaggerated and have the capacity and tendency to deceive and mislead purchasers and prospective purchasers of respondent's said correspondence lessons and courses of instruction for home study in the art of playing various musical instruments.

In truth and in fact, respondent has not actually taught 700,000 pupils through his courses of instruction and the average pupil completing the course is not ready to pass a teacher's examination without other training. The courses of instruction offered by the respondent are not such that all pupils, regardless of their degree of talent, can learn to play a musical instrument in one-half the time usually required. The respondent has not invented an automatic finger control that serves to limber, train, or guide the pupil's fingers to such an extent that they automatically fall in the proper place on the instrument being played. All pupils studying respondent's course of instruction do not quickly learn to play any jazz or classical selection. Not all pupils studying respondent's course of instruction can play real tunes perfectly by note from the very start of the course, or at any other point in the course. Some measure of musical talent is generally necessary in order to enable a person to play a musical instrument and respondent's course of instruction is not such that a pupil can learn to play any musical instrument without any musical talent. The mere enrollment in respondent's course of instruction is not sufficient to insure the pupil that he will successfully learn to play any musical instrument.

PAR. 7. There are among respondent's competitors many who distribute and sell correspondence lessons and courses of instruction for home study in the art of playing various musical instruments and who do not represent the character of said lessons or the result to be obtained from a study thereof in such a way as to mislead and

deceive purchasers or prospective purchasers into subscribing for said courses in preference to those offered by competitors.

PAR. 8. Each and all of the misleading and deceptive statements and representations made by the respondent, as herein set out, in offering for sale and selling his correspondence lessons and courses of instruction had and now have a capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that after taking said lessons and courses of instruction, a pupil will be able to accomplish the results claimed by the respondent. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondent as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's correspondence lessons and courses of instruction with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling correspondence lessons and courses of instruction who truthfully represent the effectiveness of said lessons and courses of instruction and the results to be obtained from a study thereof. As a result, 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, David F. Kemp, trading as United States School of Music, 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, David F. Kemp, trading as United States School of Music, 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 proceedings, and the Commission having

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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, David F. Kemp, individually, and trading as United States School of Music, or trading under any other name, his representatives, agents, and employees, in connection with the advertising, offering for sale, and sale and distribution of courses of instruction for home study in the art of playing various musical instruments in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing in newspapers and magazines and through circulars, catalogues, labels, or in any other form of printed matter or by radio broadcasting, or in any other way or manner:

1. That he has taught 700,000 pupils to play musical instruments;
2. That at the end of the course, the average pupil is sufficiently proficient to pass a teacher's examination;
3. That all pupils studying respondent's course of instruction, regardless of their degree of talent, can be taught to play a musical instrument in one-half the time usually required;
4. That an automatic finger control of respondent's own invention limbers, trains or guides one's fingers so that they fall in the proper place automatically;
5. That a pupil studying respondent's course of instruction will, regardless of having musical talent, quickly learn to play any jazz or classical selection;
6. That any pupil can, regardless of having musical talent by studying respondent's course of instruction, play real tunes perfectly by note from the very start of the course or at any point in the course;
7. That no talent is necessary and that any pupil can, through respondent's course of instruction, learn to play any musical instrument;
8. That when a pupil enrolls in the United States School of Music, he is assured of success;

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 shall have complied with this order.

Syllabus

IN THE MATTER OF
GENERAL ELECTRIC 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 2941. Complaint, Nov. 13, 1936¹—Decision, Apr. 2, 1937

Where four corporations engaged in manufacture and sale of turbine-generators, largest consumers of which included public utilities, whether public or privately owned, and municipal, State and Federal Governments, and in connection with which not only initial cost, but efficiency and performance guarantees, with their decided effect upon cost of operation, are vital factors and become inseparable from the prices to be paid therefor to prospective purchasers thereof, and constituting a group so large and influential in the manufacture of such products that they were able to influence and control the flow of trade thereof between and among various States and in the District of Columbia, and, but for the below set forth practices, and prior thereto, in competition with one another as to prices in the sale thereof; for the purpose of eliminating price competition among themselves—

Entered into and carried out an agreement, combination and understanding among themselves to fix and maintain, and by which they did fix and maintain, uniform delivered prices to be exacted from the purchasers of turbine-generators, and thus to fix delivered prices of such products entering into commerce among and between the various States and in the aforesaid District, and, pursuant thereto—

- (1) Fixed and maintained, by agreement among themselves, uniform delivered prices for such products, and adopted as their own, and adhered to, the delivered price sheets compiled by one of their number, notwithstanding the fact the same were unrelated to their respective individual costs;
- (2) Fixed and maintained, by agreement among themselves, uniform performance guarantees for such turbine-generators, and adopted as their own confidential performance data compiled by one of their number, notwithstanding the fact the same were unrelated to the actual or true theoretical performance of their said respective products; and
- (3) Conferred, compared and discussed, before submitting delivered prices in competitive bidding for turbine-generators, with each other, the delivered prices to be charged therefor, and agreed, as a result thereof, to submit identical bids, not only for such products, but for the numerous "extras" necessary for the proposed installation thereof;

With result that business of dealing in and distributing said products was monopolized in themselves, competition in industry in question was unreasonably lessened, eliminated, restrained, stifled, and hampered, and competition therein suppressed, and purchasing and consuming public was deprived 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, and said agreement, etc., and acts and practices otherwise operated as a restraint upon and a detriment to the freedom of fair and legitimate competition therein, and

¹ Amended complaint.

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obstructed the natural flow of trade in the channels of commerce, and with capacity and tendency so to monopolize, etc., as herein above set forth: *Held*, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. James I. Rooney for the Commission.

Wright, Gordon, Zachry & Parlin, of New York City, for General Electric Co.

Cravath, deGersdorff, Swaine & Wood and *Mr. Harold Smith*, of New York City, for Westinghouse Electric & Manufacturing Co.

Chadbourne, Wallace, Parke & Whiteside, of New York City, for Allis-Chambers Manufacturing Co.

Alter, Wright & Barron, of Pittsburgh, Pa., for Elliott Co.

Mr. Charles Neal Barney, of New York City, for Worthington Pump & Machinery Corp.

Mr. Chester A. Adee and *Mr. Charles Kingsley*, of New York City, for Ingersoll-Rand Co.

Fraser, Speir, Meyer & Kidder, of New York City, for Foster-Wheeler Corp.

Adams, Childs, McKaig & Lukens, of Philadelphia, Pa., for C. H. Wheeler Manufacturing Co.

Mr. Gilbert H. Montague, of New York City, for Ross Heater & Manufacturing Co.

Rounds, Dillingham, Mead & Neagle, of New York City, for The Heat Exchange Institute.

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 General Electric Company, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Corp., Ingersoll-Rand Company, Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ross Heater & Manufacturing Company, and The Heat Exchange Institute, 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, General Electric Company, 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 Schenectady, in said State.

Respondent, Westinghouse Electric & Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at East Pittsburgh, in said State.

Respondent, Allis-Chalmers Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in Milwaukee, in the State of Wisconsin.

Respondent, Elliott Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business in Jeanette, in said State.

Respondent, Worthington Pump & Machinery Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business at Harrison, in the State of New Jersey.

Respondent, Foster-Wheeler Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business in New York City, in said State.

Respondent, C. H. Wheeler Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at Philadelphia, in said State.

Respondent, Ingersoll-Rand Company, 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 at Jersey City, in said State.

Respondent, Ross Heater & Manufacturing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at Buffalo, in said State.

The Heat Exchange Institute, is an unincorporated trade association organized on or about June 1, 1933, with its principal place of business at New York City, in the State of New York. Its officers now are James E. Watson, president, Russell C. Jones, vice-president, and Charles H. Rohrbach, secretary and treasurer.

PAR. 2. Respondents General Electric Company, Westinghouse Electric & Manufacturing Co., Elliott Company, and Allis-Chalmers Manufacturing Co., are now, and since their organization have been

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engaged in the manufacture, at their respective places of business, of "turbine-generators" and in the sale thereof throughout the various States of the United States, and in the District of Columbia. Respondents Westinghouse Electric & Manufacturing Co., Elliott Company, Allis-Chalmers Manufacturing Co., Worthington Pump & Machinery Corp., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company and Ross Heater & Manufacturing Company, are now, and since their organization, have been engaged in the manufacture at their respective places of business of "condensers" and in the sale thereof throughout the various States of the United States and in the District of Columbia.

In the course and conduct of their respective businesses said respondents for more than five years last past have caused and still cause their products, when sold by them, to be transported from the State of origin of the shipment to the purchasers thereof located at points in various States of the United States other than the State from which said shipment was made and in the District of Columbia.

Among the largest consumers of turbine-generators and condensers are public utilities, either publicly or privately owned, municipal, State, and Federal Government.

PAR. 3. Respondents constitute a group so large and influential in the manufacture of turbine-generators and condensers that they are able to influence and control the flow of trade in commerce of such products between and among the various States of the United States, and in the District of Columbia. The said respondents were, prior to 1933, in competition as to price with one another in the sale of turbine-generators and condensers in commerce as hereinabove set out, and but for the combination, agreement, understanding, and conspiracy hereinafter described said respondents would have been at all times since 1933, and would now be, in such competition with one another.

To prospective purchasers of these products, not only the initial cost but also the efficiency and performance guarantees, which have a decided effect in the cost of operation, are vital factors and become inseparable from the prices to be paid for these products. Thus, of several generators or condensers all selling for one delivered price, yet with varying performance guarantees, those with the more favorable performance guarantees would be selected by the prospective purchasers.

PAR. 4. During the year 1933 respondents referred to in paragraph 2 hereof for the purpose of eliminating price competition among themselves entered into and have since carried out and are still carrying out an agreement, combination, understanding, and conspiracy among themselves to fix and to maintain, and by which they have fixed and

maintained, uniform delivered prices to be exacted by them from the purchasers of turbine-generators and condensers, and thus to fix the delivered price of turbine-generators and condensers entering into commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out said agreement, combination, understanding, and conspiracy the said respondents have among other things done the following:

(a) By agreement among themselves have fixed and maintained and still fix and maintain uniform delivered prices for turbine-generators and condensers.

(b) By agreement among themselves have fixed and maintained and still fix and maintain uniform performance guarantees for said turbine-generators and condensers.

(c) Adopted as their own and adhered to the delivered pricing sheets compiled by one of the respondents although the same is unrelated to the individual costs of the respective respondents.

(d) Adopted as their own the confidential performance data compiled by one of the said respondents although the same is unrelated to the actual or true theoretical performance of the turbine-generators and condensers of the respective respondents.

(e) Conferred, compared, and discussed before submitting delivered prices in competitive bidding for turbine-generator sets and condensers with each other the delivered prices to be charged for said products and agreed, as a result thereof, to submit identical delivered bids, not only for said turbine-generators and condensers, but for the numerous "extras" necessary for the proposed installation of said generators and condensers, and to submit identical performance guarantees for said generators and condensers.

(f) Took disciplinary action against any of said respondents who fail to abide by the delivered prices in accordance with said agreement, understanding, and conspiracy.

PAR. 5. Respondent, The Heat Exchange Institute, of which those respondents engaged in the manufacture of condensers are a separate branch, was organized for the purpose of more effectively aiding said respondents to carry out the agreement, combination, understanding, and conspiracy set forth in paragraph 4 hereof, in so far as the same applies to the sale and distribution of condensers, and to the subjection of said respondents to penalties for failure to adhere to the agreed delivered prices.

The capacity, tendency, and effect of said agreement, combination, understanding, and conspiracy, and the said acts and practices of the respondents set forth in paragraph 4 hereof, are and have been

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to monopolize in said respondents the business of dealing in and distributing turbine-generators and condensers; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry, and to deprive the purchasing and consuming public of the 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 said trade and industry and to obstruct the natural flow of trade in the channels of interstate commerce.

PAR. 6. The above alleged acts and things done by respondents as set forth herein are monopolistic practices and to the prejudice and injury of the public and 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."

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 9th day of October 1936, issued and served its complaint in this proceeding upon the following named respondents: General Electric Company, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., and Elliott Company. On the 13th day of November 1936, an amended complaint was issued and served in this proceeding upon the above-named respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 9th day of March 1937, said respondents filed their answers, in which answers they stated that it is not their desire or intention to violate Section 5 of the Act commonly called The Federal Trade Commission Act, approved September 26, 1914; that they desire to waive hearing on the charges set forth in said amended complaint, and not to contest the proceedings, and therefore, but solely for the purpose of disposing of this proceeding, they consent that all the material facts alleged in the amended complaint, in so far as the same are connected with the business of selling or offering for sale turbine-generators, may be deemed to be admitted as unfair methods of competition in commerce within the intent and meaning of Section 5 of said Federal Trade

Commission Act, but not within the intent and meaning of any other law of the United States; that said answers do not constitute admission of any conclusion of law or fact by said respondents for any other purpose, nor are they to be used against it in any other proceeding, suit, or action. And for the sole purpose of avoiding trouble and expense incident to the further continuance of this proceeding they waive hearing herein and refrain from contesting this proceeding, and consent that the Commission may, without trial, or without the taking of evidence or any other proceeding make and enter its findings as to the facts and issue and serve upon them an order to cease and desist from any method of competition alleged in the amended complaint in so far as the same is connected with the business of selling or offering for sale turbine-generators which constitute violations of Section 5 of said Federal Trade Commission Act; that any and all admissions given by them herein are given solely upon the conditions, and for the purposes aforesaid, and in so far as they constitute admissions are not made as, nor are they to be taken to be admissions of fact for any other purpose whatsoever.

Thereafter this proceeding regularly came on for final hearing before the Commission on said amended 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, General Electric Company, 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 Schenectady, in said State.

Respondent, Westinghouse Electric & Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at East Pittsburgh, in said State.

Respondent, Allis-Chalmers Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in Milwaukee, in the State of Wisconsin.

Respondent, Elliott Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business in Jeanette, in said State.

PAR. 2. These respondents are now, and since their organization have been engaged in the manufacture of turbine-generators and in the sale thereof throughout the States of the United States, and in the District of Columbia.

Said respondents cause their turbine-generators when sold by them to be transported in commerce throughout the United States, to the purchasers thereof located at points in various States of the United States other than the State in which said shipment was made and in the District of Columbia.

Among the largest consumers of turbine-generators are public utilities, either publicly or privately owned, municipal, State, and Federal Governments.

PAR. 3. These respondents constitute a group so large and influential in the manufacture of turbine-generators that they are able to influence and control the flow of trade in commerce of such products between and among the various States of the United States, and in the District of Columbia. These respondents were, prior to 1933, in competition as to prices with one another in the sale of turbine-generators in commerce as hereinbefore set forth, and but for the combination, agreement, and understanding hereinafter described, these respondents would have been at all times since 1933, and would now be, in such competition with one another.

To prospective purchasers of turbine-generators, not only the initial cost but also the efficiency and performance guarantees, which have a decided effect upon the cost of operation, are vital factors and become inseparable from the prices to be paid for said turbine-generators.

PAR. 4. During the year 1933, these respondents, for the purpose of eliminating price competition among themselves, entered into, and have since carried out, at the date of the amended complaint herein were still carrying out an agreement, combination and understanding among themselves to fix and maintain, and by which they have fixed and maintained, uniform delivered prices to be exacted by them from the purchasers of turbine-generators and thus to fix the delivered prices of turbine-generators entering into commerce between and among the various States of the United States and of the District of Columbia. Pursuant to, and for the purpose of carrying out said agreement, combination and understanding, these respondents have, among other things, done the following:

(a) By agreement among themselves have fixed and maintained, and at the date of the amended complaint herein were still fixing and maintaining uniform delivered prices for turbine-generators;

(b) By agreement among themselves have fixed and maintained, and at the date of the amended complaint herein were still fixing and maintaining uniform performance guarantees for said turbine-generators;

(c) Adopted at their own, and adhered to, the delivered pricing sheets compiled by one of the respondents although the same are unrelated to the individual costs of the respective respondents;

(d) Adopted as their own the confidential performance data compiled by one of the said respondents, although the same are unrelated to the actual or true theoretical performance of the turbine-generators of the respective respondents;

(e) Conferred, compared, and discussed, before submitting delivered prices in competitive bidding for turbine-generators, with each other, the delivered prices to be charged for said products, and agreed, as a result thereof, to submit identical bids not only for said turbine-generators, but for the numerous "extras" necessary for the proposed installation of said turbine-generators.

PAR. 5. The capacity, tendency, and effect of said agreement, combination, and understanding and the said acts and practices of these respondents as set forth in paragraph 4 hereof, are, and have been to monopolize in said respondents the business of dealing in and distributing turbine-generators; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry and to deprive the purchasing and consuming public of the 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 said trade and industry and to obstruct the natural flow of trade in the channels of interstate commerce.

CONCLUSION

The aforesaid acts and practices of respondents General Electric Company, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., and Elliott Company are to the prejudice of the public and of said 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 matter coming on to be heard by the Commission on the complaint filed herein on October 9, 1936, the amended complaint filed herein on November 13, 1936, and the answers of respondents General Electric Company, Westinghouse Electric & Manufacturing Co., Elliott Company and Allis-Chalmers Manufacturing Co., herein, filed herein on March 9, 1937, in which said respondents, in so far as this proceeding relates to the business of selling or offering for sale turbine-generators, state that they desire to waive hearing on the charges set forth in the amended complaint in so far as the same refers to alleged 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," and that for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding they refrain from contesting this proceeding, and consent that all the material facts alleged in said amended complaint may be deemed to be admitted as unfair methods of competition in commerce within the intent and meaning of Section 5 of said Federal Trade Commission Act, but not within the intent and meaning of any other law of the United States, such answers not constituting an admission of any conclusions of law and not constituting an admission of fact for any other purpose nor to be used against them in any other proceeding, suit or action, and that said respondents consent that the Commission may without trial, without the taking of evidence, and without any other proceeding make and enter its findings as to the facts and issue and serve upon them an order to cease and desist from any methods of competition alleged in the amended complaint which constitute violations of Section 5 of the Federal Trade Commission Act;

Now, therefore, it is hereby ordered, That the respondents, General Electric Company, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co. and Elliott Company, and their successors, officers, agents, and employees, forthwith cease and desist in connection with the business of selling or offering for sale turbine-generators in interstate commerce, from doing and performing, by agreement, combination or conspiracy between or among any two or more of said respondents the following acts and things:

1. Fixing and maintaining uniform delivered prices;
2. Fixing and maintaining uniform performance guarantees where the same are unrelated to the actual or true theoretical performance of the turbine-generators of the respective respondents;

3. Adopting as their own and adhering to the delivered pricing sheets of any of the respondents;

4. Submitting uniform or identical delivered prices in competitive bidding for turbine-generators and for the extra equipment necessary for their installation, and submitting uniform or identical performance guarantees for said turbine-generators where the same are unrelated to the actual or true theoretical performance of the turbine-generators of the respective respondents;

Provided, however, That nothing contained in this order shall prohibit the respondents, or any of them, from exchanging scientific, technical, or engineering data or information with respect to the actual performance, rating, or capacity of turbine-generators manufactured by them, or any of them, or from participating with one another, or with third persons, in discussions, meetings or studies of a scientific, technical or engineering character for the purpose of improving, standardizing or simplifying their products or testing methods or facilities relating thereto, defining technical terms, or promoting safety, such as:

(1) Determining the highest actual efficiency practically obtainable by turbine-generators of various types or sizes and under various conditions, and (2) standardizing the various types or sizes of turbine-generators and specifying the actual performance or characteristics which a turbine-generator should attain under given conditions in order to be designated as of a specific type or size, and provided further that nothing in this order contained shall prohibit the respondents, or any of them, from using, in such manner as any of said respondents may individually so desire to do, the results of the technical or engineering data and information above referred to; but this proviso is in no way to be construed as permitting the said several respondents named in this order to accomplish unlawfully what is specifically prohibited in paragraphs 2 and 4 of this order; and

Provided further, That the prohibitions of this order shall not apply to any lawful action taken under patents or license agreements relating thereto.

It is hereby further ordered, That respondents shall, within 60 days of the date of service upon them of this order, file with this Commission a report or reports in writing stating the manner and form in which they shall have complied with this order.

IN THE MATTER OF
WESTINGHOUSE ELECTRIC & MANUFACTURING
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 2941. Complaint, Nov. 13, 1936¹—Decision, Apr. 2, 1937

Where eight corporations engaged in manufacture and sale of condensers, largest consumers of which included public utilities, whether public or privately owned, and municipal, State, and Federal Governments, and in connection with which not only initial cost, but efficiency and performance guarantees, with their decided effect upon cost of operation, are vital factors and become inseparable from the prices to be paid therefor to prospective purchasers thereof, and constituting a group so large and influential in the manufacture of such products that they were able to influence and control the flow of trade thereof between and among various States and in the District of Columbia, and, but for the below set forth practices, and prior thereto, in competition with one another as to prices in the sale thereof; for the purpose of eliminating price competition among themselves—

Entered into and carried out an agreement, combination and understanding among themselves to fix and maintain, and by which they did fix and maintain, uniform delivered prices to be exacted from the purchasers of condensers, and thus to fix delivered prices of such products entering into commerce among and between the various States and in the aforesaid District, and, pursuant thereto—

- (1) Fixed and maintained, by agreement among themselves, uniform delivered prices for such products, and adopted as their own, and adhered to, the delivered price sheets compiled by one of their number, notwithstanding the fact the same were unrelated to their respective individual costs;
- (2) Fixed and maintained, by agreement among themselves, uniform performance guarantees for such condensers, and adopted as their own confidential performance data compiled by one of their number, notwithstanding the fact the same were unrelated to the actual or true theoretical performance of their said respective products;
- (3) Conferred, compared and discussed, before submitting delivered prices in competitive bidding for condensers, with each other, the delivered prices to be charged therefor, and agreed, as a result thereof, to submit identical bids, not only for such products, but for the numerous "extras" necessary for the proposed installation thereof; and
- (4) Took disciplinary action against any of their number who failed to abide by the delivered prices, in accordance with said agreement, combination and understanding;

With the result that business of dealing in and distributing said products was monopolized in themselves, competition in industry in question was unreasonably lessened, eliminated, restrained, stifled, and hampered, and competition therein suppressed, and purchasing and consuming public was deprived of advantages in price, service and other considerations which they

¹ Amended complaint.

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would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said trade and industry, and said agreements, etc., and acts and practices, otherwise operated as a restraint upon and a detriment to the freedom of fair and legitimate competition therein, and obstructed the natural flow of trade in the channels of commerce, and with capacity and tendency so to monopolize, etc., as hereinabove set forth :

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

Mr. James I. Rooney for the Commission.

Wright, Gordon, Zachry & Parlin, of New York City, for General Electric Co.

Cravath, deGersdorff, Swaine & Wood and *Mr. Harold Smith*, of New York City, for Westinghouse Electric & Manufacturing Co.

Chadbourne, Wallace, Parke & Whiteside, of New York City, for Allis-Chalmers Manufacturing Co.

Alter, Wright & Barron, of Pittsburgh, Pa., for Elliott Co.

Mr. Charles Neal Barney, of New York City, for Worthington Pump & Machinery Corp.

Mr. Chester A. Adee and *Mr. Charles Kingsley*, of New York City, for Ingersoll-Rand Co.

Fraser, Speir, Meyer & Kidder, of New York City, for Foster-Wheeler Corp.

Adams, Childs, McKaig & Lukens, of Philadelphia, Pa., for C. H. Wheeler Manufacturing Co.

Mr. Gilbert H. Montague, of New York City, for Ross Heater & Manufacturing Co.

Rounds, Dillingham, Mead & Neagle, of New York City, for The Heat Exchange Institute.

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 General Electric Company, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Corp., Ingersoll-Rand Company, Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ross Heater & Manufacturing Company, And The Heat Exchange Institute, 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

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respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, General Electric Company, 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 Schenectady, in said State.

Respondent, Westinghouse Electric & Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at East Pittsburgh, in said State.

Respondent, Allis-Chalmers Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in Milwaukee, in the State of Wisconsin.

Respondent, Elliott Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business in Jeanette, in said State.

Respondent, Worthington Pump & Machinery Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business at Harrison, in the State of New Jersey.

Respondent, Foster-Wheeler Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business at New York City, in said State.

Respondent, C. H. Wheeler Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at Philadelphia, in said State.

Respondent, Ingersoll-Rand Company, 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 at Jersey City, in said State.

Respondent, Ross Heater & Manufacturing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at Buffalo, in said State.

The Heat Exchange Institute, is an unincorporated trade association organized on or about June 1, 1933, with its principal place of business at New York City, in the State of New York. Its officers now are James E. Watson, president, Russell C. Jones, vice president, and Charles H. Rohrbach, secretary and treasurer.

PAR. 2. Respondents General Electric Company, Westinghouse Electric & Manufacturing Co., Elliott Company, and Allis-Chalmers Manufacturing Co., are now, and since their organization have been engaged in the manufacture, at their respective places of business, of "turbine-generators" and in the sale thereof throughout the various States of the United States, and in the District of Columbia. Respondents Westinghouse Electric & Manufacturing Co., Elliott Company, Allis-Chalmers Manufacturing Co., Worthington Pump & Machinery Corp., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company, and Ross Heater & Manufacturing Company, are now, and since their organization, have been engaged in the manufacture at their respective places of business of "condensers" and in the sale thereof throughout the various States of the United States and in the District of Columbia.

In the course and conduct of their respective businesses said respondents for more than five years last past have caused and still cause their products, when sold by them, to be transported from the State of origin of the shipment to the purchasers thereof located at points in various States of the United States other than the State from which said shipment was made and in the District of Columbia.

Among the largest consumers of turbine-generators and condensers are public utilities, either publicly or privately owned, municipal, State, and Federal Governments.

PAR. 3. Respondents constitute a group so large and influential in the manufacture of turbine-generators and condensers that they are able to influence and control the flow and trade in commerce of such products between and among the various States of the United States, and in the District of Columbia. The said respondents were, prior to 1933, in competition as to price with one another in the sale of turbine-generators and condensers in commerce as hereinabove set out, and but for the combination, agreement, understanding, and conspiracy hereinafter described said respondents would have been at all times since 1933, and would now be, in such competition with one another.

To prospective purchasers of these products, not only the initial cost but also the efficiency and performance guarantees, which have a decided effect in the cost of operation, are vital factors and become inseparable from the prices to be paid for these products. Thus, of several generators or condensers all selling for one delivered price, yet with varying performance guarantees, those with the more favorable performance guarantees would be selected by the prospective purchasers.

PAR. 4. During the year 1933 respondents referred to in paragraph 2 hereof for the purpose of eliminating price competition among them-

selves entered into and have since carried out and are still carrying out an agreement, combination, understanding, and conspiracy among themselves to fix and to maintain, and by which they have fixed and maintained, uniform delivered prices to be exacted by them from the purchasers of turbine-generators and condensers, and thus to fix the delivered price of turbine-generators and condensers entering into commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out said agreement, combination, understanding, and conspiracy the said respondents have among other things done the following:

(a) By agreement among themselves have fixed and maintained and still fix and maintain uniform delivered prices for turbine-generators and condensers.

(b) By agreement among themselves have fixed and maintained and still fix and maintain uniform performance guarantees for said turbine-generators and condensers.

(c) Adopted as their own and adhered to the delivered pricing sheets compiled by one of the respondents although the same is unrelated to the individual costs of the respective respondents.

(d) Adopted as their own the confidential performance data compiled by one of the said respondents although the same is unrelated to the actual or true theoretical performance of the turbine-generators and condensers of the respective respondents.

(e) Conferred, compared, and discussed before submitting delivered prices in competitive bidding for turbine-generator sets and condensers with each other the delivered prices to be charged for said products and agreed, as a result thereof, to submit identical delivered bids, not only for said turbine-generators and condensers, but for the numerous "extras" necessary for the proposed installation of said generators and condensers, and to submit identical performance guarantees for said generators and condensers.

(f) Took disciplinary action against any of said respondents who fail to abide by the delivered prices in accordance with said agreement, understanding, and conspiracy.

PAR. 5. Respondent, The Heat Exchange Institute, of which those respondents engaged in the manufacture of condensers are a separate branch, was organized for the purpose of more effectively aiding said respondents to carry out the agreement, combination, understanding, and conspiracy set forth in paragraph 4 hereof, in so far as the same applies to the sale and distribution of condensers, and to the subjection of said respondents to penalties for failure to adhere to the agreed delivered prices.

The capacity, tendency and effect of said agreement, combination, understanding, and conspiracy, and the said acts and practices of the respondents set forth in paragraph 4 hereof, are and have been to monopolize in said respondents the business of dealing in and distributing turbine-generators and condensers; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry, and to deprive the purchasing and consuming public of the 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 said trade and industry and to obstruct the natural flow of trade in the channels of interstate commerce.

PAR. 6. The above alleged acts and things done by respondents as set forth herein are monopolistic practices and to the prejudice and injury of the public and 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."

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 9th day of October 1936, issued and served its complaint in this proceeding upon the following named respondents: Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Corp., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ross Heater & Manufacturing Company, Ingersoll-Rand Company, and The Heat Exchange Institute. On the 13th day of November 1936, an amended complaint was issued and served in this proceeding upon the above-named respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 9th day of March 1937, said respondents filed their answers, in which answers, with the exception of The Heat Exchange Institute, they stated that it is not their desire or intention to violate Section 5 of the act commonly called The Federal Trade Commission Act, approved September 26, 1914; that they desire to waive hearing on the charges set forth in said

amended complaint, and not to contest the proceedings, and therefore, but solely for the purpose of disposing of this proceeding, they consent that all the material facts alleged in the amended complaint, insofar as the same are connected with the business of selling or offering for sale condensers, may be deemed to be admitted as unfair methods of competition in commerce within the intent and meaning of Section 5 of said Federal Trade Commission Act, but not within the intent and meaning of any other law of the United States; that said answers do not constitute admission of any conclusion of law or fact by said respondents for any other purpose, nor are they to be used against it in any other proceedings, suit, or action. And for the sole purpose of avoiding trouble and expense incident to the further continuance of this proceeding they waive hearing herein and refrain from contesting this proceeding, and consent that the Commission may, without trial, or without the taking of evidence or any other proceeding make and enter its findings as to the facts and issue and serve upon them an order to cease and desist from any method of competition alleged in the amended complaint insofar as the same is connected with the business of selling or offering for sale condensers which constitute violations of Section 5 of said Federal Trade Commission Act; that any and all admissions given by them herein are given solely upon the conditions and for the purposes aforesaid, and insofar as they constitute admissions are not made as, nor are they to be taken to be admissions of fact for any other purpose whatsoever.

Thereafter this proceeding regularly came on for final hearing before the Commission on said amended complaint and said answers, 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, Westinghouse Electric & Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at East Pittsburgh, in said State.

Respondent, Allis-Chalmers Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in Milwaukee, in the State of Wisconsin.

Respondent, Elliott Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of

Pennsylvania, with its principal office and place of business in Jeannette, in said State.

Respondent, Worthington Pump & Machinery Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal place of business at Harrison, in the State of New Jersey.

Respondent, Foster-Wheeler Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal place of business at New York City, in said State.

Respondent, C. H. Wheeler Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at Philadelphia, in said State.

Respondent, Ingersoll-Rand Company, 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 at Jersey City, in said State.

Respondent, Ross Heater & Manufacturing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at Buffalo, in said State.

The Heat Exchange Institute is an unincorporated trade association organized on or about June 1, 1933, with its principal place of business at New York City, in the State of New York.

PAR. 2. Respondents, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Co., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company, and Ross Heater & Manufacturing Company, are now, and since their organization have been, engaged in the manufacture of condensers, and in the sale thereof in the various States throughout the United States and in the District of Columbia.

Said respondents cause their condensers when sold by them to be transported in commerce throughout the United States, to the purchasers thereof located at points in various States of the United States other than the State in which said shipment was made and in the District of Columbia.

Among the largest consumers of condensers are public utilities, either publicly or privately owned, municipal, State and Federal Governments.

PAR. 3. These respondents constitute a group so large and influential in the manufacture of condensers that they are able to influence and control the flow of trade in commerce of such products between and among the various States of the United States, and in the District of Columbia. These respondents were, prior to 1933, in competition as to prices with one another in the sale of condensers, in commerce as hereinbefore set forth, and but for the combination, agreement, and understanding hereinafter described, these respondents would have been at all times since 1933, and would now be, in such competition with one another.

To prospective purchasers of condensers, not only the initial cost but also the efficiency and performance guarantees, which have a decided effect upon the cost of operation, are vital factors and become inseparable from the prices to be paid for said condensers.

PAR. 4. During the year 1933, these respondents, for the purpose of eliminating price competition among themselves, entered into, and have since carried out, and at the date of the amended complaint herein were still carrying out an agreement, combination, and understanding among themselves to fix and maintain, and by which they have fixed and maintained, uniform delivered prices to be exacted by them from the purchasers of condensers, and thus to fix the delivered prices of condensers entering into commerce between and among the various States of the United States and of the District of Columbia. Pursuant to, and for the purpose of carrying out said agreement, combination and understanding, these respondents have, among other things, done the following:

(a) By agreement among themselves have fixed and maintained, and at the date of the amended complaint herein were still fixing and maintaining uniform delivered prices for condensers;

(b) By agreement among themselves have fixed and maintained, and at the date of the amended complaint herein were still fixing and maintaining uniform performance guarantees for said condensers;

(c) Adopted as their own, and adhered to, the delivered pricing sheets compiled by one of the respondents although the same are unrelated to the individual costs of the respective respondents;

(d) Adopted as their own the confidential performance data compiled by one of the said respondents, although the same are unrelated to the actual or true theoretical performance of the condensers of the respective respondents;

(e) Conferred, compared, and discussed, before submitting delivered prices in competitive bidding for condensers, with each other, the delivered prices to be charged for said products, and agreed, as a result thereof, to submit identical bids not only for said condensers,

but for the numerous "extras" necessary for the proposed installation of said condensers;

(f) Took disciplinary action against any of said respondents who failed to abide by the delivered prices in accordance with the said agreement, combination and understanding.

PAR. 5. The capacity, tendency, and effect of said agreement, combination and understanding and the said acts and practices of these respondents as set forth in paragraph 4 hereof, are, and have been to monopolize in said respondents the business of dealing in and distributing condensers; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said industry, and to deprive the purchasing and consuming public of the 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 said trade and industry and to obstruct the natural flow of trade in the channels of interstate commerce.

These respondents engaged in the condenser industry constitute only that section of the Heat Exchange Institute known as the Condenser Section, and compliance with the order to cease and desist by these respondents engaged in the condenser industry will be as effective as if the order were directed against the Heat Exchange Institute.

CONCLUSION

The aforesaid acts and practices of respondents Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Co., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company, and Ross Heater & Manufacturing Company are to the prejudice of the public and of said 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 matter coming on to be heard by the Commission on the complaint filed herein on October 9, 1936, the amended complaint filed herein on November 13, 1936, and the answers of respondents Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Corp..

Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company and Ross Heater & Manufacturing Company, herein, filed herein on March 9, 1937, in which said respondents, insofar as this proceeding relates to the business of selling or offering for sale condensers, state that they desire to waive hearing on the charges set forth in the amended complaint insofar as the same refers to alleged 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," and that for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding they refrain from contesting this proceeding, and consent that all the material facts alleged in said amended complaint may be deemed to be admitted as unfair methods of competition in commerce within the intent and meaning of Section 5 of said Federal Trade Commission Act but not within the intent and meaning of any other law of the United States, such answers not constituting an admission of any conclusions of law and not constituting an admission of fact for any other purpose nor to be used against them in any other proceeding, suit or action, and that said respondents consent that the Commission may without trial, without the taking of evidence, and without any other proceeding make and enter its findings as to the facts and issue and serve upon them an order to cease and desist from any methods of competition alleged in the amended complaint which constitute violations of Section 5 of the Federal Trade Commission Act; and

Respondents Worthington Pump & Machinery Corp., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company and Ross Heater & Manufacturing Company, in their answers deny, as to themselves, every allegation in the amended complaint insofar as they relate to the business of selling or offering for sale turbine-generators;

Now, therefore, it is hereby ordered, That the respondents Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., Elliott Company, Worthington Pump & Machinery Corp., Foster-Wheeler Corp., C. H. Wheeler Manufacturing Co., Ingersoll-Rand Company, and Ross Heater & Manufacturing Company, and their successors, officers, agents and employees forthwith cease and desist in connection with the business of selling or offering for sale condensers in interstate commerce, from doing and performing, by agreement, combination, or conspiracy between or among any two or more of said respondents the following acts and things:

1. Fixing and maintaining uniform delivered prices;

2. Fixing and maintaining uniform performance guarantees where the same are unrelated to the actual or true theoretical performance of the condensers of the respective respondents;

3. Adopting as their own and adhering to the delivered pricing sheets of any of the respondents;

4. Submitting uniform or identical delivered prices in competitive bidding for condensers, and for the extra equipment necessary for their installation, and submitting uniform or identical performance guarantees for said condensers where the same are unrelated to the actual or true theoretical performance of the condensers of the respective respondents;

5. Imposing, attempting or threatening to impose, by any means whatsoever, any disciplinary action on any of the respondents who fail to abide by any delivered prices as stated in paragraphs 1, 3, and 4 hereof;

Provided, however, That nothing contained in this order shall prohibit the respondents, or any of them, from exchanging scientific, technical or engineering data or information with respect to the actual performance, rating, or capacity of condensers manufactured by them or any of them or from participating with one another, or with third persons, in discussions, meetings, or studies of a scientific, technical or engineering character for the purpose of improving, standardizing, or simplifying their products or testing methods or facilities relating thereto, defining technical terms, or promoting safety, such as:

(1) Determining the highest actual efficiency practically obtainable by condensers of various types or sizes and under various conditions, and (2) standardizing the various types or sizes of condensers and specifying the actual performance or characteristics which a condenser should attain under given conditions in order to be designated as of a specific type or size, and provided further that nothing in this order contained shall prohibit the respondents, or any of them, from using, in such manner as any of said respondents may individually so desire to do, the results of the technical or engineering data and information above referred to; but this proviso is in no way to be construed as permitting the said several respondents named in this order to accomplish unlawfully what is specifically prohibited in paragraphs (2) and (4) of this order; and

Provided further, That the prohibitions of this order shall not apply to any lawful action taken under patents or license agreements relating thereto.

Order

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It is hereby further ordered, That all respondents, except the Heat Exchange Institute, shall, within 60 days of the date of service upon them of this order, file with this Commission a report or reports in writing stating the manner and form in which they shall have complied with this order; and

Since the respondents engaged in the condenser industry constitute only that section of the Heat Exchange Institute known as the Condenser Section, and since compliance with the order to cease and desist by these respondents engaged in the condenser industry will be as effective as if the order were directed against the Heat Exchange Institute;

It is hereby further ordered, That the complaint in this proceeding as amended be, and the same is hereby dismissed as to the respondent the Heat Exchange Institute.

Complaint

IN THE MATTER OF

SAMUEL BRIER, DOING BUSINESS AS SAMUEL BRIER & COMPANY AND QUAKERTOWN LUGGAGE 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 3049. Complaint, Feb. 4, 1937—Decision, Apr. 2, 1937

Where an individual, and a corporation, headed and controlled, managed and operated by him, engaged in the manufacture, distribution, and sale of handbags, suitcases, and other luggage to jobbers and retailers, portion of which luggage, thus manufactured and sold by them, was made from top grain leather and portion of which was made from the inferior and less durable and costly split or inner side leather—

Placed upon pieces of said latter luggage, covered with said split leather, conspicuous stamp reading "Warranted Cowhide," "Genuine Cowhide," "All Leather," "Genuine Leather," and thereby represented that such pieces were covered with the preferred top grain leather;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that luggage so stamped by them was covered with the outside or top layer of the hide, and with the result of enabling retailers and jobbers to mislead and deceive the purchasing public as to the quality of the material with which such luggage was covered, and of placing in the hands of retailers and dealers an instrument and means whereby they might commit a fraud upon members of such public, and with the further result, as a direct consequence of the misleading and erroneous belief induced as aforesaid, that a number of the consuming public bought a substantial volume of their said luggage, and trade was unfairly diverted to them from those likewise engaged in the sale of luggage covered with split hide, and who truthfully labeled the same, and from those also engaged in the sale of top grain leather-covered luggage; 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. George Foulkes for the Commission.

Bender, Rubin & Simons, 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 Samuel Brier, an individual doing business as Samuel Brier & Company and Quakertown Luggage Company, Inc., a corporation hereinafter re-

ferred 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, Samuel Brier, is an individual doing business as Samuel Brier & Company, with his principal office and place of business located at 310 Spruce Street, Philadelphia, State of Pennsylvania.

Respondent Quakertown Luggage 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 and place of business located in Quakertown, State of Pennsylvania.

Respondent, Samuel Brier is president of the respondent, Quakertown Luggage Company, Inc. He controls, manages and operates the sales policies and business activities of respondent, Quakertown Luggage Company, Inc.

PAR. 2. Respondents have been, for more than one year last past, and are now, engaged in the business of manufacturing, distributing, and selling handbags, suitcases and other luggage to jobbers and retailers, many of whom reside in States other than the State of Pennsylvania. When orders are received therefor they are filled by respondents by shipping said luggage to said purchasers from the respective places of business of said respondents into and through other States of the United States and in the District of Columbia. There is now and has been during the time hereinbefore mentioned, a constant current of trade in commerce in said luggage so distributed and sold by respondents between and among the various States of the United States and in the District of Columbia.

In the course of their said businesses said respondents were, and are, in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution of handbags, suitcases and other luggage in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Certain pieces of luggage manufactured and sold by respondents, as aforesaid, are made from top grain leather, while other pieces are made from split leather. Top grain leather is that portion of the hide which includes the outer surface or hair side. Split leather consists of a cut or layer of the hide which remains after the top grain or surface has been removed from said hide. Split leather is of inferior quality and durability to top grain leather and commands a lower price. The terms "Top Grain Leather," "Grained

Leather," "Genuine Leather," "Genuine Cowhide," "Warranted Leather," "Warranted Cowhide," "All Leather," and "Leather," when applied to leather products, are understood by the trade and consuming public to mean top grain leather as distinguished from split leather as described above, and there is a preference among the trade and consuming public for luggage made of such leather over luggage made from split leather. Certain pieces of the luggage manufactured and sold as aforesaid by respondents are covered with said split leather and respondents place upon the surface of luggage so manufactured from split leather a conspicuous stamp reading as follows:

Warranted Cowhide .
 Genuine Cowhide
 All Leather
 Genuine Leather

Said stamps, labels, and markings serve as representations to the purchasing public that the material with which such luggage is covered is top grain leather. In addition, retailers and jobbers are thus enabled by reason of said stamps, labels, and representations to mislead and deceive the purchasing public as to the quality of the material with which such luggage is covered.

PAR. 4. The acts and practices of respondents in offering for sale and selling said handbags, suitcases and other luggage stamped and labeled as aforesaid had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that luggage so stamped by respondents is covered with the outside or top layer of the hide. Further, said acts and practices as herein set out places in the hands of retailers and dealers an instrument and a means whereby said retailers and dealers may commit a fraud upon members of the purchasing public. As a direct consequence of the misleading and erroneous belief induced by the advertisements and representations of respondents, as hereinabove enumerated, a number of the consuming public have purchased a substantial volume of respondents' luggage with the result that trade has been and is now being unfairly diverted to respondents from corporations, firms, partnerships, and individuals likewise engaged in the business of selling luggage covered with split hide and who truthfully label said luggage, as well as from corporations, firms, partnerships and individuals who are engaged in the business of selling luggage covered with top grain leather. As a result thereof substantial injury has been done and is now being done by respondents to competition in commerce between and among

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

PAR. 5. 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 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."

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 4, 1937, issued and served its complaint in this proceeding upon respondent Samuel Brier, an individual doing business as Samuel Brier & Company, and respondent Quakertown Luggage Company, Inc., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the said act. On February 25, 1937, the respondents filed their answer, in which answer they admitted all the material allegations of the complaint to be true and stated that they waived hearing on the charges set forth in the complaint and that, without further evidence or other intervening procedure, the Commission might issue and serve upon them findings of 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 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

PARAGRAPHS 1. Respondent Samuel Brier is an individual doing business as Samuel Brier & Company, with his principal office and place of business located at 310 Spruce Street, Philadelphia, State of Pennsylvania.

Respondent Quakertown Luggage 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 and place of business located in Quakertown, State of Pennsylvania.

Respondent Samuel Brier is president of the respondent, Quakertown Luggage Company, Inc. He controls, manages, and operates the sales policies and business activities of respondent, Quakertown Luggage Company, Inc.

PAR. 2. For more than one year last past the respondents have been, and are now, engaged in the business of manufacturing, distributing, and selling handbags, suitcases, and other luggage to jobbers and retailers, many of whom reside in States other than the State of Pennsylvania. When the respondents receive orders for their luggage they are filled by respondents by shipping said luggage to purchasers from the respective places of business of said respondents into and through other States of the United States and in the District of Columbia.

There is now, and has been during the time hereinbefore mentioned, a constant current of trade in commerce in said luggage so distributed and sold by respondents between and among the various States of the United States and in the District of Columbia.

The respondents, in the course of the operation of their said businesses, were and are in substantial competition with other corporations, firms, partnerships, and individuals likewise engaged in the sale and distribution of handbags, suitcases, and other luggage in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. A portion of the luggage manufactured and sold by the respondents, as aforesaid, is made from top grain leather, while other pieces are made from split leather.

Top grain leather is that portion of the hide which includes the outer surface or hair side. Split leather consists of a cut or layer of the hide which remains after the top grain or surface has been removed from said hide.

Split leather is of inferior quality and durability to top grain leather and commands a lower price on the market.

The terms "Top Grain Leather," "Grained Leather," "Genuine Leather," "Genuine Cowhide," "Warranted Leather," "Warranted Cowhide," "All Leather," and "Leather," when applied to leather products, are understood by the trade and consuming public to mean top grain leather as distinguished from split leather as described above.

There is a preference among the trade and consuming public for luggage made of top grain leather over luggage made from split leather.

Certain pieces of the luggage manufactured and sold as aforesaid by the respondents are covered with said split leather and respondents place upon the surface of luggage so manufactured from split leather a conspicuous stamp reading as follows:

Warranted Cowhide
Genuine Cowhide
All Leather
Genuine Leather

These stamps, labels, and markings serve as representations to the purchasing public that the material with which such luggage is covered is top grain leather. By placing said labels and markings on the luggage respondents enable retailers and jobbers to mislead and deceive the purchasing public as to the quality of the material with which such luggage is covered.

PAR. 4. The acts and practices of respondents in offering for sale and selling said handbags, suitcases and other luggage stamped and labeled as aforesaid had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that luggage so stamped by respondents is covered with the outside or top layer of the hide. Further, said acts and practices as herein set out places in the hands of retailers and dealers an instrument and a means whereby said retailers and dealers may commit a fraud upon members of the purchasing public.

As a direct consequence of the misleading and erroneous belief induced by the advertisements and representations of respondent, as hereinabove enumerated, a number of the consuming public have purchased a substantial volume of respondents' luggage with the result that trade has been and is now being unfairly diverted to respondents from corporations, firms, partnerships and individuals likewise engaged in the business of selling luggage covered with split hide and who truthfully label said luggage, as well as from corporations, firms, partnerships, and individuals who are engaged in the business of selling luggage covered with top grain leather. As a result thereof substantial injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Samuel Brier, an individual doing business as Samuel Brier & Company, and respondent Quakertown Luggage Company, Inc., a corporation, are to the prejudice of the public and of respondents' competitors, and

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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 answer of the respondents, in which answer the 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 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, Samuel Brier, individually and doing business as Samuel Brier & Company, or doing business under any other trade name, and the respondent Quakertown Luggage Company, Inc., a corporation, and its officers, their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of handbags, suitcases, and other luggage in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the words "Warranted Cowhide," "Genuine Cowhide," "All Leather," "Genuine Leather," or through the use of any other words or symbols of similar import and meaning, or in any manner whatever, that handbags, suitcases, and other luggage sold by them and made from split leather or the inner split of leather are in fact made from the outer split or any part of the hide or skin other than the inner split thereof.

It is further ordered, That the respondents shall within 30 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

BEAR MILL MANUFACTURING COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 25 1914

Docket 2678. Complaint, Oct. 11, 1935—Decision, Apr. 5, 1937

Where a corporation engaged in the sale and distribution of cotton and rayon fabrics and of rayon and cotton mixtures, purchasing unfinished cotton, rayon, and mixed fabrics and having the same processed according to its instructions by a finishing company over which it exercised no control and which it did not own or operate, and selling its said fabrics in substantial competition with those engaged in sale and distribution, or in manufacture, sale, and distribution, of cotton and rayon fabrics and of cotton and rayon mixtures, and including among its competitors many who sell and distribute, but do not manufacture, their said cotton and rayon fabrics, or in any way represent themselves as manufacturers thereof, and competitor manufacturers of cotton and rayon fabrics sold by them who do employ terms "mill" and "manufacturing" or other terms of similar import and meaning—

Represented, through use of terms "Mill" and "Manufacturing" as included in its corporate name, on its stationery and invoices circulated throughout the United States to customers and prospective customers, and on folders containing samples of its said products and carried by its salesmen who travel throughout the United States, to its customers, prospective customers, and general buying public, that it actually owned and operated, or directly and absolutely controlled, a mill wherein its goods were made, the facts being it did not thus own, operate or control any such factory or mill and was not engaged in manufacturing, and was not itself a manufacturer as understood by trade and purchasing public generally, and did not own any print works, dye works, bleach works, finishing works, spinnery or weavery, but was engaged solely in sale and distribution of fabrics made by others as hereinbefore set forth;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that it actually owned and operated, or directly and absolutely controlled, a mill or mills wherein the products sold by it were manufactured, and with further result that the buying public, as a result of the erroneous belief thus induced, bought a substantial volume of its said products, and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution of cotton and rayon fabrics and who truthfully advertise and represent the nature and character of their respective businesses; 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. T. H. Kennedy for the Commission.

Mr. Dudley B. Borsal of Curtis, Mallet-Prevost, Colt & Mosle, 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 Bear Mill Manufacturing Company, 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, states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Bear Mill Manufacturing Company, Inc., is a corporation organized under the laws of the State of New York in 1907, then, ever since and now exists by virtue of the laws of said State, and now has its principal place of business in the City of New York, State of New York. The respondent is, and for more than one year last past has been engaged in supplying rayons and cottons to commission weavers, who, in turn, manufacture or weave the material so supplied them into fabric. The title to the material so supplied said weavers, and in the product manufactured by the said weavers, is retained in the respondent. Respondent, for more than one year last past, has been engaged in the sale and distribution of rayon and cotton cloth or fabric either as an agent for others or on its own behalf. Said operations of respondent have been and are in commerce between and among the various States of the United States. When the products herein referred to are sold, respondent causes them to be shipped from its place of business in the State of New York or other State of origin to purchasers thereof located in various States of the United States and other than the State of New York or other State of origin. In the course and conduct of its business said respondent was at all times hereinafter referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the supplying of materials to weavers for manufacture by them and in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of its business, as described in paragraph 1, said respondent adopted as and for its name the words Bear Mill Manufacturing Company, Inc., under which to carry on its business and which name containing the words "Mill" and "Manufacturing" it has used continuously since in or about 1907 and is now using in soliciting the sale of and selling its said products in interstate commerce. Respondent has caused said name "Bear Mill Man-

ufacturing Company, Inc." to appear on its letterheads and other stationery and advertisements circulated, in soliciting the sale of and selling its products in interstate commerce when in truth and in fact said respondent did not manufacture any of the products which it sold and distributed and did not own, control, or operate any mill or factory wherein said products were manufactured or fabricated, which said products respondent sold and distributed in interstate commerce.

PAR. 3. There is a preference on the part of certain of the retail merchants in the different States of the United States for goods, wares and merchandise, to be resold at retail to the public, bought directly from the mill owner or manufacturer thereof, and there is an impression and belief existing among certain of said retail merchants that by dealing directly with the mill owner or manufacturer they can buy goods at a cheaper price and on more favorable terms than they can from jobbers or corporations, associations, individuals, firms, and partnerships not manufacturing goods, wares, and merchandise they sell to such retail dealers by eliminating the profits of the middleman and that a more uniform line of goods can be purchased from a mill operator than from one who does not operate a mill. The use by respondent of the words "Mill" and "Manufacturing" in its name in respondent's letterheads, billheads, invoices, stationery, and otherwise has a tendency and capacity to mislead and deceive purchasers who are customers and prospective customers of respondent by causing them to believe that respondent actually owns and operates, or directly and absolutely controls the mill or mills in which said products are made or manufactured, or that respondent himself makes or manufactures his products, and that thereby such customers or prospective customers save and will save the middleman's profit; and the use by respondent of the words "Mill" and "Manufacturing" has a tendency and capacity unfairly to divert trade to respondent from other corporations, associations, individuals, firms, and partnerships, who are actually manufacturing products similar to the products of respondent for sale in interstate commerce and those competitors of respondent who do not manufacture similar or like products to those of respondent for sale and distribution in interstate commerce, but who truthfully advertise and label same and who do not claim or represent themselves to be manufacturers.

PAR. 4. The practices of respondent described in paragraph 2 hereof are all to the prejudice of the public and the respondent's competitors and constitute 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 October 11, 1935, issued and served its complaint in this proceeding upon respondent Bear Mill Manufacturing 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Thomas H. Kennedy, 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 Dudley B. Bonsal, 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. The respondent, Bear Mill Manufacturing Company, Inc., is a New York corporation, organized in 1907. Its principal office is at 361 Broadway, New York, N. Y.

It is now, and since its incorporation has been, engaged in the sale and distribution of cotton fabrics. During more recent years it has added rayon fabrics and rayon and cotton mixtures to its line of merchandise. When orders are received for respondent’s goods it either ships them from its place of business in New York, N. Y., or from the point at which the goods are processed, to the purchasers thereof located at various points in States of the United States other than the State of origin of shipment. The respondent has, at all times during the past several years, maintained a constant current of trade and commerce among and between the various States of the United States

and in the District of Columbia in the merchandise which it sells. Its dollar volume of sales for the year 1935 approximated \$2,500,000 and for 1936 \$3,500,000.

At all times during the last several years, the respondent has been in substantial competition with other corporations and with individuals and partnerships likewise engaged in the sale and distribution, or in the manufacture, sale, and distribution, of cotton fabrics, rayon fabrics, and cotton and rayon mixtures in commerce, among and between the several States of the United States and the District of Columbia.

PAR. 2. The respondent's corporate name, "Bear Mill Manufacturing Company, Inc.," appears on its stationery and invoices circulated throughout the United States to customers and prospective customers. Its salesmen, who travel throughout the United States, carry samples of respondent's products, the folders of which bear the respondent's corporate name. Its corporate name also appears in the New York City telephone directory.

The use of the terms "mill" and "manufacturing", as a part of its trade name, serves as a representation to respondent's customers, prospective customers and the general buying public that the respondent actually owns and operates or directly and absolutely controls a mill wherein its goods are manufactured.

PAR. 3. The respondent does not, in fact, own, operate or control any factory or mill wherein its said products are manufactured. It is not engaged in the business of manufacturing and is not itself a manufacturer as those terms are understood by the trade and the purchasing public generally. It does not own any print works, dye works, bleach works, finishing works, spinnery or weavery, but is engaged solely in the sale and distribution of fabrics manufactured by others. It buys unfinished cotton, rayon, and mixed fabrics and has said fabrics processed, according to its own instructions, by a finishing company over which it exercises no control and which it does not own or operate.

PAR. 4. A substantial portion of the fabric-buying public has a preference for dealing direct with a manufacturer of the fabrics being purchased. Said purchasers believe they obtain better prices, superior quality, and other advantages in dealing direct with a manufacturer rather than a broker or middleman.

PAR. 5. Many of respondent's competitors who sell and distribute cotton and rayon fabrics in interstate commerce do not manufacture the products sold by them and do not in any way represent that they are the manufacturers of said products. There are also among respondent's competitors manufacturers of cotton and rayon fabrics

which they sell in interstate commerce, who do employ the terms "mill" and "manufacturing" or other terms of similar import and meaning, in their corporate names and advertising.

PAR. 6. Respondent's practice of designating and representing itself as a manufacturer through the use of the terms "mill" and "manufacturing" as parts of its corporate name, which appears on its stationery, invoices, in the telephone directory, and on its advertising matter, has had, and now has, the capacity, and tendency to mislead and deceive, and has misled, a substantial portion of the purchasing public into the erroneous belief that respondent actually owns and operates or directly and absolutely controls a mill or mills wherein the products which it sells are manufactured. As a result of the erroneous belief induced by the false and misleading representation above referred to, the buying public has purchased a substantial volume of respondent's products with a result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of selling and distributing cotton and rayon fabrics, who truthfully advertise and represent the nature and character of their respective businesses. 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 and of the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Bear Mill Manufacturing 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, 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 complaint and in opposition thereto, briefs filed herein, and oral arguments by Thomas H. Kennedy, counsel for the Commission, and by Dudley B. Bonsal, 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

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

It is ordered, That the respondent, Bear Mill Manufacturing Company, Inc., its officers, representatives, agents, and employees, in connection with the sale and distribution of cotton and rayon fabrics, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, directly or by implication, through the use of the words “mill” or “manufacturing,” alone or in conjunction with other words, as part of its corporate or trade name, or in any other manner, or through any other means or device, that it manufactures the product which it sells until and unless it actually owns and operates or directly and absolutely controls the mill or factory wherein such products are made.

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

H. WILL ELDERS

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

Docket 2673. Complaint, Dec. 28, 1935—Decision, Apr. 5, 1937

Where an individual engaged in sale and distribution, under name "Dr. H. Will Elders," or "Dr. Elders," as case might be, of his so-called "Private Prescription" for women, "Laxative Lozenges" and "Private Prescription Sanitary Douche"; in advertising the same in periodicals circulated to the purchasing public in the various States and through circulars, letters, and other advertising material, and through publication of testimonials of others—

- (a) Represented, directly or by implication, that his said preparations constituted a cure, remedy, or competent and adequate treatment for sterility in women, facts being that causes of such condition are many and varied, and in many cases are not due to functional weakness, but are result of disease and anatomical abnormalities, and that while his said "Filled Prescription," by virtue of its action as a general tonic, and tendency to aid nutrition, tended to relieve sterility in cases not due to any diseased or abnormal condition by aiding and restoring patient to normal health, and might be beneficial to some of such cases due to functional weakness, it could not be beneficial in all of such cases, including those where such weakness was result of disease, only effect of said lozenges in connection with treatment of sterility was to give temporary relief in constipation where such condition might exist and thus be associated with such other conditions to be treated, said "Private Prescription Sanitary Douche" did not, in itself, have curative properties in many causative pathological conditions producing sterility, and his said medicines, used either together or singly, did not constitute a cure, remedy, or competent and adequate treatment for such condition in women, nor for diseased conditions which are most frequently the cause thereof, and in cases of sterility due to disease or to anatomical abnormalities would not be effective in removing the same; and
- (b) Represented, as aforesaid, that his said prescriptions constituted a cure, remedy, or competent and adequate treatment for similar diseases generally, and especially for leucorrhoea and delayed, painful, and suppressed menstruation, facts being that, while his said "Filled Prescription" acted as a palliative and gave some relief from pain, it had no curative effects where any definite pathology existed, and would not cure or remedy ovarian pains and various other conditions and ailments included in the term "female diseases," and had no effect on the causes underlying or forming the basis of such diseases where a pathological condition existed, and that, while said "Private Prescription Sanitary Douche" was a cleansing sanitary wash and had inhibitory antiseptic properties and some slight inhibitory germicidal properties, it was not a general germicide, and while its use might be beneficial to women, whether suffering from female disorders or not, and use thereof would tend to be beneficial in some ways in

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certain cases of leucorrhœa, it would not be in all such cases, and while some such antiseptic wash was indicated generally in treating vaginal disorders, it did not, in itself, have curative properties in most so-called female diseases, and said medicines, whether used together or singly, did not constitute a cure, remedy, or competent and adequate treatment for such diseases or for leucorrhœa or for delayed, suppressed, or painful menstruation, and were not effective in the treatment of such conditions and diseases where caused by many diseased conditions, and representations to the contrary were neither accurate nor limited enough to express the true therapeutic effects of said medicines;

With tendency and capacity to confuse, mislead, and deceive members of the public in the aforesaid particulars and to cause and induce them to buy and use said preparations because of the erroneous beliefs engendered as above set forth, and to divert trade to him from competitors engaged in the sale in interstate commerce of preparations of the same or similar kind as those sold by him, or of those adapted to and used for the same general purposes for which his said preparations were adapted, and with effect of diverting business to him from competitors, including those who do not make, in any wise, the same or similar misleading representations, but truthfully and accurately state the therapeutic effects of their said preparations; to their substantial injury and prejudice:

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

Mr. Harry D. Michael for the Commission.

Nash & Donnelly and *Dodds & Burkinshaw*, 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 H. Will Elders 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, H. Will Elders is now and has been engaged for more than five years last past in the sale and distribution in interstate commerce of a certain medicinal preparation known and described as Dr. H. Will Elders' Filled Prescription for Women, as well as of certain other medicinal preparations designed and intended to be used in connection therewith and known and described, respectively, as Dr. H. Will Elders' Private Prescription Sanitary Douche and Dr. Elders' Laxative Lozenges. The office and principal place of business of respondent in the conduct of his

said business is and has been located in the city of St. Joseph in the State of Missouri. Said respondent, in the course and conduct of his said business, causes the said medicines, so sold by him, to be transported in interstate commerce from his said place of business in Missouri to, into and through States of the United States other than Missouri to various and numerous persons in such other States to whom such preparations are or have been sold.

PAR. 2. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of medicines and preparations similar in kind to those of respondent or intended for and adapted to the uses for which respondent's said medicines are adapted. Such other individuals, firms, and corporations have caused and do now cause their said medicines and preparations, when sold by them, to be transported from the various States of the United States where they are located 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 medicines with such other individuals, firms, and corporations.

PAR. 3. That respondent, in connection with the sale of his said medicines, as aforesaid, has made use of advertisements inserted in magazines and other publications circulated to the purchasing public in the various States of the United States. He also has advertised and does now advertise his said medicines by means of circular letters and other advertising material which he causes to be distributed to the purchasing public in various States of the United States by mail or otherwise.

PAR. 4. That, by the means aforesaid, respondent represents, either directly or by implication, or by the publication of testimonials of others, that his preparations, as above set out and described, constitute a cure, remedy or competent and adequate treatment for sterility in women. Respondent further represents, by the means and in the manner aforesaid, that his said preparations constitute a cure, remedy or competent and adequate treatment for female diseases generally, and especially for leucorrhœa and delayed, painful and suppressed menstruation. One such advertisement so used by respondent containing such representations is the following:

A BABY IN YOUR HOME.

Scientists now state that "Complete unity in life depends on sex harmony" and that the lack of it is the one greatest cause for unhappy marriages. Also that every woman "has the capacity for sex expression" but too often she is unde-

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(PICTURE OF MOTHER AND BABY)

veloped or suffering with general female disorders, which rob her of her normal desires. During an experience of more than 35 years specializing in the treatment of diseases peculiar to women, I developed a simple home treatment which has brought new hope, health and happiness to many thousands. Many who had been childless for years became proud and happy Mothers. Husbands have written me the most glowing letters of gratitude and now I want every woman who is run-down or suffering from female disorders to learn about this splendid treatment, and how she may use it in the privacy of her own home.

GET THIS KNOWLEDGE FREE

In my two booklets, which will be sent in plain wrapper, I intimately discuss many important subjects relating to the female sex that are vitally interesting to every woman. They tell how you too may combat your troubles as thousands of others have and often again enjoy the desires and activities of Nature's most wonderful creation—a normal, fully developed vigorous woman. I will gladly send both books postpaid free. Write today. DR. H. WILL ELDERS, Suite 528-E, 7th and Felix Streets, St. Joseph, Mo.

Representations to the general effect as above stated have been made by respondent in his advertising matter by quoting from testimonials given by users of his aforesaid medicines. The following excerpts from a few of such testimonials so used by respondent are illustrative of such representations:

Your medicines have improved me greatly. I don't have that soreness and tender feeling, not even when I am menstruating. It has done wonders to me for as sick as I was. It has saved me the worry of an operation. * * *

I used to suffer terribly every month and would have to go to bed and stay some times all day but now I feel fine and when my menstruation periods come I don't have those terrible pains. I am telling the honest truth I don't believe I would ever have had a baby if it had not been for your medicine. * * *

* * * Will say that Dr. Elders Filled Prescription has made a new woman out of me.

I want to thank you for your wonderful treatments I took last fall. I am expecting a baby in October. * * * I know the treatments did the work. * * *

Am very glad to let you know that the last box of Dr. Elders Filled Prescription for Women I took has surely helped me out. I am now five months pregnant, and am very glad. I certainly will praise your prescription to any woman who wants a family.

* * * If it had not been for your treatment I would have been dead. I am glad to be well again after 23 years of sickness. * * *

I am feeling so fine I just have to sit down and write to you and let you know that your medicine has helped me. * * * I have suffered 2 years with painful, irregular menstruation and tired aching feeling. I didn't have any appetite to speak of, eating sometimes only once a day but now I just can't get enough to eat and am feeling fine.

Other representations made by respondent in his advertising matter in regard to his said medicines include the following:

Sanitary Douche (Mentho-Borodine), my own Private Prescription, offers the most speedy relief from this condition (Leucorrhœa) of any treatment I have ever found.

You are now beginning a treatment * * * which has a most unusual and long record of success in alleviating many cases of painful, delayed or irregular menses, general female disorders and lack of feeling.

Moreover, respondent makes many other representations in his advertising matter of the general effect as heretofore stated.

PAR. 5. That in truth and in fact respondent's said medicines do not constitute a cure, remedy or competent and adequate treatment for sterility in women or for female diseases generally, or for leucorrhœa or for delayed, painful and suppressed menstruation, nor do they constitute an effective treatment for such diseases and conditions where the same are caused by many diseased and abnormal conditions. Said medicines are not beneficial in cases of sterility unless such condition is due to functional weakness. They act, respectively, only as a palliative and tonic, as an antiseptic, and as a laxative. The representations of respondent as aforesaid are greatly exaggerated, inaccurate, misleading, and much broader than are justified by the facts.

PAR. 6. That the representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public in the particulars as aforesaid, and to cause and induce them to buy and use respondent's said preparations because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale of preparations of the same or similar kind as those sold by respondent or of those adapted to and used for the same general purposes for which respondent recommends his said preparations as aforesaid. There are among the competitors of respondent those who in no wise make the same or similar false and misleading representations as made by respondent as herein set out and who truthfully and accurately state the uses for which their said preparations may be used and the effects thereof.

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

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 28, 1935, issued and served its complaint in this proceeding upon respondent, H. Will Elders, 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, a stipulation as to the facts was agreed upon by and between W. T. Kelley, Chief Counsel for the Commission, and the respondent by which it was agreed that 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 to make its report stating its findings as to the facts (including inferences from 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. Said stipulation as to the facts has been 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, and the statement of facts agreed to, as aforesaid, in lieu of testimony, 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. Said respondent, H. Will Elders, is now and has been engaged for more than five years last past in the sale and distribution in commerce of a certain medicinal preparation known and described as Dr. H. Will Elders Filled Prescription for Women, as well as of certain other medicinal preparations designed and intended to be used in connection therewith and known and described, respectively, as Dr. H. Will Elders' Private Prescription Sanitary Douche and Dr. Elders' Laxative Lozenges. The office and principal place of business of respondent in the conduct of his said business is and has been located in the city of St. Joseph in the State of Missouri. Said respondent, in the course and conduct of his said business, causes the said medicines, so sold by him, to be transported in interstate com-

merce from his said place of business in Missouri to, into and through States of the United States other than Missouri to various and numerous persons in such other States to whom such preparations are or have been sold. Respondent's usual course of business is to sell his said medicines direct to members of the public.

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 medicines and preparations similar in kind to those of respondent or intended for and adapted to the uses for which respondent's said medicines are adapted. Such other individuals, firms, and corporations have caused and do now cause their said medicines and preparations, when sold by them, to be transported from the various States of the United States where they are located to, into and through States other than the State of origin in the shipment thereof. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said medicines with such other individuals, firms, and corporations. Such competition has been direct and substantial. Such competing medicines and preparations are sold either direct to members of the consuming public by mail or through agents or they are sold to wholesale or retail dealers through whom they are in turn sold to members of the public.

PAR. 3. Respondent, in connection with the sale of his said medicines, as aforesaid, has made use of advertisements inserted in magazines and other publications circulated to the purchasing public in the various States of the United States. He also has advertised and does now advertise his said medicines by means of circular letters and other advertising material which he causes to be distributed to the purchasing public in various States of the United States by mail or otherwise.

PAR. 4. By the means aforesaid, respondent represents, either directly or by implication or by the publication of testimonials of others, that his preparations, as above set out and described, constitute a cure, remedy or competent and adequate treatment for sterility in women. Respondent further represents, by the means and in the manner aforesaid, that his said preparations constitute a cure, remedy or competent and adequate treatment for female diseases generally, and especially for leucorrhœa and delayed, painful and suppressed menstruation. One such advertisement so used by respondent containing such representations is the following:

A BABY IN YOUR HOME.
Scientists now state that "Complete unity in life depends on sex harmony" and that the lack of it is the one greatest cause for unhappy marriages. Also

that every woman "has the capacity for sex expression" but too often she is undeveloped or suffering with general female disorders, which rob her of her normal desires. During an experience of more than 35 years specializing in the treatment of diseases peculiar to women, I developed a simple home treatment which has brought new hope, health and happiness to many thousands. Many who had been childless for years became proud and happy mothers. Husbands have written me the most glowing letters of gratitude and now I want every woman who is run-down or suffering from female disorders to learn about this splendid treatment, and how she may use it in the privacy of her own home.

(PICTURE OF MOTHER AND BABY)

GET THIS KNOWLEDGE FREE

In my two booklets, which will be sent in plain wrapper, I intimately discuss many important subjects relating to the female sex that are vitally interesting to every woman. They tell how you too may combat your troubles as thousands of others have and often again enjoy the desires and activities of Nature's most wonderful creation—a normal, fully developed vigorous woman. I will gladly send both books postpaid free. Write today.

DR. H. WILL ELDERS, Suite 528-E, 7th and Feltz Streets, St. Joseph, Mo.

Other representations to the same general effect as stated in the foregoing advertisement have been made by respondent in his advertising matter by quoting from testimonials given by users of his aforesaid medicines. The following excerpts from a few of such testimonials so used by respondent are illustrative of such representations:

Your medicines have improved me greatly. I don't have that soreness and tender feeling, not even when I am menstruating. It has done wonders to me for as sick as I was. It has saved me the worry of an operation. * * *

I used to suffer terribly every month and would have to go to bed and stay some times all day but now I feel fine and when my menstruation periods come I don't have those terrible pains. I am telling the honest truth I don't believe I would ever have had a baby if it had not been for your medicine. * * *

* * * Will say that Dr. Elders Filled Prescription has made a new woman out of me.

I want to thank you for your wonderful treatments I took last fall. I am expecting a baby in October. * * * I know the treatments did the work. * * *

Am very glad to let you know that the last box of Dr. Elders Filled Prescription for Women I took has surely helped me out. I am now five months pregnant, and am very glad. I certainly will praise your prescription to any woman who wants a family.

* * * If it had not been for your treatment I would have been dead. I am glad to be well again after 23 years of sickness. * * *

I am feeling so fine I just have to sit down and write to you and let you know that your medicine has helped me. * * * I have suffered 2 years with painful, irregular menstruation and tired aching feeling. I didn't have any

appetite to speak of, eating sometimes only once a day but now I just can't get enough to eat and am feeling fine.

Other representations made by respondent in his advertising matter in regard to his said medicines include the following:

Sanitary Douche (Mentho-Borodine), my own Private Prescription, offers the most speedy relief from this condition (Leucorrhœa) of any treatment I have ever found.

You are now beginning a treatment * * * which has a most unusual and long record of success in alleviating many cases of painful, delayed or irregular menstruation, general female disorders and lack of feeling.

Respondent makes many other representations in his advertising matter of the same general effect as heretofore stated.

PAR. 5. The qualitative formula for said Dr. H. Will Elders' Filled Prescription for Women, with quantitative formula per tablet, is as follows:

Powdered Viburnum Opulus-----	½ gr.
Powdered Gentian-----	1 gr.
Powdered Ferrous Sulphate—Dried-----	1 gr.
Arsenous Acid-----	1/80 gr.
P. E. Cascara Sagrada-----	1/12 gr.
Powdered Hydrastis-----	1 gr.
Powdered Aletris-----	1 gr.
Powdered Caulophyllum-----	1½ gr.
Powdered Pulsatilla-----	1 gr.
Powdered Cimicifuga-----	1 gr.
Dessiccated Corpus Lutea (Sow)-----	½ gr.

The dosage for said medicine, as recommended by respondent, is one to two tablets at meal time three times a day.

The qualitative formula for said Dr. Elders' Laxative Lozenges, with quantitative formula per tablet is as follows:

Cascarin-----	¼ gr.
Aloin-----	¼ gr.
Podophyllum Resin (U. S. P.)-----	½ gr.
Strychnine Sulphate-----	½ ¹⁸⁰ gr.
Ext. Belladonna Leaves-----	½ ¹⁶ gr.
Oleoresin Ginger-----	¼ min.

The dosage for said last named medicine, as recommended by respondent, is one to two lozenges on retiring or one lozenge before meals.

The formula for Dr. H. Will Elders' Private Prescription Sanitary Douche, based on a quantity of 101 pounds, is as follows:

Borate Tetra-----	100 lbs.
Chloramine-T-----	500 grms.
Menthol Crystals-----	200 grs.

The directions for use of said last named preparation, as given by respondent to his customers, are to dissolve one teaspoonful in one

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quart of hot water and use as a vaginal douche by means of a syringe each night until improvement and then every second night.

Respondent's said medicines are directed to be used together in the treatment of the conditions for which respondent recommends them and are usually so used.

PAR. 6. Respondent's said medicines when used either together or singly do not constitute a cure, remedy or competent and adequate treatment for sterility in women, nor for diseased conditions which are most frequently the cause of sterility. In cases of sterility due to disease or to anatomical abnormalities, such medicines would not be effective in removing the condition. Neither do said medicines used together or singly constitute a cure, remedy or competent and adequate treatment for female diseases or for leucorrhea or for delayed, suppressed or painful menstruation, nor are they effective in the treatment of such conditions and diseases where the same are caused by many diseased conditions. Representations to the contrary are neither accurate nor limited enough to express the true therapeutic effects of said medicines.

Said medicine, Dr. H. Will Elders' Filled Prescription for Women, may be beneficial in some cases of sterility due to functional weakness, but it is not beneficial in all such cases, including those cases where the functional weakness is the result of disease. The causes of sterility are many and varied. Many of such cases are not due to functional weakness, but are the result of disease and anatomical abnormalities. Said medicine acts as a general tonic and tends to aid nutrition. In this way it would tend to relieve sterility in cases not due to any diseased or abnormal condition by aiding in restoring the patient to normal health.

Said medicine acts as a palliative and gives some relief from pain. It has no curative effects where any definite pathology exists. It will not cure or remedy ovarian pains, uterine displacements, leucorrhea, pus tubes, enlargement or inflammation of the generative organs, fibroids of the uterus, cyst of the ovary, cancer of the uterus, infections of the uterus or of the Fallopian tubes, all of which are included in the term "female diseases." It has no effect on the causes underlying or forming the basis of female diseases where a pathological condition exists.

Respondent's said medicine Dr. Elders' Laxative Lozenges is a laxative. Its only effect in connection with the treatment of sterility and of female disorders is to cause an evacuation of the bowels and to give temporary relief in constipation, where such condition may exist, and thus is associated with such other conditions to be treated.

Respondent's said medicine Dr. H. Will Elders' Private Prescrip-

tion Sanitary Douche is a cleansing, sanitary wash. It has inhibitory antiseptic properties and some slight inhibitory germicidal properties but is not a general germicide. Its use may be beneficial to women, whether suffering from female disorders or not, by promoting cleanliness and desirable hygienic conditions in the vagina. Its use would tend to lessen the discharges in some cases of leucorrhoea but not in cases of leucorrhoea due to gonorrhoea. Some such antiseptic wash is indicated generally in treating vaginal disorders. However, it does not in itself have curative properties in many causative pathological conditions producing sterility and most so-called female diseases.

PAR. 7. The representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public in the particulars as aforesaid, and to cause and induce them to buy and use respondent's said preparations because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of preparations of the same or similar kind as those sold by respondent or of those adapted to and used for the same general purposes for which respondent's said preparations are adapted.

PAR. 8. There are among the competitors of respondent, in the sale of his said preparations, those who do not make in anywise the same or similar misleading representations as made by respondent, as herein set forth, but who truthfully and accurately state the therapeutic effects of their said preparations. Respondent's said acts and practices tend to and do divert business to respondent from its competitors, to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, H. Will Elders, 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, and an agreed statement of facts in lieu of testimony, briefs and oral argument having been waived, and the Commission having made its findings as to the facts and its conclusion that said respondent

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ent 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, H. Will Elders, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of his medicinal preparations known and described as Dr. H. Will Elders' Filled Prescription for Women, Dr. H. Will Elders' Private Prescription Sanitary Douche and Dr. Elders' Laxative Lozenges, or of any preparations of the same or similar formulae, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly, or by implication, or by use of the statements, endorsements, or testimonials of others:

1. That said medicinal preparations, or any of them, constitute a cure, remedy, or competent and adequate treatment for sterility in women.

2. That said medicinal preparations, or any of them, are beneficial in the treatment of sterility in women unless such representations are specifically limited to cases of sterility due to functional weakness.

3. That said medicinal preparations, or any of them, are beneficial in all cases of sterility in women due to functional weakness or that they are beneficial in such cases where the functional weakness is the result of disease.

4. That said medicinal preparations, or any of them, constitute a cure, remedy, or competent and adequate treatment for so-called female diseases or troubles, or for leucorrhoea or for delayed, painful, or suppressed menstruation, or for the pathological conditions producing or that may cause the same.

5. That said medicinal preparations, or any of them, are beneficial in the treatment of leucorrhoea unless such representations are limited to such cases not due to gonorrhoeal infection and also limited to the sedative effects of the said Filled Prescription and to the antiseptic and soothing effects of said Sanitary Douche.

6. That said medicinal preparations, or any of them, are beneficial in the treatment of delayed, painful or suppressed menstruation unless such representations are limited to relief from pain and to the sedative and palliative effects of said Filled Prescription in cases where no definite pathology exists.

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.

Syllabus

IN THE MATTER OF

GEORGE LANDON AND MICHAEL MASON WARNER,
TRADING AS LANDON & WARNER

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

Docket 2947. Complaint, Oct. 15, 1936—Decision, Apr. 5, 1937

Where two individuals engaged in the sale and distribution of billfolds, Gladstone handbags, and other similar products, in substantial competition with others engaged in sale and distribution of similar goods or articles in commerce between and among the various States, and with numerous competitors who make and sell their billfolds and aforesaid handbags, covered with leather made from the outside or top side of cow skin, after having been separated or split from the flesh side thereof, and properly described by makers of such products, and generally known by manufacturers and dealers and purchasing public as "cowhide," "genuine cowhide," "choice leather," and ". . . A-1 quality leather," and for which articles and other leather products thus made and generally known and described as aforesaid, purchasing public generally has a pronounced and distinct preference—

- (a) Represented, through marks, stamps, and brands in large letters on their said handbags, that the same were genuine cowhide, and in advertising circulars distributed widely among their customers and prospective customers, that the said handbags, thus offered, sold and distributed, were "made only of choice leather . . .," and of "A-1 quality leather," facts being handbags thus described were not made from the outside or top side of cowskin and were not genuine cowhide or made of choice leather or of A-1 quality leather, as ordinarily and commonly understood by purchasing public, but were composed of the much inferior, less durable, and cheaper split cowhide derived from the flesh side of the skin; and
- (b) Represented, in their advertising circulars, that the initials of purchasers of said handbags were placed thereon in "14-K Gold" and that such initials would be encased within a "14-K Gold" frame, and, in their advertising catalogs distributed to their customers and prospective customers, that the metallic corners and snap-buttons on their billfolds were "14-K Gold," facts being said initial letters and frames and metallic corners and snap-buttons were not composed of "14-K gold," but, on the contrary, were 14-K gold plated;

With capacity and tendency to mislead and deceive purchasing public into the erroneous beliefs that the Gladstone handbags advertised, offered, and sold by them were made from the outside or topside of cow skin and were genuine cowhide, choice leather, and A-1 quality leather, as represented by them, and that said articles, when purchased, would be stamped with initials of the purchaser in 14-K Gold and a 14-K Gold frame, and that the said billfolds' metallic corners and snap-buttons were 14-K Gold, and with capacity and tendency to induce members of the purchasing public to buy said products because of the erroneous beliefs thus engendered, and to

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divert trade unfairly to them from competitors engaged in sale in interstate commerce of similar products, and who rightfully and truthfully represent the same and do not in any wise falsely represent 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. 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 George Landon and Michael Mason Warner, Jr., trading as Landon and Warner, 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 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, George Landon and Michael Mason Warner, Jr., are copartners, trading under the name and style of Landon and Warner, with their office and principal place of business located at 360 N. Michigan Avenue, in the city of Chicago, Ill. They are now, and have been for more than one year last past, engaged in the business of selling and distributing billfolds, Gladstone bags, and other similar products to members of the purchasing public in commerce, as herein set out.

PAR. 2. The respondents, being engaged in business as aforesaid, cause and caused said products, when sold by them, to be transported from their principal place of business in the city of Chicago, Ill., to 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 at all times mentioned herein a constant current of trade in commerce in said products sold and distributed by said respondents among and between the various States of the United States, and in the District of Columbia.

PAR. 3. Respondents, in the course and conduct of their business are now, and have been at all times mentioned herein, engaged in substantial competition with other partnerships and with corporations, firms, and individuals engaged in the sale and distribution of

similar products in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 4. Many of respondents' competitors, mentioned in paragraph 3 hereof, make and sell billfolds and Gladstone bags covered with leather made from the outside or top-side of cowskin after same has been separated or split from the flesh-side of the skin. Such leather is described by makers of such products, and generally known by manufacturers, tanners, dealers, and the purchasing public as "cowhide," "genuine cowhide," "choice leather," and "A-1 quality leather." The flesh side of the cowskin is now used to some extent for the making of leather, which leather is ordinarily known and described as "split cowhide." It is very much inferior in quality and durability to, and cheaper in price than, "genuine cowhide," "choice leather," and "A-1 quality leather" as described in this paragraph. There is a marked preference on the part of the purchasing public for billfolds and Gladstone bags made from genuine cowhide, choice leather, and A-1 quality leather as described herein.

PAR. 5. In the course and conduct of their business as described herein, respondents, in offering for sale, selling, and distributing in interstate commerce their "Landon and Warner" feature Gladstone bags represented and still represent by marks, stamps, and brands in large and conspicuous letters on the bags themselves that said Gladstone bags were and are "genuine cowhide," and they further represented and still represent in advertising circulars, circulated widely among their customers and prospective customers, that the Gladstone bags so offered for sale, sold, and distributed were "made only of choice leathers . . .," and of "A-1 quality leather." Said respondents in soliciting the sale of, and selling their Gladstone bags in interstate commerce represented, and still represent, in the advertising circular referred to that the initials of purchasers of said bags would be placed thereon in 14-K gold, and that such initials would also be encased within a 14-K gold frame. Further, respondents in the aid of the sale of their billfolds under the trade name "Pasmaster," which billfolds were, and are, equipped with metallic corners and snap buttons, represented and represent in their advertising catalogs that said metallic corners and snap buttons were "14-K gold."

PAR. 6. Said descriptions, representations, marks, stamps, and brands made by respondents as to their Gladstone bags and billfolds were, and are, false and fraudulent in that:

1. The Gladstone bags described as "genuine cowhide," "made of only choice leathers," and "A-1 quality leather" are not, and were not, genuine cowhide, made of only choice leathers, or made of A-1 qual-

ity leather as such descriptions, marks, brands, and representations are commonly understood by the purchasing public.

2. The initial letters and frames placed, and offered to be placed, on the Gladstone bags were not, and are not 14-K gold, but on the contrary were, and are, 14-K gold-plated.

3. The metallic corners and snap buttons on their billfolds were not, and are not, 14-K gold as represented, but were other than 14-K gold.

PAR. 7. The representations, descriptions, marks, stamps, and brands, as hereinbefore set out, and other similar representations, have had, and do have, the tendency and capacity to confuse, mislead, and deceive members of the purchasing public into the erroneous beliefs that the Gladstone bags advertised and sold by respondents were genuine cowhide, made of only choice leathers, and of A-1 quality leather, as described herein, and that said bags, upon request of the purchaser, would be stamped by the respondents with the initials of the purchaser in 14-K gold and placed in a 14-K gold frame; that the metallic corners and snap buttons of the billfolds advertised and sold by respondents were 14-K gold. The said representations, descriptions, marks, brands, and stamps have had, and do have, the capacity and tendency to induce members of the purchasing public to buy said products because of the erroneous beliefs engendered, as above set forth. Further, said representations, descriptions, marks, brands, and stamps have the capacity and tendency to unfairly divert trade from competitors of respondents engaged in the sale in interstate commerce of similar products, which said competitors truthfully and rightfully advertise and represent their said products. As a result thereof, substantial injury has been and now is being done by respondents' to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 8. The acts and practices of respondents are all to the injury and prejudice of the public and competitors of respondents 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 15th day of October 1936, is-

sued and served its complaint in this proceeding upon respondents, George Landon and Michael Mason Warner, partners, trading as Landon & Warner, 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 Astor Hagg, 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 George Landon, 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 (respondents' counsel having waived the filing of 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. George Landon and Michael Mason Warner are partners trading and doing business as Landon & Warner, with their office and principal place of business located at 360 North Michigan Avenue, in the city of Chicago, Ill. For more than one year last past, respondents have been engaged in the business of selling and distributing billfolds, Gladstone handbags and other similar products. They sell and distribute their products in commerce between and among the various States of the United States and in the District of Columbia. Respondents ship their products when sold, from their place of business in the States of Illinois, to the purchasers thereof located in the various States of the United States other than the State of Illinois. Respondents are now and for more than one year last past have been in substantial competition with other partnerships and with corporations, firms and individuals engaged in the business of selling and distributing billfolds, Gladstone handbags, and other similar products in commerce between and among the various States of the United States.

PAR. 2. Numerous competitors of respondents manufacture and sell their billfolds and Gladstone handbags covered with leather made from the outside or topside of cowskin, after same has been separated or split from the flesh side of the skin. Leather made from the out-

side or topside of cowskin is properly described by makers of such products, and is generally known by manufacturers, dealers and the purchasing public, as "cowhide," "genuine cowhide," "choice leather," and "A-1 quality leather." The flesh side of the cowskin is used to some extent in the making of certain grades of leather, which grades of leather are ordinarily known and described as "split cowhide." "Split cowhide" is very much inferior in quality and durability to, and cheaper in price than, "genuine cowhide," "choice leather," and "A-1 quality leather," which are made from the outside or topside of cowskin, as before described. The purchasing public generally has a pronounced and distinct preference for billfolds and Gladstone handbags and other leather products that have been made from leather from the outside or topside of cowskin generally known and described as "genuine cowhide," "choice leather," and "A-1 quality leather" rather than split cowhide.

PAR. 3. Respondents in offering for sale and selling in interstate commerce their Gladstone handbags have represented by marks, stamps, and brands in large letters on the handbags themselves that said Gladstone handbags were "genuine cowhide." They have also represented, in advertising circulars circulated widely among their customers and prospective customers, that the Gladstone handbags so offered for sale, sold and distributed, were "made only of choice leather . . .", and of "A-1 quality leather." They have also represented in their advertising circulars that the initials of purchasers of said handbags are placed on the handbags in 14-K Gold, and that such initials would be encased within a 14-K Gold frame. Respondents have represented in their advertising catalogs distributed to their customers and prospective customers that the metallic corners and snap-buttons on their billfolds were "14-K Gold."

PAR. 4. The descriptions, representations, marks, stamps and brands used by respondents in connection with their Gladstone handbags and billfolds were and are false and misleading in that:

1. The Gladstone handbags described as being "genuine cowhide" "made of only choice leather" and "A-1 quality leather" were not made from the outside or topside of cowskin, and were not genuine cowhide, were not made of choice leather, or of A-1 quality leather as such descriptions are ordinarily and commonly understood by the purchasing public, but on the contrary such handbags were and are composed of split cowhide, derived from the flesh side of the cowskin.

2. The initial letters and frames placed and offered to be placed on the said handbags, and the metallic corners and snap buttons on their billfolds were not composed of 14-K Gold, but on the contrary, such

initial letters, frames, corners and snap buttons were 14-K Gold-plated.

PAR. 5. The above and foregoing descriptions, marks and brands used by the respondents and the representations made by respondents have had and do have the capacity and tendency to mislead and deceive the purchasing public into the erroneous beliefs that the Gladstone handbags advertised, offered for sale, and sold by respondents, were made from the outside or topside of cowskin and were "genuine cowhide," "choice leather," and "A-1 quality leather" as represented by respondents, and that said handbags, when purchased would be stamped by the respondents with initials of the purchaser in 14-K Gold and placed in a 14-K Gold Frame; that the metallic corners and snap-buttons of the billfolds advertised and sold by the respondents were 14-K Gold. The representations, marks, brands and descriptions used by respondents as aforesaid have had and do have the capacity and tendency to induce members of the purchasing public to buy said products because of the erroneous beliefs engendered as above set forth. Such representations, descriptions, marks, and brands used by the respondents, have a capacity and tendency to unfairly divert trade from competitors of respondents engaged in the sale in interstate commerce of similar products who rightfully and truthfully represent their products and who do not in anywise falsely represent their products; and in this manner, respondents do substantial injury to the competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, George Landon and Michael Mason Warner, partners, trading and doing business as Landon & Warner, 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 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, brief of the Commission filed herein (respondents having

waived the filing of brief); 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, George Landon and Michael Mason Warner, individually and as partners trading as Landon and Warner, their representatives, agents, servants, and employees, in connection with the offering for sale, sale and distribution of Gladstone handbags, luggage and billfolds in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Labeling, stamping, marking, branding, advertising or otherwise representing through the use of the words "cowhide," "genuine cowhide," "choice leather," and "A-1 quality leather," or any other word or words of similar meaning, import or effect, that Gladstone handbags or other luggage manufactured in whole or in part from the under layers or flesh side of cowskin, known as split leather, are made from the outside layer of cowskin;

2. Using the term "14-K Gold" or any other term, mark or symbol of similar import to describe initials or letters placed on the handbags when such initials are not composed of 14-K gold and when they are gold-plated;

3. Representing in any manner that letters or initials of purchasers are encased within a 14-K gold frame when such frame is not composed of 14-K gold or when such frames are gold-plated;

4. Representing in any manner that the metallic corners and snap buttons on their billfolds are 14-K gold when the same are not composed of 14-K gold or when such metallic corners and snap buttons are gold-plated.

It is further ordered, That the respondents 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
JOSEPH A. PIUMACOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2229. Complaint, Sept. 5, 1934—Decision, Apr. 6, 1937*

Where an individual, manufacturing pharmacist, engaged in sale and distribution of a preparation made for him under his formula and known and sold for some seven or eight years theretofore under name "Glendage," and formerly under name "Sexvitor," and in marketing said preparation, packaged in bottles of ninety tablets, for sale at retail for \$3.00, through wholesale drug jobbers principally, and through retail drug chains, and occasionally direct to consumers, at various points in the several States and in the District of Columbia, in substantial competition with those engaged in offer and sale of remedies, preparations, products and treatments used and useful for treatment and correction of ailments and conditions for which his said "Glendage" might possess any corrective or therapeutic value, and for treatment and correction of ailments and conditions for which he represented said preparation as an effective corrective or treatment—

Represented, in advertising said "Glendage" in newspapers in various cities and through form letters mailed to prospective purchasers thereof and through pamphlets distributed among such purchasers and containing statements as to the value thereof in the treatment and correction of human ailments and conditions, and superiority thereof compared with other preparations and products used in treatment and correction of ailments and conditions for which it was recommended, that said "Glendage" was a gland tonic and remedy which would restore vigorous health, and was the best such remedy known, and the "last word" in "modern science" in such remedies, and one which stimulated all the glands to healthy activity and was entirely unlike other so-called gland remedies, and stood superior as a tonic, and was a remedy for nervousness, overwork, and lack of vim and vigor, and would return one to the full vigor of manhood or womanhood, and constituted competent and effective treatment or corrective for use in remedying ailments and conditions indicated, facts being it did not possess the therapeutic efficacy represented and implied by him in treatment and correction of ailments and conditions for which recommended, and said various representations and statements were false and misleading;

With effect of misleading and deceiving many persons affected with ailments and conditions concerning which said representations and implications were made, and of causing a substantial portion of such persons erroneously to believe that said representations and implications were true, and that preparation in question possessed therapeutic efficacy represented, and was a competent and effective treatment or corrective for use in remedying ailments and conditions for which recommended, and of causing a substantial portion of such persons, because of such erroneous belief, to buy said preparation, and thereby unfairly divert trade to him from his competitors who truthfully represent their preparations, products, remedies and treatments; to their substantial injury and that of the public:

Complaint

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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.

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 Joseph A. Piuma, 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. The respondent, Joseph A. Piuma, is a manufacturing pharmacist, with his principal office and place of business in the city of Los Angeles, in the State of California. Now and for more than two years last past he has been engaged in the business of selling, among other articles, a purported medicinal preparation designated by him as "Glendage," and in the sale thereof between and among the various States of the United States and in the District of Columbia, causing said "Glendage" when sold by him to be transported from his place of business in the city of Los Angeles, California, to the purchasers thereof located in said State and to other purchasers thereof located in other States of the United States and in the District of Columbia. There is now and has been for more than two years last past a constant current of trade in commerce by the respondent in the said "Glendage" between and among the various States and territories of the United States and in the District of Columbia. In the course and conduct of his said business, respondent is now, and for more than two years last past has been, in substantial competition with other persons, and with firms, partnerships, and corporations engaged in commerce between and among the various States of the United States; in medicinal preparations, pills and compounds for use in the treatment of physical impairments and physical disabilities for which respondent's said "Glendage" is advertised and represented by respondent to be a remedy.

PAR. 2. In and by advertisements, circulars, and letters sent by respondent through the mails, respondent in selling and soliciting the sale between and among the various States of the United States and in the District of Columbia, of his said product called "Glend-

age," now and for more than two years last past, has falsely represented, and still falsely represents, among other things concerning said "Glendage," that—

1. Said "Glendage" is a gland tonic;
2. Said "Glendage" restores vigorous health;
3. Said "Glendage" is the best gland remedy known;
4. Said "Glendage" constitutes a remedy for glands;
5. Said "Glendage" is the last word in modern science;
6. Said "Glendage" stimulates all the glands to healthy activity;
7. Said "Glendage" is entirely unlike other so-called gland remedies;
8. Said "Glendage" stands superior to a tonic;
9. Said "Glendage" is a wonderful remedy for cases of nervousness or overwork, or lack of vim, or lack of vigor; and
10. Said "Glendage" will return one to the full vigor of manhood or womanhood,

when in truth and in fact said "Glendage" is not a gland tonic; will not restore vigorous health; not only is not the best gland remedy known but is not a gland remedy; does not constitute a remedy for glands; not only is not the last word in modern science but is not a scientific product; will not stimulate all of the glands to healthy activity, or any of them; is not unlike other so-called gland remedies; is not a tonic; is not a wonderful remedy, or any remedy at all, for cases of nervousness or overwork, or lack of vim, or lack of vigor, and will not return one to the full vigor of manhood or womanhood.

PAR. 3. The aforesaid misrepresentations made by the said respondent as set out in paragraph 2 hereof, have had, and still have, the capacity and tendency to mislead and deceive, and have misled and deceived the purchasing public in the beliefs that the aforesaid statements set out in paragraph 2 hereof made by the said respondent, are true, and have had and still have the capacity and tendency to induce, and have induced the purchasing public to purchase said "Glendage" from the respondent in such beliefs.

PAR. 4. There are among the competitors of the respondent mentioned in paragraph 1 hereof, manufacturers and sellers of medicinal preparations and products who do not make representations concerning their medicinal preparations and products such as those made by the respondent and enumerated in paragraph 2 hereof. The aforesaid misrepresentations made by respondent have the capacity and tendency to divert trade from such competitors in interstate commerce and thereby substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 5. The above alleged acts and things done by respondent are all to the injury and prejudice of the public and respondent's competitors in commerce within the intent and meaning of Section 5 of

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

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 5, 1934, issued and, on September 10, 1934, served its complaint in this proceeding upon respondent Joseph A. Piuma, 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 Edw. W. Thomerson, attorney for the Commission, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, no evidence having been offered by the respondent in opposition thereto; 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 complaint, the answer thereto, testimony and evidence, brief in support of the complaint, no brief having been filed in opposition 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 respondent, Joseph A. Piuma, is a manufacturing pharmacist and sells and distributes a number of medicinal preparations, with his office and principal place of business at 600 Spring Street in the city of Los Angeles, in the State of California, and maintains a laboratory at 221 San Fernando Road, Los Angeles, Calif. Among the medicinal preparations sold and distributed by the respondent from his said place of business in the city of Los Angeles, in the State of California, is a preparation manufactured by Sharp and Dohme of Philadelphia, Pa., under a formula of the respondent, which is now, and has been for the past seven or eight years, known as, and sold under the name, "Glendage" and which was formerly known as and sold under the name of "Sexvitor."

Respondent markets said preparation Glendage principally through wholesale drug jobbers, through retail drug chains, and, occasionally, direct to consumers located at various points in the several States of the United States other than in the State of California and in the District of Columbia, and when such sales are made, the respondent causes said preparation to be transported from his place of business in the city of Los Angeles and State of California to the said purchasers thereof.

The preparation Glendage is packaged in bottles of ninety tablets each which sell at retail for the sum of \$3.00. Respondent's annual business in the sale of said preparation for the past three or four years has ranged from \$25,000 to \$30,000. The respondent in offering for sale and selling the preparation Glendage in commerce between and among the several States of the United States and in the District of Columbia, is in substantial competition with other individuals and with firms and corporations who are engaged in said commerce in the business of offering for sale and selling remedies, preparations, products, and treatments used and useful for the treatment and correction of the ailments and conditions for which the respondent's said preparation Glendage might possess any corrective or therapeutic value and for the treatment and correction of the ailments and conditions for which the respondent represents the preparation Glendage to be an effective corrective or treatment.

PAR. 2. The preparation Glendage is in tablet form and is packaged in bottles containing ninety tablets which retail for \$3.00 per bottle. The approximate annual sales of the preparation Glendage are between \$25,000 and \$30,000.

The preparation Glendage is compounded of glandular substances in combination with phosphorus nux vomica and cascara. An analysis of the preparation Glendage shows that it is constituted as follows:

Number of tablets—63.

Average weight (50 tabs.), 0.3155 gm. or 4.868 grs./tablet

Total alkaloids calculated as nux vomica extract (USP X), 3.59% or 0.175 grs./tablet

Iodine in organic combination, 0.0334% or 0.00148 grs./tablet, 0.0304% or 0.00148 grs./tablet

Equivalent to thyroid, 0.87 grs./tablet

Qualitative Tests:

Alkaloids—Present. (Brucine and strychnine identified, which point to presence of nux vomica extract)

Phosphates—Trace.

Emodin test—Positive. (Extract cascara sagrada indicated)

Zinc—Present.

Findings

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Tablet excipients Present. (Talc, iron oxide, calcium carbonate, and red coloring matter)

Glandular substances—Indicated by odor.

Inorganic iodides—Absent.

Product is a red coated pill, and is composed of animal tissues apparently glandular in nature (which is indicated by odor of the substance, and also the organically combined iodine content), with small amounts of alkaloids (strychnine and brucine, probably indicating the presence of *nux vomica*), emodin bearing drugs (cascara indicated by taste and odor), and traces of zinc, phosphates, iron, calcium, and talc (the latter three probably as tablet excipients).

The organically combined iodine content of the pills correspond to 0.87 gr./tablet of thyroid (U. S. P. X), but iodine is also a constituent of other glandular substances.

The formula used in compounding the preparation in 1927 is as follows:

Suprarenal Glands desiccated.....	1/8 Gr.
Thyroid desiccated.....	1/8 Gr.
Pituitary Whole desiccated.....	1/12 Gr.
Orchic Substance desiccated.....	2 Gr.
Zinc Phosphide to represent Phosphorus.....	1/100 Gr.
Ext. Nux Vomica.....	1/8 Gr.
Ext. Cascara Sagrada.....	1/8 Gr.

Excipient to make one tablet.

PAR. 3. The respondent, Joseph A. Piuna, during the five years last past, has advertised the preparation Glendage in newspapers located in various cities in the States of the United States, and through form letters mailed to prospective purchasers of said preparation, and through pamphlets distributed among prospective purchasers containing statements as to the value of said preparation in the treatment and correction of ailments and conditions found to exist in the human body and the superiority of the preparation when compared with other preparations and products used in the treatment and correction of the ailments and conditions for which it is recommended.

Among and typical of the statements so used are the following:

GLENDAGE is the last word in glandular therapy. In convenient tablet form, Glendage contains the extracts from the glands of healthy animals, and stimulates ALL OF THE GLANDS to healthy activity. The effect is astonishing—almost magical. You return to the full vigor of manhood and womanhood. Your interest in life returns. Vigorous health is necessary for success in all activity today.

Do not confuse Glendage with other so called gland remedies. It is entirely unlike others—is a REAL GLAND PRODUCT and carries an unlimited guarantee of satisfaction or money back.

Restores Vigorous Health

We guarantee to restore your pep, vigor, vitality, or we refund every cent. That's how sure we are that we have the best gland remedy known. Thousands of tests have proved this to our full satisfaction. Now, **WITHOUT RISK**, you can prove it to yours.

IS YOUR HEALTH SLIPPING?

New Gland Tonic Discovered

If you feel that the "big kick" of life is passing, if your vigor and pep is waning, try Glendage, the new money-back glandular tablet. It is no longer necessary to be weak, nervous, frail, run down. By regulating and stimulating gland secretions millions of red blood corpuscles are built and you again feel the glow of youthful vigor.

IS YOUR VIGOR SLIPPING?

PAR. 4. By the means and in the manner above stated, the respondent Joseph A. Piuma represents and implies that the said preparation Glendage is a gland tonic; that it will restore vigorous health; that it is the best gland remedy known; that it constitutes a remedy for glands; that it is the last word in "modern science" in gland remedies and stimulates all of the glands to healthy activity; that it is entirely unlike other so-called gland remedies; that it stands superior to all other tonics as a tonic; that it is a remedy for cases of nervousness, overwork, lack of vim and lack of vigor; that it will return one who does not possess the full vigor of manhood or womanhood to such a state; and that said preparation Glendage is a competent and effective treatment or corrective for use in remedying the ailments and conditions mentioned.

In truth and in fact, said preparation Glendage is not a competent and effective treatment or corrective for use in remedying the ailments and conditions for which it is recommended; it is not a gland tonic; it will not restore vigorous health; it is not the best gland remedy known; it does not constitute a remedy for glands; it is not the last word in "modern science" in gland remedies nor does it stimulate all the glands to healthy activity; it is not unlike other so-called gland remedies; it is not superior as a tonic; it is not a remedy for cases of nervousness, overwork, lack of vim and lack of vigor; and it will not return one to the full vigor of manhood or womanhood.

In truth and in fact, said preparation Glendage does not possess the therapeutic efficacy represented and implied by the respondent Joseph A. Piuma in the treatment and correction of the ailments and conditions for which it is recommended.

Order.

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PAR. 5. The representations and implications so used by the respondent Joseph A. Pioma, in connection with the sale of said preparation Glendage in said commerce, in the matter hereinabove set out, are false and misleading and have had, and do have, the tendency and capacity to, and have, and do, mislead and deceive many persons affected with the ailments and conditions about which said representations and implications are made, and cause a substantial portion of such persons erroneously to believe that said representations and implications are true and that said preparation possesses the therapeutic efficacy represented and is a competent and effective treatment or corrective for use in remedying the ailments and conditions for which it is recommended; and cause a substantial portion of such persons, because of such erroneous belief, to purchase said preparation Glendage, thereby unfairly diverting trade to the respondent from his competitors who truthfully represent their preparations, products, remedies, and treatments, 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, Joseph A. Pioma, are to the prejudice of the public and the 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. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and brief in support of the complaint, no brief having been filed by the respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Joseph A. Pioma, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of the medicinal preparation now known

as, and sold under the name, Glendage, or any other preparation, under whatever name sold, composed of similar ingredients and possessing therapeutic properties similar to the preparation now known as, and sold under the name, Glendage, 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 preparation is a gland tonic;
2. That said preparation will restore vigorous health;
3. That said preparation is the best gland remedy known;
4. That said preparation constitutes a remedy for glands;
5. That said preparation is the "last word" in "modern science" in gland remedies, and stimulates all the glands to healthy activity;
6. That said preparation is entirely unlike other so-called gland remedies;
7. That said preparation stands superior as a tonic;
8. That said preparation is a remedy for cases of nervousness, overwork, lack of vim and lack of vigor;
9. That said preparation will return one to the full vigor of manhood or womanhood;
10. That said preparation is a competent and effective treatment or corrective for use in remedying the ailments and conditions hereinabove mentioned.

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

24 F. T. C.

IN THE MATTER OF
E. G. ZELLERS AND M. W. ZELLERS, TRADING AS ZELLERS
LABORATORIES

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

Docket 2835. Complaint, June 5, 1936—Decision, Apr. 6, 1937

Where a firm engaged in the sale and distribution of poultry medicines and remedies, including their "Zellers Kamala Nicotine Tabs," "Zellers Fowl Tone Formula No. 1," "Zellers Fowl Tone Formula No. 2," and "Carbo-Zel Tablets," in substantial competition with others engaged in the manufacture and sale of similar and like commodities used for the same or similar purposes—

Represented, in advertising their aforesaid four preparations, that said products, as the case might be, constituted effective remedies or treatments for round and tape worms and internal parasites in fowls, and an effective remedy and agency for the removal of all such parasites, and effective remedies and treatments for intestinal flu and various other conditions and ailments in turkeys and irritations caused by worms in fowls, and constituted perfect and ideal antiseptics for fowls, and would preclude infestation by worms, or were scientifically prepared successfully to combat the ravages of intestinal worms in fowls, and to counteract toxic poisons created by their presence, and constituted a worm preventive, facts being such representations and statements were false and misleading and said various preparations did not have the qualities or properties thus represented, and would not accomplish such results;

With tendency and capacity to deceive and mislead substantial portions of purchasing public into the erroneous belief that such representations were true, and with the result that consuming public, as a direct consequence of mistaken and erroneous beliefs thus engendered, purchased substantial volume of their commodities and trade was thereby unfairly diverted to them from competitors engaged in sale of products of same kind and nature, and who truthfully advertise and represent their character and quality and results to be obtained from 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. W. W. Sheppard*, 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 E. G. Zellers and M. W. Zellers, copartners, doing business under the trade

name Zellers Laboratories, 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. E. G. Zellers and M. W. Zellers, copartners, doing business under the trade name Zellers Laboratories, with their principal place of business at Orrton Avenue and Noble Street, Reading, Pa., are now and for several years last past have been engaged in the sale and distribution of poultry products, consisting of medicines and remedies for various diseases in fowls, in commerce between and among the various States of the United States and in the course of the sale and distribution of the aforesaid commodities cause the same to be transported to the purchasers thereof from their place of business in the city of Reading, State of Pennsylvania, into and through the various States of the United States other than the State of Pennsylvania.

PAR. 2. There are among the competitors of respondents, individuals, firms, partnerships, and corporations engaged in the manufacture and sale of similar and like commodities, or commodities to be used for the same and similar purposes, who offer for sale and sell their said products to purchasers located in the various States of the United States, and who cause their said products when sold to be transported to purchasers thereof located in the various States of the United States.

PAR. 3. There are, among the poultry products offered for sale and sold by respondents as aforesaid, products sold under the trade names "Zellers Kamala Nicotine Tabs," "Zellers Fowl Tone Formula No. 1," "Zellers Fowl Tone Formula No. 2," and "Carbo-Zel Tablets." In the course of the offering for sale and sale of the poultry medicines and remedies sold under the trade names designated supra in this paragraph, the respondents have caused and cause statements and representations to be made in advertisements, pamphlets, circulars, trade magazines, and other printed matter which is published or distributed in the various States of the United States to the following effect, gist, or meaning:

(a) "Zellers Kamala Nicotine Tabs" are an effective individual worm treatment for Round and Tape Worms in chickens, turkeys and other fowls; they are a powerful and effective agency for ridding your birds of worms; they do not dissolve until they reach the gizzard, where normal grinding action releases the medicine right at the seat of the worms; they produce results in less than six hours; medication is released at the very seat of the worm infestation, resulting in efficient ridding of the bird's body of intestinal parasites; unless the

Complaint

24 F. T. C.

head of the Tape Worm is removed treatment will be of no avail; and the head of the worm must come out as it is the root of the Tape Worm.

(b) "Zellers Fowl Tone Formula No. 1" contains the elements essential to the proper development of future layers; it is a special tonic for building up disease resistance and aiding in the quick recovery from worm infestation; it and "Carbo-Zellers Tablets" are ideal antiseptics; they will prevent digestive disorders; they are effective treatments for intestinal flu, coccidiosis, diarrhea, cholera, typhoid, brooder pneumonia, blackhead in turkeys and irritation caused by worms.

(c) "Zellers Fowl Tone Formula No. 2" is especially recommended for flock treatment of worms, is scientifically prepared to combat the ravages of these small, microscopic worms, to counteract the toxic poisons they give off; it is an excellent tonic and worm preventive.

PAR. 4. All of the representations and statements made by the respondents in the manner indicated in paragraph 3 hereof are false and misleading. "Zellers Kamala Nicotine Tabs" is not an effective treatment for all worms in chickens and other fowls, and is not an effective remedy for tape worms and worms other than round worms; it will not remove the heads of tape worms, and is not an effective remedy for such purpose. "Zellers Fowl Tone Formula No. 1" and "Carbo-Zellers Tablets" are not effective remedies for coccidiosis and other poultry diseases designated in sub-section (b) of paragraph 3 supra, and will not produce the results represented by respondents as set forth in said paragraph. "Zellers Fowl Tone Formula No. 2" is not an effective flock treatment scientifically prepared to combat the ravages of small, microscopic worms and to counteract the toxic poison they give off; it is not a worm preventive and will not produce the results represented by respondents as described in sub-section (c) of paragraph 3 supra.

PAR. 5. Each and all of the false and misleading statements and representations made by the respondents 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 respondents' commodities, with the result that trade has been unfairly diverted to the respondents 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 and quality, and the results to be obtained from the use of their said products. As a result thereof, a substantial injury has been and is being done by respondents to competition in commerce, as hereinabove set forth.

PAR. 6. The above acts and practices of respondents are to the injury and prejudice of the public and to competitors of respondents 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 June 5, 1936, issued, and on June 7, 1936, served, its complaint in this proceeding upon respondents, E. G. Zellers and M. W. Zellers, copartners, doing business under the trade name, Zellers Laboratories, 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, the Commission, by order entered herein, granted respondents' 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 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. The respondents, E. G. Zellers and M. W. Zellers, copartners, are doing business under the trade name of Zellers' Laboratories, having a principal place of business at Orrton Avenue and Noble Street, Reading, Pa. They are and for several years past have been engaged in the sale and distribution of poultry products consisting of medicines and remedies for various diseases in fowls. When sales are made, respondents cause said products to be transported from their place of business in the city of Reading, Pa., into and through various States of the United States to the purchasers thereof.

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PAR. 2. There are other individuals, firms, partnerships, and corporations engaged in the manufacture and sale of similar and like commodities which are used for the same and similar purposes, who offer for sale and sell their products to purchasers located in the various States of the United States, and who cause their products, when sold, to be transported to purchasers located in the various States of the United States. Respondents are engaged in substantial competition with such other individuals, firms, partnerships, and corporations in such commerce.

PAR. 3. Among the products offered for sale and sold by respondents as aforesaid, are products sold under the trade names "Zellers Kamala Nicotine Tabs," "Zellers Fowl Tone Formula No. 1," "Zellers Fowl Tone Formula No. 2," and "Carbo-Zel Tablets." In the course of the promotion and sale of their products under the trade names designated herein, the respondents cause statements and representations to be made in advertising matter which is distributed in the various States of the United States to the following effect, gist, or meaning:

(a) "Zellers Kamala Nicotine Tabs" are an effective individual worm treatment for round and tape worms in chickens, turkeys and other fowls; they are a powerful and effective agency for ridding birds of worms; they do not dissolve until they reach the gizzard, where normal grinding action releases the medicine right at the seat of the worms; they produce results in less than six hours; medication is released at the very seat of the worm infestation, resulting in efficient ridding of the bird's body of intestinal parasites; unless the head of the tape worm is removed treatment will be of no avail; and the head of the worm must come out, as it is the root of the tape worm.

(b) "Zellers Fowl Tone Formula No. 1" contains the elements essential to the proper development of future layers; it is a special tonic for building up disease resistance and aiding in the quick recovery from worm infestation; it and "Carbo-Zel Tablets" are ideal antiseptics; they will prevent digestive disorders; they are effective treatments for intestinal flu, coccidiosis, diarrhea, cholera, typhoid, brooder pneumonia, blackhead in turkeys and irritations caused by worms.

(c) "Zellers Fowl Tone Formula No. 2" is especially recommended for flock treatment of worms, is scientifically prepared to combat the ravages of these small microscopic worms, to counteract the toxic poisons they give off; it is an excellent tonic and worm preventive.

PAR. 4. Representations and statements to the aforesaid effect and meaning, as made by the respondents in the manner indicated in paragraph 3 hereof, are false and misleading. "Zellers Kamala Nicotine Tabs" is not an effective treatment for all worms in chickens and other fowls, and is not an effective remedy for tape and other worms; it will not remove the heads of tape worms and is not an effective remedy for such purpose. "Zellers Fowl Tone For-

mula No. 1" and "Carbo-Zel Tablets" are not effective remedies for coccidiosis and other poultry diseases designated in sub-section (b) of paragraph 3, supra, and will not produce the results represented by respondents as set forth in said paragraph. "Zellers Fowl Tone Formula No. 2" is not an effective flock treatment scientifically prepared to combat the ravages of small, microscopic worms and to counteract the toxic poisons they give off; it is not a worm preventive and will not produce the results represented by respondents as set forth in sub-section (c) of paragraph 3, supra.

PAR. 5. Representations and statements made by respondents to the effect and meaning of those set forth in paragraph 3, supra, are calculated to and do have the tendency and capacity to deceive and mislead substantial portions of the purchasing public into the erroneous belief that such representations are true. As a direct consequence of their mistaken and erroneous beliefs induced thereby, the consuming public has purchased a substantial volume of respondents' commodities, with the attendant result that trade has been unfairly diverted to the respondents 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 and quality, and the results to be obtained from the use of their said products. Substantial injury is thereby done by respondents to competition in commerce, as hereinabove set forth.

CONCLUSION

The aforesaid acts and practices of the respondents E. G. Zellers and M. W. Zellers, copartners doing business under the trade name, Zellers Laboratories, 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 filed herein on February 10, 1937, 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

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

It is ordered, That the respondents, E. G. Zellers and M. W. Zellers, individually and as copartners doing business under the trade name Zellers Laboratories, or under any other name, their representatives, agents and employees, in connection with the offering for sale, sale, and distribution of their poultry products now designated as "Zellers Kamala Nicotine Tabs," "Zellers Fowl Tone Formula No. 1," "Carbo-Zel Tablets" and "Zellers Fowl Tone Formula No. 2," or any other products of substantially the same ingredients or having the same therapeutic effect, sold under those names or any other names, do forthwith cease and desist from directly or indirectly representing:

1. That "Zellers Kamala Nicotine Tabs" is an effective remedy or treatment for round worms, tape worms, or intestinal parasites in fowls; or that it is an effective remedy and agency for the removal of all intestinal parasites in fowls.

2. That "Zellers Fowl Tone Formula No. 1" and "Carbo-Zel Tablets" are effective remedies and treatments for intestinal flu, coccidiosis, diarrhea, cholera, typhoid, brooder pneumonia, blackhead in turkeys, and irritation caused by worms in fowls; that they are perfect and ideal antiseptics for fowls or that they will preclude worm infestation.

3. That "Zellers Fowl Tone Formula No. 2" is scientifically prepared to successfully combat the ravages of intestinal worms in fowls and that it will counteract toxic poisons created by their presence in fowls; or that it is a worm preventive.

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 request.

Syllabus

IN THE MATTER OF

FRANK MCKINNON, TRADING AS EASTERN ART COMPANY AND UNITED ART ASSOCIATION

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

Docket 2912. Complaint, Aug. 28, 1936—Decision, Apr. 8, 1937

- Where an individual engaged, under two separate trade names, in the offer and sale of tinted or colored photographic enlargements of family and other photographs, and of frames therefor, through the medium of salesmen or agents, working in squads, groups, or teams, and whom it supplied with identification cards and with equipment including samples or specimens of its so-called "paintings," and with printed order or contract forms, and with sales talks and with certificates or coupons for salesmen's use in the lucky "draw" ruse employed by him, and who called upon the prospective customers and, in accordance with their instructions, falsely represented that said individual was conducting a contest for national advertisers, and that winning pictures in such contest, and particularly those of babies, would appear on Cream of Wheat, Ovaltine, Ralston, and other packages or containers, and that parents of child would obtain royalties for use of the picture and a grand prize, and that paintings to be entered in such contest might result in the offer of a movie contract to the customer, and who made further false and misleading representations to the effect that said individual was conducting an art school at which pictures made for customers would be exhibited, etc., and made other representations in enlisting interest of prospective customers over and in addition to those below set forth, and in direct substantial competition with others similarly engaged in sale between and among the various States of tinted or colored photographic enlargements and frames therefor, and with those engaged in the similar sale of genuine, free-hand, original, oil, and water color paintings, and including among said former competitors those who truthfully represent and honestly vend their products, and, among the latter, those who truthfully represent their genuine portraits as paintings—
- (a) Described said enlargements as "paintings" and as "fine oil paintings" and as "hand paintings," and as a work of art and not photographic enlargements, in soliciting sale thereof as above set forth, and as "portrait paintings" on the order or contract forms with said individual's trade name thereon, notwithstanding fact that so-called "paintings" were not portrait paintings, oil paintings, etc., or original paintings or works of art, but were merely cheap photographic enlargements of photographs which had been tinted or colored through use of pastel or crayon water color or other powdered pigments sprayed thereon with air brush and compressed air;
 - (b) Represented to the prospective customer contacted by one of his said sales agents or representatives that a drawing contest would be held to decide a few lucky persons to receive free paintings in their homes, and that customer would be allowed two draws or trials, and informed the

participating customer, upon invariable receipt of a winning check or coupon purportedly entitling him, as theretofore announced, to a genuine oil painting, painting or portrait free, or to a substantial discount on the price thereof, and, following the subsequent negotiations and contract for such a painting, free or at substantial discount, and after the closing of the deal, casually and incidentally, that there was a nominal charge of \$3.98 to be paid as representing actual cost of materials used in making the paintings, facts being said alleged "draw" or "drawing" was a mere sham device employed for the sole purpose of inducing prospective purchaser to believe erroneously, that if he drew a lucky coupon or certificate he would thereby have the distinct advantage of obtaining a painting free, or at a price below that ordinarily charged, and all customers, unknown to each other, were approached in the same manner through use of said scheme and device and were similarly beguiled into the false belief that they had been favored by chance and that their cases were exceptional in such respects, when such was not the fact;

- (c) Represented, as aforesaid, that said sum of \$3.98 covered actual cost of materials used in making painting, and that said individual desired to open a branch studio in the home town of the customer and a limited number would be selected as exhibitors to receive paintings free of charge, paying only such incidental item to cover cost of materials as aforesaid, or that customers would receive a fine oil painting for said sum, as covering alleged cost of materials only, or that, in view of a special sale, a hand painted miniature, representing the mere cost of materials, would be painted for \$3.08, and in his order blanks set forth that customer was entitled to "portrait painting," as above set forth, and of specified size, at a "cost of production" price of \$3.98, facts being sum mentioned therein did not represent such actual cost, but constituted an initial substantial profit to him on the character and type of work done by him, and he was not painting miniatures in oil or otherwise for aforesaid sum in connection with any special sale or otherwise, was not offering any customer any special price or genuine price reduction in case of any "painting" or frame therefor, or operating any art school or giving work to unemployed artists in painting pictures of babies for prize contests, or opening any branch studio in town or community in question, or exhibiting customers' paintings for benefit of artists, or conducting any contest, etc., and no child's mother was to receive a grand prize or the child's parents any royalties, as variously claimed and represented in salesmen's contact sales talks, as above indicated;
- (d) Represented that pictures and frames had selling prices and values which were fictitious and greatly in excess of the prices at which similar products were usually sold and intended to be sold, and in excess of the values of such or similar products, through such statements as that the customer would receive a fine oil painting on canvas, worth \$35 or \$40, for \$3.98, alleged cost of materials only, as above set forth, and that prominent people paid as much as \$1,000 for portraits painted by hand in fadeless colors such as those made by him, facts being said so-called "paintings," etc., were, as above set forth, merely cheap photographic enlargements or photographs tinted or colored as hereinabove explained, were not worth and did not have the value of \$35 or \$40, or any other sum approaching such amount, but constituted cheap inferior products costing around

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\$1.25 each, and were not pictures of the type ever bought by prominent people for \$1,000; and

- (e) Failed to disclose, in soliciting and taking the order, and after selection by agent of a family photograph to be used, as stated, merely to check details in the so-called "oil painting" to be furnished free to the customer, and except for the so-called incidental item of \$3.98 to cover cost of materials, that the painting would be made on a peculiar shaped convex surface, hexagonal in form, as subsequently disclosed to customer by a second, and different, agent who called to exhibit a sketch, outline or proof of such oil painting and endeavored to collect in advance said so-called incidental sum of \$3.98, and who represented that it would be necessary for the full protection of the picture to have a frame with convex unbreakable glass, such as could be obtained only from aforesaid individual, and which was priced to consumer at various exorbitant figures, and sale of which cheap and inferior frame was further pressed by a third salesman who called to deliver finished product, in event of second salesman's failure to consummate same;

With tendency and capacity to cause members of the purchasing public to form mistaken and erroneous beliefs that said colored or tinted photographic enlargements were genuine oil or water color paintings, drawings, and portraits in the ordinary accepted meaning, and that said pictures had a value of \$35 to \$40, or other similar sum, and were the type sold for \$1,000, or some such figure, as hereinbefore set forth, and that purchaser would receive a picture free or at a substantially reduced price on account of being a winner in a drawing contest, and with result that many of the members of the public, acting in such erroneous beliefs, induced by various misrepresentations, purchased said colored photographic enlargements and frames therefor, and with further capacity and tendency to divert to said individual trade of competitors engaged in selling in interstate commerce colored photographs and photographic enlargements and frames therefor, truthfully advertised and represented; 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. Marshall Morgan for the Commission.

Hartigan, Mullen & Roberts, of Providence, R. I., 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 Frank McKinnon, an individual trading under the names, Eastern Art Company and United Art Association, has been and is using unfair methods of competition in commerce as 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, Frank McKinnon, is an individual, residing at Providence, State of Rhode Island, and doing business at No. 710 Eddy Street in said city, under the trade names, Eastern Art Company and United Art Association.

Respondent is the sole owner and operator of the business conducted by him through the medium of the aforementioned trade name companies and directs the activities and controls the business policies and practices of each.

Respondent, Frank McKinnon, trading as Eastern Art Company and as United Art Association, as aforesaid, is now, and for more than two years last past, has been engaged in the business of offering for sale and the sale of tinted or colored photographic enlargements of family and other photographs, and of frames therefor. Respondent sells his products through the medium of salesmen or representatives appointed by him as agents in his behalf, to customers located in States other than the State of Rhode Island. In consummating such sales and in distributing such products, respondent Frank McKinnon causes the pictures and frames so sold by him to be transported and delivered from his place of business in Providence in the State of Rhode Island, through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of his said business, respondent Frank McKinnon has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals, likewise engaged in the sale, between and among the various States of the United States, of tinted or colored photographic enlargements and of frames therefor, and, likewise, with corporations, partnerships, and individuals engaged in the sale among the various States of the United States of genuine, free hand original paintings, including oil paintings and water color paintings, as will be more fully hereinafter shown.

PAR. 2. A crayon is a pencil-shaped piece of colored clay, chalk or charcoal used for drawing upon paper. A crayon drawing is the act or art of drawing with crayons.

A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil or crayon.

The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with a colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

Paint is defined as a substance used in painting composed of a dry coloring material intimately mixed with a liquid vehicle. A paint-

ing is a likeness, image, or scene depicted with paints without the aid of photography.

A water color is a painting with pigments for which water, and not oil, is used as a solvent.

A portrait, in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness, particularly in oil.

An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 3. In the course and conduct of his said business, respondent Frank McKinnon, trading as Eastern Art Company and as United Art Association, causes agents and representatives employed by him to visit the homes of prospective customers in the cities, towns, and rural communities of the various States of the United States. Under said respondent's selling plan he organizes the said agents and representatives into squads, groups or teams, each covering or working a particular territory under a crew manager appointed by respondent. Neither of the two trade name companies operates in the same territory, at the same time, and when agents of the Eastern Art Company are working in Connecticut or Massachusetts, agents of the United Art Association are working elsewhere. No separate book-keeping systems are maintained for the business handled through the medium of the aforesaid trade name companies, nor does an agent know before taking over a given territory which of the two companies he will represent therein. Crew managers in charge of selling teams keep in constant touch with the daily activities of the respective salesmen or representatives of respondent. One sales representative of respondent calls upon, or contacts, a prospective customer and makes a contract with said prospect for a "Portrait Painting" or oil painting at a price of \$3.98, alleged to represent merely the cost of production, said sum of \$3.98 to be paid when "proof" of said "painting" is shown later at said customer's residence or address. In connection with the initial order the first salesman obtains from the customer a family photograph to serve as a model for the "painting." A second and different salesman submits an outline or proof of the "painting" in due course, and endeavors at that time to collect for the incompleted "painting" and to induce the customer to agree to buy a frame therefor. A third and final representative delivers the finished "painting," collects any sum remaining due thereon and collects also for the frame if the customer has agreed to buy one. Sales talks containing approved methods of approach and convincing proposals or arguments to be used in contacting prospective pur-

chasers of "paintings," and necessary order blanks or forms, are furnished by respondent for the use of and distribution among his sales representatives; also certificates or coupons to be used in connection with the "draw" as hereinafter related.

PAR. 4. Respondent, Frank McKinnon, trading under the names Eastern Art Company and United Art Association, as aforesaid, makes and produces and sells his "paintings" in the following manner:

A negative is made of a family photograph furnished to the agent or sales representative by the customer. This negative is then used to make a photographic enlargement of the original photograph. This photographic enlargement is then tinted or colored by spraying crayon or pastel water color or oil thereon by the use of a mechanical appliance from which liquid paint is forced by compressed air and known as an air brush. Respondent makes these enlarged tinted or colored photographs at an average cost of \$1.25. Frames range in cost from 85¢ to \$1.05, a few special patterns going as high as \$2.25. Glass and a back for the picture or painting represent a cost of about 24¢. Picture frames are sold for as much as an agent can obtain for them at any particular home visited, respondent's largest item of profit being realized in the sale of frames. Colored enlargements are made in an unusual convex hexagonal shape necessitating a type of glass and frame which respondent represents, can only be obtained by the purchaser from him.

Respondent maintains and operates a separate collection department in connection with his aforesaid business to which specific fees or sums are credited in connection with the collection of sums alleged to be due from delinquent customers.

Respondent, Frank McKinnon, trading respectively, as aforesaid, as Eastern Art Company and United Art Association, causes orders or contracts for pictures or "paintngs" to be taken by his agents or representatives on printed forms provided by respondent bearing the name and address of one of the trade name companies across the top thereof and in such order it is "certified" that the customer is entitled to "one Venetian Convex Portrait Painting" 10 x 16 inches in size at a "cost of production" price of \$3.98 unframed, payment to be made upon presentation of proof at customer's residence. Said order blank or certificate is duly signed by respondent's agent in his representative capacity on a line provided therefor. Receipts similar in tenor are signed for the trade name company by the agent making a sale.

Purchasers of pictures are given to understand that they are contracting or dealing with a duly constituted agent of one or the

other of respondent's trade name companies and each agent or salesman is furnished by respondent with an identification card or card of credentials to be presented or exhibited by him when interviewing prospective purchasers. Equipment, including sample cases containing samples of specimens of fine oil paintings, is also furnished solicitors or agents by said respondent for use in soliciting orders in his behalf.

PAR. 5. Salesmen, agents, or representatives soliciting orders for and on behalf of respondent are given full and complete instructions by respondent as to the representations to be made by them upon approaching or contacting prospective purchasers of pictures or "paintings." Alluring samples of respondent's work, painted in oil paint, hand drawn and hand painted portraits to be duplicated for the prospect, are exhibited to him. Respondent's agents and representatives, with a view to inducing prospective customers to sign contracts for pictures, or "paintings," make, and are instructed to make and do make the following, among other representations:

1. That respondent is conducting a contest for national advertisers; that pictures, particularly those of babies, will be entered in such contest, the winning pictures to appear on Cream of Wheat, Ovaltine, Ralston and other packages or containers, and that the parents of the child will obtain royalties for the use of the picture, and a grand prize;

2. That respondent desires to open a branch studio in the home town of a customer; that a limited number of customers will be selected as exhibitors, these to receive paintings free of charge, paying only the incidental item of \$3.98, representing the cost of materials;

3. That respondent is conducting an art school, that pictures made for customers will be exhibited to art students and for their benefit, and that respondent is assisting unemployed art students;

4. That the customer will receive a fine oil painting on canvas worth \$35 to \$40, for \$3.98, the alleged cost of materials only;

5. That prominent people pay as much as \$1,000 for portraits "painted by hand in fadeless colors" such as those made by respondent;

6. That respondent's paintings are "hand drawn, hand painted," "a work of art" and are not photographic enlargements, the photograph being used merely to obtain details for the painting;

7. That a hand painted miniature, in view of a special sale being conducted by respondent, will be painted for \$3.98, representing the mere cost of materials;

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8. That pictures of babies will be painted by unemployed artists and entered in a prize contest;

9. That a paper or document obligating the customer to pay for a painting is merely a receipt for a small photograph;

10. That paintings to be entered in a contest of national advertisers may result in the offer of a movie contract to the customer.

In further connection with his said selling methods respondent, Frank McKinnon, represents that a drawing contest will be held for the purpose of deciding who shall be one of a few lucky persons in a particular city or town to have respondent place free paintings in their homes. The agent in connection with said drawing produces a sealed box or package containing a number of slips of paper attached to a wire. It is represented that most of said slips are blank but that a few are trade checks or coupons; that a customer is allowed two draws or trials; that if he draws a blank he does not win, but if fortunate enough to draw a winning check or coupon, he will be entitled to receive a genuine oil painting free, or to receive a substantial discount on the price of a genuine oil painting. The prospective customer draws, and finally, and invariably, draws a lucky coupon, allegedly giving him an oil painting free. The customer is thereupon congratulated by the agent upon his good luck. Believing the representations of the agent to the effect that he has been lucky and has obtained a distinct financial advantage the customer is thereby induced to continue negotiations with said agent and to make a contract with the said agent for a fine "oil painting" free. The customer is casually and incidentally informed when the agent is departing that there is just a nominal charge of \$3.98 to be paid in connection with the transaction, representing the actual cost of the materials to be used in making the "painting."

Said alleged "draw" or "drawing" was, and is, a mere sham device employed by respondent for the sole purpose of inducing the prospective purchaser to believe that if he draws a lucky "coupon" or certificate, he will thereby have the distinct advantage of obtaining a portrait free, or at a price below that ordinarily charged customers, when in truth and in fact other customers unknown to each other are approached in the same manner through the use of said drawing scheme and device, and likewise have been beguiled into believing that they are exceptional ones favored by fortune and chance, when such is not the fact.

The interest of the prospective customer finally having been elicited through the use of one or more of the herein described selling devices, the said agent of respondent then asks the privilege of inspecting family photographs. After careful inspection a photo-

graph announced by the agent to be satisfactory, is selected by him. This photograph, with which the agent departs when the contract is closed, is to be used, it is stated, merely for the purpose of checking details in the oil painting to be furnished free to said customer, except for the incidental item of \$3.98 to cover cost of materials.

In due course a second and different agent of said respondent calls to exhibit a sketch, outline, or proof of the oil painting to be finished for the customer; to inquire about coloring details; to collect, or to endeavor to collect, in advance of the completion and delivery of the painting, for the "incidental" cost of the materials to be used in painting the picture or "portrait," amounting to \$3.98 as aforesaid; and to persuade the customer to contract for a frame for the painting. Respondent's said agent, in this relation, exhibits to the customer a model, outline, or proof of the painting made on a peculiar-shaped convex surface, hexagonal in shape. Respondent's said agent then represents that it will be necessary for the picture, in order to be fully protected, to have a frame with convex unbreakable glass and that such frame and glass can be obtained only from the said respondent. Said frame and glass are priced to the customer at various exorbitant figures, and in the event the second visiting agent fails to sell a frame and glass, a third salesman, who calls to deliver the finished painting, makes a further effort to induce the customer to add the price of a frame and glass to his contract.

PAR. 6. The pictures or photographs which are borrowed from prospective purchasers by the agents and representatives of respondent for the purpose of having "paintings" made therefrom, were, and are in most instances, pictures of members of the customer's family or near relatives, and many such pictures cannot possibly be duplicated. Such photographs loaned and furnished to respondent by his customers, possess and have possessed great sentimental value. In numerous instances the member of the family or near relative represented by the photograph, has been dead many years. In making contracts with his customers the respondent inserts therein a clause to the effect that no cancellations will be accepted. In case of a controversy involving alleged misrepresentation as to the character or quality of the work done, or for other reasons, justified in the mind of the purchaser, the respondent, Frank McKinnon, in the event any sum or balance is claimed to be due him from the purchaser, did and does insist upon holding the purchaser to the letter and terms of the contract, and, as a means of enforcing compliance with the terms of the contract in every instance, respondent did and does refuse to return the valued family photograph until the money claimed

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to be due him has been paid to him. Respondent in many instances has retained original photographs and colored enlargements made therefrom and has retained possession of enlargements fully paid for, at original contract price, if subsequently frames therefor were refused by the customer for any reason. Under such type of duress, many customers who are and have been dissatisfied with the character or quality of the paintings made for them by respondent, and who assert, and have asserted, misrepresentation in connection therewith, have been forced to go through with the contract in order to obtain the return of a treasured family photograph.

PAR. 7. In truth and in fact the various statements and representations made by respondent through his agents and representatives, in selling and offering for sale his pictures in cities, towns, and communities of the respective States of the United States, were and are false, deceptive and misleading in the following, among other particulars:

(a) The paintings so represented and sold on behalf of respondent, Frank McKinnon, trading as Eastern Art Company and United Art Association, are not and never have been, "portrait paintings," "oil paintings," or "hand drawn, hand painted," or "hand paintings," or "water color paintings," or "original paintings," or "works of art," or any work of art produced through the art of drawing or drawn from life, but on the contrary, are and have been, merely cheap photographic enlargements of photographs, tinted or colored by the use of pastel or crayon, water color or other powdered pigments sprayed upon the enlargement, in solution, through the use of an air brush and compressed air;

(b) Pictures or "paintings" such as those represented and sold by respondent are not worth, and have never been worth, or had the value of \$40 or \$35, or any other value approximating these amounts; pictures of this type have never been bought by prominent people for \$1,000, nor do respondent's pictures possess, nor have they ever possessed or had the quality, characteristics, or value of oil paintings or other types of genuine paintings attributed to them by representatives of the said respondent, but on the contrary comprise a cheap, inferior product costing around \$1.25 each;

(c) The sales prices represented for respondent's pictures by his sales representatives, were and are fictitious and greatly in excess of the prices at which such tinted or colored photographic enlargements were ever sold or were ever intended or contemplated to be sold;

(d) Respondent does not operate any art school and does not give work to unemployed artists and does not exhibit customer's paintings

for the benefit of artists, and the United Art Association is not an art association;

(e) Respondent has not conducted, and is not conducting, any contest for or in connection with national advertisers in which the winning picture has been, or will be selected and used for advertising purposes, nor is any child's mother in connection with such alleged contest to receive a grand prize, or the child's parents to receive any royalty from any national advertiser alleged to be using the picture.

(f) Respondent has not painted, and does not paint, miniatures in oil or otherwise for \$3.98 in connection with any special sale being conducted, or otherwise;

(g) The sum of \$3.98 does not represent, and has never represented, the actual cost of materials used by respondent in making a "painting," but on the contrary represents and constitutes an initial, substantial profit to respondent on the type and character of work done by him;

(h) Pictures or "paintings" made by respondent for customers are different from and greatly inferior in quality, workmanship and character to alleged samples thereof exhibited by respondent's agents in endeavoring to and obtaining contracts for such pictures or "paintings";

(i) Customers do not understand and have not agreed in connection with contracts that treasured family photographs are to be retained by respondent until payment of any sum alleged by respondent to be due him;

(j) Customers have not understood and do not understand from respondent that receipts for photographs supplied by them are actually contracts for pictures or "paintings" to be made by respondent;

(k) Frames delivered by respondent in connection with the sale of the said pictures or "paintings" are not the same as, but are inferior to, alleged samples of frames exhibited by agents while obtaining contracts therefor, and the prices asked for said frames are exorbitant and far above the value thereof;

(l) Respondent has not introduced, and is not introducing, any new or special type of pictures or "paintings"; is not offering, and has not offered to any customer any special or genuine reduction in price in the case of any "painting" or frame therefor; has not opened, nor intended opening any branch studios in any city, town, or community; does not select, and has not selected, a few special exhibitors of his products in any city, town, or community, and the prices quoted by respondent's said agents to customers and prospective customers are not special or reduced prices in any instance, but on the contrary are

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either prices ordinarily quoted, or prices grossly in excess of the real and actual value of respondent's products as sold by him in commerce.

PAR. 8. There are among the competitors of respondent, Frank McKinnon, trading as aforesaid under the names, Eastern Art Company and United Art Association, as described in paragraph 1 hereof, corporations, partnerships, firms, and persons who are engaged in the sale of tinted or colored enlargements of photographs and of frames therefor, who do not employ and maintain the practices as set forth in paragraphs 3 to 7 of this complaint, but who truthfully represent their products and honestly vend the same, and there are also, among the competitors of respondent, Frank McKinnon, corporations, partnerships, firms, and persons engaged in the business of painting genuine portraits, who truthfully represent their products as being "paintings."

PAR. 9. The use by respondent, Frank McKinnon, trading as Eastern Art Company and United Art Association, of the said practices as set forth in paragraphs 2 to 7 of this complaint, tends to and does unfairly divert trade from competitors and thereby substantial injury has been done, and is being done, by respondent to competition in interstate commerce. By the use of the within described false and misleading representations, respondent has deceived, and is deceiving, the public concerning the quality and value of the products sold by him as aforesaid and in the various other particulars as hereinbefore described and related, and has thereby induced, and is inducing, the public to purchase said products under the erroneous belief that the same are, and were, high-grade quality "paintings" and picture frames of exceptional merit and value.

PAR. 10. The above-alleged acts and practices employed by respondent as aforesaid are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 28, 1936, issued, and on August 31, 1936, served, its complaint in this proceeding upon respondent, Frank McKinnon, an individual trading under the names Eastern Art

Company, and United Art Association, 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, 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 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, Frank McKinnon, is an individual residing at Providence, State of Rhode Island, and doing business at No. 710 Eddy Street in said city, under the trade names, Eastern Art Company and United Art Association. Respondent is the sole owner and operator of the business conducted by him through the medium of the aforementioned trade name companies and directs the activities and controls the business policies and practices of each.

Respondent, Frank McKinnon, trading as Eastern Art Company and as United Art Association, as aforesaid, and hereinafter referred to as respondent, is now, and for more than two years last past has been, engaged in the business of offering for sale and the sale of tinted or colored photographic enlargements of family and other photographs, and of frames therefor. Respondent sells his products through the medium of salesmen or representatives appointed by him as agents. In consummating such sales and in distributing such products, respondent Frank McKinnon causes the pictures and frames so sold by him to be transported and delivered from his place of business in Providence in the State of Rhode Island, through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of his said business, respondent Frank McKinnon has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals, likewise engaged in the sale, between and among the various States of the United States, of tinted or colored photographic enlargements and of frames therefor, and with corporations, partnerships, and individuals engaged in the

sale among the various States of the United States of genuine, free hand original paintings, including oil paintings and water color paintings.

PAR. 2. A crayon is a pencil-shaped piece of colored clay, chalk or charcoal used for drawing upon paper. A crayon drawing is the act or art of drawing with crayons. A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil, or crayon. The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with a colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

A painting is a likeness, image, or scene depicted with paints without the aid of photography. A water color is a painting with pigments for which water, and not oil, is used as a solvent. A portrait, in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness, particularly in oil. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 3. In the course and conduct of his said business, respondent causes agents and representatives employed by him to visit the homes of prospective customers in the cities, towns and rural communities of the various States of the United States. Under said respondent's selling plan he organizes the said agents and representatives into squads, groups or teams, each covering or working a particular territory under a crew manager appointed by respondent. Neither of the two trade name companies operates in the same territory, at the same time. No separate bookkeeping systems are maintained for the business handled through the medium of the aforesaid trade name companies. Crew managers in charge of selling teams keep in constant touch with the daily activities of the respective salesmen or representatives of respondent. Purchasers of pictures are given to understand that they are contracting or dealing with a duly constituted agent of one or the other of respondent's trade name companies and each agent or salesman is furnished by respondent with an identification card or card of credentials to be presented or exhibited by him when interviewing prospective purchasers. Equipment, including sample cases containing samples of specimens of "paintings," is also furnished solicitors or agents by said respondent for use in soliciting orders in his behalf.

Respondent causes orders or contracts for pictures or paintings to be taken on printed forms provided by him bearing the name and address of one of the trade name companies across the top thereof

and in such order it is "certified" that the customer is entitled to "one Venetian Convex Portrait Painting" 10 x 16 inches in size at a "cost of production" price of \$3.98, unframed, payment to be made upon presentation of proof at customer's residence. Said order blank or certificate is duly signed by respondent's agent in his representative capacity on a line provided therefor. Receipts similar in tenor are signed for the trade name company by the agent making a sale.

Sales talks containing approved methods of approach and convincing proposals or arguments to be used in contacting prospective purchasers of paintings, and necessary order blanks or forms, are furnished by respondent for the use of and distribution among his sales representatives; also certificates or coupons to be used in connection with the "draw" as hereinafter related.

PAR. 4. Respondent makes and produces and sells his "paintings" in the following manner:

A negative is made of a family photograph furnished to the agent or sales representative by the customer. This negative is then used to make a photographic enlargement of the original photograph. This photographic enlargement is then tinted or colored by spraying crayon or pastel water color or oil thereon by the use of a mechanical appliance known as an air brush, from which liquid paint is forced by compressed air. Respondent makes these enlarged tinted or colored photographs at an average cost of \$1.25. Frames range in cost from 85¢ to \$1.05, a few special patterns going as high as \$2.25. Glass and a back for the picture or painting represent a cost of about 24¢. Picture frames are sold for as much as an agent can obtain for them at any particular home visited, respondent's largest item of profit being realized in the sale of frames. Said colored enlargements are made in an unusual convex hexagonal shape necessitating a type of glass and frame which respondent fails or refuses to disclose at the time of the purchase of the picture, can be obtained only from him.

PAR. 5. In pursuance of the sales methods employed by and on behalf of and under the direction of respondent, a sales agent or representative calls upon or contacts a prospective customer, usually at the home of the latter. Said sales agent represents that a drawing contest will be held for the purpose of deciding who shall be one of a few lucky persons in a particular city or town to have respondent place free paintings in their homes. The agent then produces a box or package containing a number of slips of paper. It is represented that most of said slips are blank but that a few are trade checks or coupons; that a customer is allowed two draws or trials;

that if he draws a blank he does not win, but if fortunate enough to draw a winning check or coupon, he will be entitled to receive a genuine oil painting, painting or portrait free, or to receive a substantial discount on the price of a genuine oil painting or valuable painting. The prospective customer draws, and finally, and invariably, draws a lucky coupon, allegedly giving him a painting free, or at a substantial discount. Believing the representations of the agent to the effect that he has been lucky and has obtained a distinct financial advantage the customer is thereby induced to continue negotiations with said agent and to make a contract with the said agent for a fine oil painting or portrait painting free, or at a substantial discount. The customer is casually and incidentally informed, when the deal is closed, that there is just a nominal charge of \$3.98 to be paid in connection with the transaction, representing the actual cost of the materials to be used in making the painting.

Said alleged "draw" or "drawing" was, and is, a mere sham device employed by respondent for the sole purpose of inducing the prospective purchaser to believe that if he draws a lucky coupon or certificate, he will thereby have the distinct advantage of obtaining a painting free, or at a price below that ordinarily charged. In truth and in fact all customers, unknown to each other, are approached in the same manner through the use of said drawing scheme and device, and likewise have been and are beguiled into believing that they are exceptional ones favored by chance, when such is not the fact. Respondent's agents and representatives, with a view to inducing prospective customers to sign contracts for oil, portrait or other valuable types of painting, make, and are instructed to make and do make the following, among other representations:

(1) That respondent is conducting a contest for national advertisers; that pictures, particularly those of babies, will be entered in such contest, the winning pictures to appear on Cream of Wheat, Ovaltine, Ralston, and other packages or containers, and that the parents of the child will obtain royalties for the use of the picture, and a grand prize; (2) That respondent desires to open a branch studio in the home town of a customer; that a limited number of customers will be selected as exhibitors, these to receive paintings free of charge, paying only the incidental item of \$3.98, representing the cost of materials; (3) That respondent is conducting an art school, that pictures made for customers will be exhibited to art students and for their benefit, and that respondent is assisting unemployed art students; (4) That the customer will receive a fine oil painting on canvas worth \$35 to \$40 for \$3.98, the alleged cost of materials only; (5) That prominent people pay as much as \$1,000

for portraits painted by hand in fadeless colors such as those made by respondent; (6) That respondent's paintings are hand drawn, hand painted, a work of art, and are not photographic enlargements; (7) That a hand-painted miniature, in view of a special sale being conducted by respondent, will be painted for \$3.98, representing the mere cost of materials; (8) That pictures of babies will be painted by unemployed artists and entered in a prize contest; (9) That paintings to be entered in a contest of national advertisers may result in the offer of a movie contract to the customer.

The interest of the prospective customer finally having been elicited through the use of one or more of the herein described selling devices, the said agent of respondent then asks the privilege of inspecting family photographs. After careful inspection a photograph announced by the agent to be satisfactory, is selected by him. This photograph, with which the agent departs when the contract is closed, is to be used, it is stated, merely for the purpose of checking details in the oil painting to be furnished free to said customer, except for the incidental item of \$3.98 to cover cost of materials.

In due course a second and different agent of said respondent calls to exhibit a sketch, outline, or proof of the oil painting to be finished for the customer; to inquire about coloring details; to collect, or to endeavor to collect, in advance of the completion and delivery of the painting, for the purported incidental cost of the materials to be used in painting the picture or portrait, amounting to \$3.98 as aforesaid; and to persuade the customer to contract for a frame for the painting. Respondent's said agent exhibits to the customer a model, outline, or proof of the painting made on a peculiar-shaped convex surface, hexagonal in shape. Said agent then represents that it will be necessary for the picture, in order to be fully protected, to have a frame with convex unbreakable glass and that such frame and glass can be obtained only from the said respondent. Said frame and glass are priced to the customer at various exorbitant figures, and in the event the second visiting agent fails to sell a frame and glass, a third salesman, who calls to deliver the finished painting, makes a further effort to induce the customer to add the price of a frame and glass to his contract.

PAR. 6. The various statements and representations made by respondent directly and through his agents and representatives, in selling and offering for sale pictures in cities, towns, and communities of the respective States of the United States, were and are false, deceptive and misleading in the following, among other particulars:

The "paintings" so represented and sold by the respondent are not, and never have been, portrait paintings, oil paintings, or hand drawn, hand painted, or hand paintings, or water color paintings, or original paintings, or works of art, or any work of art produced through the art of drawing or drawn from life. They are, and have been, merely cheap photographic enlargements of photographs, tinted or colored by the use of pastel or crayon, water color or other powdered pigments sprayed upon the enlargement, in solution, through the use of an air brush and compressed air. Pictures or purported paintings such as those sold by respondent are not worth, and never have been worth, or had the value of \$40 or \$35, or any other value approximating these amounts. Pictures of this type have never been bought by prominent people for \$1,000. Respondent's pictures do not possess, and they have never possessed or had the quality, characteristics or value of oil paintings or other types of genuine paintings attributed to them by representatives of the said respondent. They comprise a cheap, inferior product costing around \$1.25 each. The sales prices represented for respondent's pictures by his sales representatives, were and are fictitious and greatly in excess of the prices at which such tinted or colored photographic enlargements, as such, were ever sold or were ever intended or contemplated to be sold. Respondent does not operate any art school and does not give work to unemployed artists and does not exhibit customer's paintings for the benefit of artists. Respondent has not conducted, and is not conducting, any contest for or in connection with national advertisers in which the winning picture has been, or will be selected and used for advertising purposes, nor is any child's mother in connection with such alleged contest to receive a grand prize, or the child's parents to receive any royalty from any national advertiser alleged to be using the picture. Respondent has not painted, and does not paint, miniatures in oil or otherwise for \$3.98 in connection with any special sale being conducted, or otherwise. The sum of \$3.98 does not represent, and has never represented, the actual cost of materials used by respondent in making a "painting," but on the contrary represents and constitutes an initial, substantial profit to respondent on the type and character of work done by him. Pictures or "paintings" made by respondent for customers are different from and greatly inferior in quality, workmanship, and character to alleged samples thereof exhibited by respondent's agents in endeavoring to and obtaining contracts for such pictures or "paintings." Frames delivered by respondent in connection with the sale of the said pictures or "paintings" are of cheap, inferior quality and the prices asked for said frames are exorbitant and far

above the value thereof. Respondent has not introduced, and is not introducing, any new or special type of pictures or "paintings." Respondent is not offering, and has not offered to any customer any special price or genuine reduction in price in the case of any "painting" or frame therefor. Respondent has not opened, nor intended opening, any branch studios in any city, town or community, and does not select, and has not selected, a few special exhibitors of his products in any city, town, or community. The prices quoted by respondent's said agents to customers and prospective customers are not special or reduced prices in any instance, but on the contrary are either prices ordinarily quoted, or prices grossly in excess of the real and actual value of respondent's products as sold by him in commerce.

PAR. 7. There are among the competitors of respondent, as described hereinbefore, corporations, partnerships, firms, and persons who are engaged in the sale of tinted or colored enlargements of photographs and of frames therefor, who do not employ and use practices similar to those set out herein, but who truthfully represent their products and honestly vend the same. There are also, among the competitors of respondent, Frank McKinnon, other corporations, partnerships, firms, and persons engaged in the business of painting genuine portraits, who truthfully represent their products as being paintings.

PAR. 8. The use of the aforesaid false and misleading representations and practices on the part of the respondent and his agents in the sale and offering for sale of purported paintings has had, and now has, the tendency and capacity to cause members of the purchasing public to form the mistaken and erroneous beliefs that respondent's said colored or tinted photographic enlargements are paintings produced by one of the methods described in paragraph 2, hereof; that said pictures have a value of \$35 to \$40 or some similar sum; that pictures of the same type have sold for \$1,000 or some similar sum; that said pictures have the same quality, value and characteristics as paintings produced by the methods described in paragraph 2 hereof; and that the various other representations made by the respondent and his agents as detailed in paragraph 5 hereof, including the representation that the purchaser will receive the picture free or at a substantially reduced price on account of being a winner in a drawing contest, are true. Acting in such erroneous beliefs, induced by the various misrepresentations herein detailed, many of said members of the public have purchased the colored photographic enlargements, and frames therefor, sold by the respondent. The aforesaid representations and practices on the part of respondent

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ent have and have had the capacity and tendency to divert to respondent the trade of competitors engaged in selling in interstate commerce colored photographs and photographic enlargements and frames therefor, which latter product are truthfully advertised and represented, and thereby substantial injury has been done, and is 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, Frank McKinnon, an individual trading under the names Eastern Art Company and United Art Association 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 9, 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 fact 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 said respondent, Frank McKinnon, individually, and trading under the names Eastern Art Company and United Art Association, or under any other trade name, or through any corporate or other device, his servants, employees, or agents, individual or corporate, in connection with the offering for sale, sale, and distribution of colored or tinted photographic enlargements having a photographic base for a likeness, and of frames therefor, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That such pictures are "oil paintings," "portrait paintings," "water color paintings," "original paintings," "hand paintings," "paintings," or "hand drawn"; and are produced by hand without the aid of photography;

2. That the sum of \$3.98, or any other sum, represents only the actual cost of the materials used by respondent in making one of his pictures through his accustomed process, when said sum represents other than the actual cost of production;

3. That customers by means of the so-called draw, or drawing, or voting contest, by drawing a "lucky" blank, coupon or certificate, or on account of any other device or pretext such as prize contests or introductory advertising offers, have thereby obtained a distinct financial advantage, as a result of which they will be entitled to receive free one of two "paintings," or will receive a substantial discount or reduction in price in the case of an order for one "painting";

4. That pictures and frames have selling prices or values which were and are fictitious and greatly in excess of the prices at which such or similar products are usually sold and were intended to be sold, and greatly in excess of the values of such or similar products.

5. In any manner, or through any means or device, or through failure to disclose the size and shape of the pictures sold at the time the order is taken, that the pictures furnished by him are of such size and shape, that frames therefor can be procured from any source, when in fact said pictures have such peculiar size and shape that frames therefor can be obtained only from respondent.

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.

IN THE MATTER OF
PHILIP WELSH, TRADING AS THE WELSH FOUNDATION

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

Docket 2485. Complaint, July 1, 1935—Decision, Apr. 9, 1937

Where an individual engaged in the publication, sale and distribution in interstate commerce of books and booklets known as and sold under the name "The 7 Essentials of Health," to wit; as designated and dealt with by him in the seven booklets, in which he detailed his theories and ideas as to correct mode of living, with respect to the subject matter of the different pamphlets, fresh air, natural foods, water, sunshine, exercise, and occupation, rest and mental attitude; and in substantial competition with others engaged in sale and distribution in commerce among the various States of books, booklets, pamphlets, magazines, and other publications dealing with problems of health and hygiene and other related subjects, and who do not in any manner misrepresent the benefits to be obtained from following the mode of living or rules of health and hygiene or treatments therein set forth; in advertising his said publication in magazines circulated throughout the States, and through circulars, dodgers, leaflets, pamphlets, form letters, and other printed matter distributed among prospective purchasers by mail and through other means—

- (a) Represented that the following and using of the theories, ideas, rules, directions, and instructions announced and stated in his said publication would prevent and cure all bodily ailments and diseases and cure or be beneficial in the treatment of a large number of specified ailments, diseases, and conditions, including, among many others, anemia, arthritis, high blood pressure, kidney trouble, low blood pressure, rheumatism, sexual disorders, and women's ailments, and that following instructions in said publication would "make the blood so pure and the entire digestive tract and colon so clean that disease CANNOT maintain hold in the body * * *," and result in the body itself becoming immune thereto, and would enable one to "get at and strengthen all the internal organs, revitalize them and bring them back to normal function," and to learn a simple, inexpensive, practical, and entirely natural way to attain unusual health; and
- (b) Represented that all sickness is caused by overlooking one of the essentials named in said publication, and that following mode of living outlined therein is simplest and most effective way of dealing with health problems, and that health cannot be restored by cutting out parts of the body, and that adoption of his said teachings, as stated in publication in question, will cause disease and premature death to disappear from the earth;

Facts being that the following and using of the theories, ideas, rules, directions and instructions of said individual, as stated in publication in question, in regard to health, hygiene, mode of living, and related matters therein referred to, will not prevent and cure all bodily ailments and diseases regardless of their cause, origin and nature, or cure or be of any substantial benefit in the treatment of the ailments, diseases, and conditions for which

such publication is represented as of value by said individual, as hereinbefore set forth, all sickness is not caused by overlooking one of the seven "essentials" of health indicated in such publication, following mode of living outlined therein is not simplest and most effective way of dealing with health problems, and aforesaid various representations, as hereinbefore set forth, were otherwise false, and representations and implications thereof, in connection with offer and sale of publication in question, were grossly exaggerated, false, and misleading;

With effect of misleading and deceiving many persons and causing them erroneously to believe that the purchase of said publication and following and use of the theories, ideas, rules, directions, and instructions of said individual, as therein set forth, would prevent and cure all bodily ailments and diseases regardless of their cause, origin, or nature, and cure or be beneficial in the treatment of those set out, that all sickness was caused by overlooking one of the essentials indicated, and that the various other statements, representations and implications hereinbefore set forth were true, and of causing many persons, because of such erroneous beliefs, to purchase publication in question, and thereby unlawfully, unfairly and substantially divert trade to said individual from his competitors in interstate commerce who do not misrepresent their products; to their injury and that of the public:

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.

Mr. Martin E. Geibel, of Los Angeles, Calif. and *Rowan & Tesch*, 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 Philip Welsh, doing business under the name and style of The Welsh Foundation, 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, Philip Welsh, doing business under the name and style of The Welsh Foundation, is now and has been engaged for more than five years last past in the sale and distribution of certain booklets known and described as "The 7 Essentials of Health." Said respondent, in conducting his said business, has his office and principal place of business at Pacific Palisades, in the State of California. Respondent, in the course and conduct of his

said business, causes his said booklets, when sold by him, 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 they are or have been sold.

PAR. 2. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States, are and have been engaged in the sale and distribution in interstate commerce of books and pamphlets on health and subjects connected therewith, and such other individuals, firms, and corporations have caused, and do now cause their said books and pamphlets, when sold by them, to be transported from various States of the United States to, into and through States other than the origin of the shipment thereof. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said booklets with such other individuals, firms, and corporations.

PAR. 3. That respondent in his advertisements inserted in magazines and other publications circulated between and among various States of the United States and distributed to the general public in such States, and in his advertising literature circulated between and among the various States of the United States and distributed to members of the public therein, makes various and sundry statements in regard to his said booklets and the theories advanced and the directions and instructions contained therein which are inaccurate, misleading, and exaggerated. Among such statements are the following:

Do you know that if you overlook the "7 Essentials" you cannot have lasting health?

If you are not enjoying your share of health it is a sure sign that you are overlooking one or more of the fundamental requirements of health.

* * * the simplest and most effective way of dealing with your problems.

There is only one way to attain internal cleanliness and that is Nature's way—that way involves the application of the "7 Essentials of Health."

Health cannot be gotten by cutting out parts of the body.

These "7 Essentials" make the blood so pure and the entire digestive tract and colon so clean that disease CANNOT maintain hold in the body. The body at once becomes IMMUNE TO DISEASE and any diseased matter present is thrown out through various channels of elimination.

If you are sick, rundown and ailing, it is because you have violated Nature's Laws—you have overlooked the "7 Essentials of Health."

The 7 Essentials of Health is a practical simplified program of living that leaves no room for disease in the body.

It strikes at all the causes of ill health.

It shows you how to get at and strengthen all the internal organs, revitalize them and bring them back to normal functions.

The basic knowledge contained in these "7 Essentials" will help you turn sickness into health. * * *

PAR. 4. That respondent, in his advertising matter, circulated as aforesaid, makes many statements which represent or imply that the following of the instructions as to mode of living contained in his said booklets will prevent or cure all bodily ailments and diseases, regardless of their cause, origin or nature. Such representations are also made by respondent by means of reproducing testimonial letters from users of his system. Among such representations are the following:

There is a natural way to overcome your ailment.

Thru the printed works on "The 7 Essentials of Health", thousands of health seekers have learned a simple, inexpensive, practical and entirely Natural way to attain unusual health.

If you are interested in this new plan, mail the coupon below . . . it may save you many years of needless suffering.

Patients whose entire health had been restored sent their friends to Dr. Welsh in increasing numbers—NOT for dental work alone but for stomach ailments, nervous and gland disorders, blood disorders, eye, nose, throat and lung diseases, constipation, rheumatism, diabetes and EVERY KNOWN DISEASE OF THE HUMAN BODY.

If mankind would adopt your teachings, disease and premature death would disappear from the earth.

You will learn how to combat sickness without drugs and surgery.

You will learn how to revitalize every part of the body.

* * * I had the services of the most renowned doctors in the profession, but they could not relieve me of my chronic and stubborn ailments. I really believed my case was hopeless. A friend of mine induced me to send for your course. My condition improved as soon as I started on your course and now I feel better than I ever felt in my life. My family and friends say you have performed a miracle.

* * * among cases which have been brought back to health after they were pronounced "hopeless".

Although I have adopted your course only one week, I have already felt definite improvement in my TUBERCULAR condition * * *.

Among the diseases and ailments which can be cured by respondent's methods, as represented by the means aforesaid, are the following: Constipation, tooth decay, chronic catarrh, sinus trouble, colds, weak lungs, pneumonia, prostate enlargement, kidney disorders, liver disorders, stomach disorders, decay of the body, poor eyesight and diseases of the eye, falling hair and baldness, nervous troubles, gland disorders, blood diseases, rheumatism, diabetes, tuberculosis, diseases of the nose and throat, ulcer of the leg, headaches, abscesses of the breast, sagging of the abdominal organs, pyorrhea, burning pains in the feet, heartburn, cancer, Bright's disease, arthritis, backaches, ear disorders, disturbed sleep, intestinal gas, bad breath, piles, colitis,

high blood pressure, pains in the limbs, insomnia, skin disease, fits, bronchitis, and despondency.

PAR. 5. That, in truth and in fact, the instructions as to mode of life contained in respondent's booklets are not such as to prevent or cure all or most human ailments and diseases. Many diseases, including most of those named in the preceding paragraph herein, cannot be so prevented or cured. There are many diseases, including some of those named by respondent, that cannot be appreciably helped by respondent's methods or cannot be helped at all thereby. Many diseases cannot be successfully treated without medication or surgery or both. His instructions and methods do not constitute a panacea. Following his methods will not assure health or absence of disease. The directions as to living given by respondent do not embrace all the rules of living which contribute to good health and a sound body nor are they unique in that others do not know of them or have not advocated the use of one or more or all of them. Many of his instructions, as for instance those advocating fresh air, sunlight and exercise in the open air, are mere repetitions of facts of common knowledge.

PAR. 6. That the representations of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's booklets contain instructions and secrets of life and mode of living that will prevent and cure all diseases and ailments of the human body and especially those that are named in his advertising literature as hereinbefore stated; that good health cannot be achieved without following all of his rules and methods of life as outlined in his booklets; that all medical and surgical methods of treating disease can be eliminated and dispensed with as a result of following respondent's methods and that everyone following his directions can attain perfect health and be free of disease thereby, when, in truth and in fact, such are not the facts. That 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 to buy his said booklets 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 books, pamphlets and courses of instruction on healthful living, diet, exercise and other methods of promoting good health and sound bodies.

PAR. 7. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade

Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 1, 1935, issued, and on July 6, 1935, served, its complaint in this proceeding upon the respondent Philip Welsh, 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 Edw. W. Thomerson, 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 Martin E. Geibel, attorney for the respondent; and said testimony and evidence were 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, the answer thereto, testimony and other evidence, and briefs in support of the complaint and in opposition 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 respondent, Philip Welsh, is in individual trading under the name and style of The Welsh Foundation, with a place of business in the city of Pacific Palisades, in the State of California. Respondent is now, and for the past several years has been, engaged in the business of publishing, and selling and distributing in interstate commerce books and booklets known as, and sold under the name, "The 7 Essentials of Health." Respondent sells said books and booklets to purchasers located in many of the States of the United States other than the State of California, and in the District of Columbia, and when such sales are made, causes said books and booklets to be transported from his place of business in Pacific Palisades, Calif., to the purchasers thereof.

PAR. 2. Other individuals, firms, and corporations sell and distribute in commerce among and between the various States of the

United States books, booklets, pamphlets, magazines, and other publications dealing with the problems of health, hygiene, and subjects connected therewith and do not in any manner misrepresent the benefits to be obtained from following the mode of living, or rules of health and hygiene, or the treatments therein set forth.

Respondent is now, and for the past several years has been, in substantial competition in such commerce, with such other individuals, firms and corporations, in selling and distributing said books and booklets.

PAR. 3. Prior to the year 1934 the publication "The 7 Essentials of Health" was in one volume and sold as one book, but since that year has been divided into seven booklets or pamphlets, each one of which covers what is designated by the respondent as one of the "essentials" of health, and is described as Lesson No. 1, 2, etc. These seven booklets are sold as a unit and now sell for the sum of \$5.00. The respondent formerly sold "The 7 Essentials of Health" for the sum of \$25.00.

The "seven essentials" are designated by the respondent as follows, and each of the seven booklets deals with one of these subjects:

1. Fresh Air,
2. Natural Foods,
3. Water,
4. Sunshine,
5. Exercise and Occupation,
6. Rest,
7. Mental Attitude.

In each of the booklets the respondent states in detail his theories and ideas as to the mode of living which should be pursued with regard to the subject matter of the particular pamphlet. The pamphlets in general deal with mental and physical hygiene.

PAR. 4. Respondent advertises said publication in magazines circulated throughout the United States, and through circulars, dodgers, leaflets, pamphlets, form letters, and other printed matter distributed among prospective purchasers by mail and through other means.

In said advertising matter so used by the respondent during the five years last past, the respondent makes many statements and claims as to the benefits a purchaser will obtain from purchasing said publication and following the theories, ideas, rules, directions, and instructions therein contained.

Among and typical of the statements and representations used and circulated by the respondent in selling said publication are the following:

Do you know that if you overlook the "7 Essentials" you cannot have lasting health?

If you are not enjoying your share of health it is a sure sign that you are overlooking one or more of the fundamental requirements of health.

There is only one way to attain internal cleanliness and that is Nature's way—that way involves the application of the "7 Essentials of Health."

Health cannot be gotten by cutting out parts of the body.

These "7 Essentials" make the blood so pure and the entire digestive tract and colon so clean that disease CANNOT maintain hold in the body. The body at once becomes IMMUNE TO DISEASE and any diseased matter present is thrown out through various channels of elimination.

If you are sick, rundown, and ailing, it is because you have violated Nature's Laws—you have overlooked the "7 Essentials of Health."

The "7 Essentials of Health" is a practical simplified program of living that leaves no room for disease in the body.

It strikes at all the causes of ill health.

It shows you how to get at and strengthen all the internal organs, revitalize them and bring them back to normal function.

The basic knowledge contained in these "7 Essentials" will help you turn sickness into health * * *

There is a natural way to overcome your ailment.

Thru the printed works on "The 7 Essentials of Health," thousands of health seekers have learned a simple, inexpensive, practical and entirely Natural way to attain unusual health.

If you are interested in this new plan, mail the coupon below * * * it may save you many years of needless suffering.

Patients whose entire health had been restored sent their friends to Dr. Welsh in increasing numbers—NOT for dental work alone but for stomach ailments, nervous and gland disorders, blood disorders, eye, nose, throat, and lung diseases, constipation, rheumatism, diabetes and EVERY KNOWN DISEASE OF THE HUMAN BODY.

If mankind would adopt your teachings, disease and premature death would disappear from the earth.

You will learn how to combat sickness without drugs and surgery.

You will learn how to revitalize every part of the body.

* * * among cases which have been brought back to health after they were pronounced "hopeless".

Although I have adopted your course only one week, I have already felt definite improvement in my TUBERCULAR condition * * *.

In a booklet so used and circulated by the respondent appears the following statement:

You will learn the TRULY NATURAL WAY to treat the following ailments:

Adenoids	Constipation
Ague (chills and fever)	Cancer
Anemia	Colds
Arthritis	Colitis
Asthma	Catarrh
Blood disorders	Diarrhoea
Bronchitis	Ear disorders
Bright's disease	Eczema

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Eye disorders	Nervousness
Female discharges	Overweight
Foot troubles	Pneumonia
Gall stones	Pyorrhea
Halitoses	Piles
Hay fever	Rheumatism
Headaches	Senility
Hemorrhoids	Sexual disorders
High blood pressure	Sinus trouble
Indigestion	Skin diseases
Influenza	Tonsillitis
Insomnia	Tooth decay
Kidney trouble	Tuberculosis
Leucorrhea	Tumor
Low blood pressure	Ulcers of stomach
Malaria	Ulcers of intestines
Masturbation	Underweight
Mastoids	Varicose veins
Neuralgia	Venereal diseases
Neuritis	Yellow jaundice

Many other statements and representations of similar import and meaning are used and circulated by the respondent as aforesaid.

PAR. 5. In the course and conduct of his business, by the means and in the manner above set out, the respondent represents and implies that the following and using of the theories, ideas, rules, directions, and instructions announced in said publication "The 7 Essentials of Health" will prevent and cure all bodily ailments and diseases, regardless of their cause, origin, and nature; and will cure, or are beneficial in the treatment of the following ailments, diseases, and conditions: adenoids, ague (chills and fever), anemia, arthritis, asthma, blood disorders, bronchitis, Bright's disease, constipation, cancer, colds, colitis, catarrh, diarrhoea, ear disorders, eczema, eye disorders, female discharges, foot troubles, gall stones, halitosis, hay fever, headaches, hemorrhoids, high blood pressure, indigestion, influenza, insomnia, kidney trouble, leucorrhea, low blood pressure, malaria, masturbation, mastoids, neuralgia, neuritis, nervousness, overweight, pneumonia, pyorrhea, piles, rheumatism, senility, sexual disorders, sinus trouble, skin disease, tonsillitis, tooth decay, tuberculosis, tumor, ulcers of stomach, ulcers of intestines, underweight, varicose veins, venereal diseases, yellow jaundice.

Respondent also represents:

1. That all sickness is caused by overlooking one of the seven "essentials" of health indicated in the respondent's publication;
2. That following the mode of living stated in the publication is the simplest and most effective way of dealing with health problems;

3. That health cannot be restored by "cutting out parts of the body";

4. That following the instructions given in said publication will "make the blood so pure and the digestive tract and colon so clean that disease cannot maintain a hold in the body" and renders one immune to disease and strikes out the cause of all ill health;

5. That following said instructions will enable one to get at and strengthen all the internal organs, revitalize them and bring them back to normal functions and will help turn sickness into health and enable one to learn a simple, inexpensive, practical and entirely natural way to attain unusual health;

6. That if respondent's teachings were adopted disease and premature death would disappear from the earth.

PAR. 6. The following and using of the theories, ideas, rules, directions and instructions of the respondent as stated in said publication "The 7 Essentials of Health," in regard to health, hygiene, mode of living, and the related matters therein referred to, will not prevent and cure all bodily ailments and diseases, regardless of their cause, origin, and nature, and will not cure, nor be of any substantial benefit in the treatment of the ailments, diseases, and conditions for which the respondent represents that it is of value, as hereinabove stated.

All sickness is not caused by overlooking one of the seven "essentials" of health indicated in the respondent's publication; following the mode of living stated in the publication is not the simplest and most effective way of dealing with health problems; health can be restored, in many instances, by cutting out parts of the body; following the instructions given in said publication will not make the blood so pure and the digestive tract and colon so clean that disease cannot maintain a hold in the body, and will not render one immune to disease or strike out the cause of all ill health; following said instructions will not enable one to get at and strengthen all the internal organs or revitalize them or bring them back to normal functions and will not help turn sickness into health nor will it enable one to learn a simple, inexpensive, practical, and entirely natural way to attain unusual health; and the adoption of the respondent's teachings would not cause disease and premature death to disappear from the earth.

The representations and implications used by the respondent in connection with the offering for sale and selling of said publication "The 7 Essentials of Health," as hereinabove set out, are grossly exaggerated, false, and misleading, and have the tendency and capacity to, and do, mislead and deceive many persons and

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cause them erroneously to believe that the purchase of said publication, and the following and using of the theories, ideas, rules, directions, and instructions of the respondent, as stated in said publication, will prevent and cure all bodily ailments and diseases, regardless of their cause, origin, and nature, and will cure or be beneficial in the treatment of the ailments, diseases, and conditions hereinabove set out; and that all sickness is caused by overlooking one of the "essentials" indicated in the respondent's publication; that the "mode of living" stated in the publication is the simplest and most effective way of dealing with health problems; that health cannot be restored by cutting out parts of the body; that following the instructions in said publication will make the blood so pure, the digestive tract and colon so clean that disease cannot maintain a hold in the body, and renders one immune to disease and strikes out the cause of all ill health; that following said instructions will enable one to get at and strengthen all the internal organs, revitalize them and bring them back to normal functions, and will help turn sickness into health and enable one to learn a simple, inexpensive, practical, and entirely natural way to attain unusual health; and that the adoption of the respondent's teachings will cause diseases and premature death to disappear from the earth.

Said representations and implications so used by the respondent as aforesaid cause many such persons, because of such erroneous belief, to purchase said publication "The 7 Essentials of Health," thereby unlawfully, unfairly, and substantially diverting trade to the respondent from his 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, Philip Welsh, 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, 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 by Edw. W. Thomerson, counsel for the Commission, and by Martin E. Geibel, 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, Philip Welsh, his representatives, agents, and employees in connection with the offering for sale, sale, and distribution in interstate commerce of the publication now known as, and sold under the name, "The 7 Essentials of Health," or in connection with the offering for sale, sale, and distribution in interstate commerce of any publication regarding the same or similar subject matters, and containing the same or similar text, and announcing and stating the theories, ideas, rules, directions, and instructions found in the publication now known as, and sold under the name, "The 7 Essentials of Health," do forthwith cease and desist from representing, directly or by implication:

1. That the following and using of the theories, ideas, rules, directions, and instructions announced and stated in said publication will prevent and cure all bodily ailments and diseases, and will cure or be beneficial in the treatment of the following ailments, diseases, and conditions: adenoids, ague (chills and fever), anemia, arthritis, asthma, blood disorders, bronchitis, Bright's disease, constipation, cancer, colds, colitis, catarrh, diarrhoea, ear disorders, eczema, eye disorders, female discharges, foot troubles, gall stones, halitosis, hay fever, headaches, hemorrhoids, high blood pressure, indigestion, influenza, insomnia, kidney trouble, leucorrhoea, low blood pressure, malaria, masturbation, mastoids, neuralgia, neuritis, nervousness, overweight, pneumonia, pyorrhoea, piles, rheumatism, senility, sexual disorders, sinus trouble, skin diseases, tonsilitis, tooth decay, tuberculosis, tumor, ulcers of stomach, ulcers of intestines, underweight, varicose veins, venereal diseases, and yellow jaundice;

2. That all sickness is caused by overlooking one of the "essentials" named in said publication;

3. That following the mode of living outlined in said publication is the simplest and most effective way of dealing with health problems;

4. That health cannot be restored by "cutting out parts of the body";

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5. That following the instructions in said publication will "make the blood so pure and the digestive tract and colon so clean that disease cannot maintain a hold in the body", and the body itself becomes immune to disease;

6. That following said instructions will enable one to "get at and strengthen all internal organs, revitalize them and bring them back to normal functions", and will enable one to learn a simple, inexpensive, practical and entirely natural way to attain unusual health;

7. That the adoption of respondent's teachings, as stated in said publication, will cause disease and premature death to disappear from the earth.

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.

Syllabus

IN THE MATTER OF
CHAMPION 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 AN
ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2322. Complaint, Mar. 12, 1935—Decision, Apr. 10, 1937

Where a corporation engaged in the manufacture of air seal type, ferreous metal burial vaults, and in the sale thereof to jobbers and funeral directors and undertakers, in substantial competition with those engaged in the sale and distribution of metal, stone, concrete, cement, and other burial vaults in commerce between and among the various States—

- (a) Represented, through certificates of warranty and through magazines, booklets, circulars, and other advertising media having wide circulation among its customers and prospective customers in the several States, prior to, but not since, year 1932, that its said vaults were rust-resisting and waterproof and verminproof and had the capacity, for unstated, but indefinite, period of time, to resist corrosion and exclude water and other substances and vermin from entrance from the grave into the casket, and that its said vaults afforded perfect protection; and
- (b) Made use of warranties or guarantees, in connection with sale and offer of said vaults, under which, prior to, but not since, the year 1932, it undertook, irrespective of location or conditions in any plot of a cemetery where original vault was buried, and regardless of care or lack of care with which same was originally placed in the grave, to furnish a new vault without cost, if contents of original were damaged by water or other elements admitted from the grave because of failure of vault due to defective material or workmanship;

Facts being that, while its said vaults (1) were made by it with great care, by skilled workmen, of specially processed and considerably more costly metals of highest grade and quality obtainable in domestic market, and, by their very nature, exclusive of air, moisture, vermin, and water until the natural process of rust and corrosion, to which they were resistant but which they could not prevent, had advanced to stage of producing tiny holes or pits permitting penetration, (2) were equal to standard metal vaults made by responsible and reputable members of the industry in question, and were an established part of the funeral supply industry and a lawful subject for sale, purchase and transportation in interstate commerce, and (3) at time of sealing were capable of sustaining weight of earth incident to burial and protecting remains from accelerated decay due to entrance of moisture, air, water, and vermin and other deleterious agents for period of years, depending upon underground and climatic conditions in particular locality, and below set forth conjunction of circumstances, no ferreous metal, buried, has absolute or predictable rate of corrosion, which varies with locality, particular underground conditions, and qualities and chemical content of different soils, all ferreous metal burial vaults will

¹ Count 2 of the complaint alleging violation of the National Industrial Recovery Act dismissed November 9, 1935.

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rust and corrode after burial, irrespective of type of construction, corrosive properties of soil and other conditions so vary in different sections that, while given metal vault, buried, would resist penetration for more than one hundred years in some sections, such resistance would not exceed more than eight or ten in highly corrosive soils, ideal conjunction of conditions, which frequently does not obtain, must exist for air-seal principle to function as intended, and, due to climatic, geographical, chemical and mineralogical conditions not subject to its control, no prediction could be made by anyone as to the period during which such vaults would continue to protect casket and contents, as above set forth;

With capacity to mislead purchasers of said products, and with capacity and tendency to induce public to purchase and use same in the erroneous belief that the aforesaid various statements and representations as to resistance of metals involved to rust and corrosion, etc., and as to airtight and other qualities of said products, and protection afforded, were true, and to divert trade unfairly to it from its said competitors:

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

Mr. E. J. Hornibrook for the Commission.

Mr. Herman L. Weisman, of New York City, for respondent.

COMPLAINT

Acting in the public interest and pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that The Champion 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 Champion 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 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 outside of the State of Ohio, 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 to the respective places of business or residences of such purchasers.

PAR. 2. In the course and conduct of 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 the 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 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 said vaults to said ultimate purchasers, the following and similar false and misleading claims, statements, and representations as to respondent's said vaults are made:

That its said vaults when buried under ground are waterproof and airtight, free from corrosion or rust, and will remain so for a period of more than fifty (50) years; that the metal of which they are made is impervious to corrosion.

(B) Respondent issues with each vault for delivery to the ultimate purchaser thereof, and they are so delivered, a written, purported warranty which provides in substance that The Champion Company warrants that the vault above-mentioned has been tested and inspected by skilled workmen and found to be free from all defects in materials and workmanship, and to be airtight and waterproof; that, when properly enclosed it will protect the casket and its contents from all outside elements. The Champion Company hereby agrees that if within fifty (50) years from the date of interment the contents of the above vault are damaged by vermin, water, or other elements admitted from the outside, that it will replace said vault free of charge, but it does not warrant against damage to the casket and its 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 airtight and waterproof when buried under ground; that said grave vaults in

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many instances will not remain waterproof and airtight when buried under ground for a period of fifty (50) years; that said grave vaults when buried under ground are not impervious to corrosion or to rust; that the metal from which said vaults are made, when buried under ground is not impervious to rust or corrosion. Respondent's said vaults are made of materials which will corrode and rust; there is a vast difference in the corrosive properties of soils throughout the United States; in some soils respondent's said vaults will corrode and pit in a period of from three (3) to ten (10) years and in others from ten (10) to twenty (20) years; in many soils respondent's said vaults will corrode and pit in a period of less than fifty (50) years, so as to let water into them; in many instances they will corrode or rust so as to cave in or collapse. Respondent's said vaults made with the materials now used have never been tested as to their corroding for a period of fifty (50) years or more, nor has the metal of which they are made been so tested; respondent's said vaults when buried under ground will, and often do permit water and air to enter them. Either air or water entering respondent's vaults when buried under ground promote and cause disintegration of the coffin and body encased therein. Water often enters the graves of the dead. The mechanism provided by respondent for sealing said vaults will not at all times prevent the entrance of water into said vaults with resulting damage to the coffin and body placed therein.

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 purchasers 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 (50) years or more. The respondent's said vaults are not waterproof or airtight as the terms are understood by the ultimate purchasers thereof. Water or air may seep into or enter these said vaults through the joints, holes, fastenings, or flanges thereof or through pit holes due to corrosion or due to corrosion or bending of such vaults.

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. The exhumation of bodies after burial is so rare as to make these certificates or warranties worthless to the purchasers of these vaults for the reason that no opportunity is offered them 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 the 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 false and misleading representations used by respondent as set forth and referred to 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 capacity and tendency 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 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 causes said products when so sold to be transported from its said 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 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 Competi-

tion 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 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 1935, issued and served its complaint in this proceeding upon respondent, Champion 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 Federal Trade 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. The respondent, the Champion 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 the past fifty years has been, engaged 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 outside of the State of Ohio. When orders are received therefor they are filled by respondent by shipping the vaults from the said city of Springfield, State of Ohio, into and through other States of the

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United States to the respective places of business or residences of such purchasers. These vaults are called the "Champion Burial Vaults." Respondent has built up a very substantial business in this product.

PAR. 2. 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 commerce between and among the 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 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 only for a temporary period of time, not permanently. The function of a metal burial vault is further to delay such process of decay and disintegration by preventing acceleration of such process through the entrance of water and other deleterious substances from the grave into the casket.

PAR. 5. The burial vaults manufactured by the Champion Company are made with great care by skilled workmen, of United States Standard 12 gauge metals. They are useful, proper and suitable receptacles for the interment of the dead; and are equal to the standard metal vaults manufactured by the reputable and responsible members of the metal vault industry. Such metal vaults are an established part of the funeral supply industry and may be lawfully sold, bought, and transported in interstate commerce.

PAR. 6. Ferrous metals called Armco Ingot Iron and Copper Bearing Steel are used by respondent in the manufacture of its said burial vaults. These metals are specially processed and rolled from the highest grade and quality of metals which can be obtained by respondent in the domestic market for the manufacture of its burial vaults. Their cost is considerably higher than the cost of ordinary commercial steel. They are fabricated under the best, modern, scientifically controlled steel-making processes which reduce impurities and tend to increase their durability in underground service. Their manufacturers are of recognized responsibility and integrity and make rigid inspection and tests of each sheet of said metal before shipment to the respondent. These metals, by their very nature, will exclude air, moisture, vermin and water until the

natural process of rust and corrosion, which these metals will resist but cannot prevent, has advanced to the stage of producing tiny holes or pits which will permit penetration of said metals.

PAR. 7. There is a vast difference in the corrosive properties of soils found in the cemeteries in the various parts of the United States and also a great difference in the surface and sub-surface drainage conditions in various sections of the country.

PAR. 8. All burial vaults made of ferreous metals will rust and corrode after burial underground. No ferreous metal, buried underground, has an absolute or predictable rate of corrosion. Such rate will vary with the locality, with particular underground conditions and with the qualities and chemical content of different soils.

PAR. 9. There is no material yet known or devised, adaptable for construction into a receptacle useful in the burial of the dead, which when placed underground would not in time deteriorate and cease to resist penetration of air, moisture, water, or vermin. The rate of deterioration would be slow in some soils and more rapid in others, depending upon the climatic conditions of the locality and the chemical and mineral composition and content of the soil in a particular place.

PAR. 10. The process of deterioration above referred to would affect every type of metal vault irrespective of whether its type of construction involved closing upon the so-called air-sealing or diving-bell principle, or depended upon mechanical locks or clamps. No principle of mechanics or physics, no process of construction and joiner of metals and no method for sealing metal burial vaults are available to enable any manufacturer thereof to warrant or predict that such vaults when placed underground would endure as airtight, verminproof and waterproof for any fixed or stated period of time.

PAR. 11. In many sections of the United States, the corrosive properties of the soil and other conditions are such that a 12 United States Standard guage metal vault placed underground would resist penetration for a period of more than one hundred years; in some of the more corrosive soils in the United States a similar vault would resist such penetration by corrosion for only fifty years, while in still other highly corrosive soils penetration would be accomplished within eight to ten years.

PAR. 12. The Champion Burial Vault is what is known in the trade as an air-seal vault. It consists of two parts: (1) a pan (or base), and (2) a hood (dome or top) and operates on the principle of a diving bell. The confined air in the inverted airtight dome is supposed to resist the entrance of water rising from below. The top

and sides of the hood are made of one piece of iron. The pan is also made of one piece of iron. The entire base resembles an inverted pan. Small raised portions, or bosses, hold the bottom of the casket a fraction of an inch above the top of the pan. The bottom rim or flange of the hood (dome or top) rests on the outside flange of the pan, the width of the metal from the grave floor. This type of vault is not airtight or waterproof until sealed by water to the level of the highest point on the rim of the inverted dome which rests on the flange of the pan. Water rising from the bottom in the grave forces the air from the cavity under the base through holes at each corner of the pan, into the hood. As the pressure of the outside water increases, the resistance of the compressed air increases, and, in theory the vault is sealed against the further entrance of water to the extent that it will not reach the casket within. The mechanism provided by respondent for sealing said vaults will not at all times prevent the entrance of water into said vaults with resulting damage to the coffin and body placed therein. In addition, in order for them to remain waterproof for any considerable length of time, they must be buried and remain buried under ideal conditions, which are:

1. An airtight hood,
2. A level base,
3. The air space underneath the pan must not be occupied by dirt or other materials that will reduce the amount of air to be forced into the dome.
4. There must be no appreciable change of temperature in the grave from that obtaining when the vault is first buried.
5. There must be no appreciable changes in atmospheric pressure.

These said "ideal" conditions do not obtain in a large number of cases of burial where said vaults are used.

PAR. 13. Respondent's metal vaults, at the time of their sale, are capable of sustaining and will sustain the weight of earth incident to burial.

PAR. 14. Respondent's metal vaults at the time of their sale are capable of protecting and will protect the remains within the casket from accelerated decay and decomposition due to the entrance from the grave into the casket of moisture, water, vermin, or other deleterious agents for a period of years depending upon the underground and climatic conditions in the locality where any such vault is used and the conditions mentioned in paragraph 12 above.

PAR. 15. No prediction can be made by anybody as to the period within which respondent's vaults will continue after burial to protect the casket and its contents from accelerated decay and decomposition because climatic, geographic, chemical and mineralogical conditions

not subject to respondent's control determine the duration of such period.

PAR. 16. Instances of disinterments are rare when compared with the total number of burials, but disinterments are not unusual occurrences. Changes in a cemetery, or removal of a section of a cemetery or even of an entire cemetery necessitates disinterments followed by reburial in some other cemetery. Disinterments are often brought about by the wishes of surviving relatives to change to better or differently located burial plots or to some different plot or cemetery where other members of the same family are buried. Such disinterments are followed by reburial. Irrespective of the actual state of decay and disintegration of the remains within the casket when disinterment of the vault takes place, surviving relatives concerned in the reburial have a proper interest as to whether the condition of the original vault makes reburial thereof practical or whether such receptacle needs to be replaced.

PAR. 17. At the time when the complaint herein (dated March 12, 1935) was issued and since on or about May 1, 1932, respondent offered to issue and from time to time did issue, incident to the sale of its burial vaults, a warranty offering under stated conditions to furnish a new vault, without cost, irrespective of the location of or conditions in any plot or cemetery where the original vault was buried and regardless of the care or lack of care with which the same was originally placed in the grave; said warranty reciting that:

The Champion Company warrants that the vault, above mentioned, is built by skilled workmen, has been tested by being submerged in water, inspected, and found to be free from defects in material or workmanship.

The Champion Company will replace this Champion Burial 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 defective material or workmanship, but damage to the casket or contents caused by dehydration of the remains is excepted.

PAR. 18. Respondent has a legitimate interest in making known to the undertakers and dealers in funeral supplies who purchase its burial vaults for resale and to the ultimate purchasers of said vaults, its willingness, without cost, to furnish a new vault under the conditions stated in such warranty.

Such warranty is of value to the recipients thereof, any one of whom may some time after the original burial, find it necessary to arrange for reburial, after disinterment, in some other plot or cemetery.

PAR. 19. Respondent has made and issued said certificates of warranty in good faith and is, and at all times has been, financially able,

ready and willing to comply fully with, and perform the full terms of, its certificate of warranty.

PAR. 20. Prior to 1932, but not since that year, including the period since the filing of the complaint herein, respondent did represent in certificates of warranty, substantially different from the certificate above referred to, and in magazines, booklets, circulars, and other advertising media, having a wide interstate circulation among its customers and prospective customers residing in the several States of the United States, in connection with the sale and promotion of the sale of its said burial vaults, in substance, that its said vaults were rust-resisting, waterproof and verminproof and had the capacity for an unstated but indefinite period of time to resist corrosion, exclude water and other substances and vermin from entrance from the grave into the casket and that its said vaults afforded "perfect protection."

Respondent in 1932, and prior to the issuance of the complaint herein dated March 12, 1935, has voluntarily abandoned, and in the usual course of business ceased to use, and it does not now make, issue or use, the above representations or statements or any of them, either in certificates of warranty or in any advertising media or in any other manner.

PAR. 21. Respondent's use of representations to the effect that its burial vaults would, under all underground conditions, remain waterproof, rust-resisting, and verminproof, had the capacity to mislead the purchasers of said vaults. Because of the great variation in the corrosive properties of soils in different sections of the country and in the subterranean water-level conditions and the surface drainage conditions, and also because of the conditions set forth in paragraph 12 hereof, any universal representation as to the endurance qualities of said vaults in underground service is inaccurate and misleading.

PAR. 22. The following statements and representations made by the respondent, its agents, employees and representatives, in connection with the offering for sale or selling in interstate commerce of the types of ferrous metal burial vaults, above described, in certificates of warranty and in advertising, to the effect that:

1. The metal of which respondent's vaults are made is able for any fixed or stated period of time to resist rust and corrosion or the effects thereof when placed underground;
2. The said vaults will remain airtight, verminproof or waterproof for any fixed or stated period of time after being placed underground;
3. Said vaults afford perfect protection;
4. Or any other representations of like import;

5. And the use of certificates of warranty such as described in paragraph 20 hereof in aid of the sale of said vaults; are untrue, 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 erroneous belief that said statements and representations are true, and have and have had the tendency and capacity 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, and 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, Champion 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:

1. The use of representations in certificates of warranty or guaranty, in advertising, or in any other manner, to the effect that:

- (a) The metal of which respondent's vaults are made is able for any fixed or stated period of time to resist rust and corrosion or the effects thereof when placed underground;
- (b) The said vaults will remain airtight, verminproof or water-proof for any fixed or stated period of time after being placed underground;
- (c) Said vaults afford perfect protection.

2. And from so making other statements and representations of like import.

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3. 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.

Syllabus

IN THE MATTER OF

ANNA R. BARLETTA, TRADING AS BARLETTA MANUFACTURING AND PACKING COMPANY, AND HERCULES A. BARLETTA

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

Docket 2907. Complaint, Aug. 21, 1936—Decision, Apr. 10, 1937

Where two individuals engaged in manufacturing, compounding, selling, and distributing a variety of flavoring extracts, in substantial competition with others engaged in the sale and distribution of such products—

Represented, through labels affixed to the bottles of their said products, and containing Italian words and coat of arms, and through counter display cards furnished to purchasers thereof, upon which display cards were likewise contained such words, that their said extracts were made, compounded and packaged by the Modern Italian Laboratory at Milan, Italy, and were imported into the United States, and that they had won a gold medal at an exposition held in Florence, Italy, in 1934 on account of excellence of their said products, and they were distributors of Italian-made extracts, facts being that, while samples compounded and made up by them in the United States and sent to exposition in Florence, Italy, in year in question were there displayed and awarded certificate of merit, their said extracts, labeled as aforesaid, were not made, prepared, compounded, or packed in Italy by any company, nor imported into the United States, but were made by said individuals at their place of business in New York City, and they were not distributors of extracts of Italian origin;

With effect of misleading large number of Italian-Americans among the purchasing public, who distinctly prefer, as superior to such products produced in this country, flavoring extracts produced in Italy, into belief that in buying such domestic products, labeled and described as above set forth, they were purchasing the preferred imported extracts of Italian origin, and with capacity and tendency to mislead and deceive purchasing public into the belief that such extracts were prepared, compounded and packaged in Italy and imported into the United States, and to induce such public, acting in such erroneous belief, to buy their said products and thereby unfairly divert trade to them from competitors who rightly and truthfully represent their merchandise and do not, in any wise, falsely represent the same; 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. Astor Hogg for the Commission.

Mr. Joseph M. Ficco, of New York City, for respondents.

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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 Anna R. Barletta, an individual trading and doing business under the firm name of Barletta Manufacturing and Packing Company, and Hercules A. Barletta, 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 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. Said respondents, Anna R. Barletta, an individual, trading and doing business under the firm name and style of Barletta Manufacturing and Packing Company, and Hercules A. Barletta, husband of said Anna R. Barletta who has, or claims to have, some interest in said business the exact nature of which is to the Commission unknown, but who is in active charge of said business, have their office and principal place of business at 2100-2102 East 177th Street, in the Borough of Bronx and city and State of New York. Respondents are now and, for more than one year last past, have been engaged in the business of manufacturing, compounding, selling, and distributing a variety of flavoring extracts. Respondents sell and distribute said products in commerce between and among the various States of the United States and the District of Columbia, causing said products, when sold, to be shipped from their 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.

PAR. 2. In the course and conduct of their business aforesaid, respondents are now, and for more than one year last past, have been in substantial competition with other partnerships and with other corporations, individuals, and firms engaged in the business of manufacturing, selling, and distributing extracts in commerce between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of their business, as aforesaid, the respondents manufacture, sell and distribute a large variety of flavoring extracts. To the bottles which contain said flavoring

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There is also furnished with said carton a display sign or card containing the following language:

Premiata con Madaglia D'Oro
Esposizione Campionaria, Firenze 1934
Oh Boy! Oh Boy!! Oh Boy!!!
What Flavor

Try the Famous

Italian Flavoring Extracts

Barletta Mfg. & Packing Co.
New York, N. Y.

the Italian words on said sign meaning that the alleged "Italian flavoring extracts" had won the Gold Medal at an exposition in Florence in 1934.

In their said place of business the respondents display prominently in a glass frame a diploma on which are pictured manufacturing, agricultural and transportation scenes and symbolical figures depicting commerce and trades. The language on said diploma is as follows:

Esposizione Mostra Campionaria
Diploma
FIRENZE 1934—II
de CROCE AL MERITO E MADAGLIO DI ORO
conferido Barleta Manufacturing & Packing Co.
NEW YORK CITY—
Estratti finissimi per liquori, non alcoolici,
sciroppi ed imitazione estratto di Vaniglia

and followed by the several signatures of officers of the exposition. The translation of said language is as follows:

COMMERCIAL EXPOSITION
DIPLOMA
FLORENCE 1934—XII
of the Cross of Merit and Gold Medal

conferred upon Barletta Manufacturing & Packing Co., New York City—Finest
Extracts for non-alcoholic liquors, syrups of imitation extract of Vanilla.

PAR. 4. In truth and in fact said flavoring extracts are not prepared, compounded and packaged by a modern Italian laboratory in Naples or Milan, Italy; they are not imported into the United States by the respondents and distributed by them. Said extracts were not exhibited at any Italian exposition, and no medals or other distinctions were awarded to them. On the contrary, said flavoring

extracts are prepared, compounded and packaged by the respondents in the State of New York. The said diploma was not awarded to the respondents because of the excellence of their products; but, on the contrary, said exposition was a charitable undertaking for the purpose of aiding a national association of families of soldiers killed in the Great War, and the products exhibited at said exposition were restricted solely to those produced within the limits of the province of Florence. Said diploma is in fact spurious in that it does not represent a bona fide award, but was bought by respondents through an alleged official of said exposition who had no authority to sell the same.

PAR. 5. There are among the purchasing public many Italian-Americans who show a preference for goods produced abroad, under the belief that they are superior to those produced in this country, said belief prevailing particularly in extracts and the like. These purchasers are led to believe that they are in fact buying an imported extract because of the fact that said labels and display cartons, cards, and diploma are printed in the Italian language and contain express representations that said flavoring extracts were manufactured in Italy and imported to this country.

There are among respondent's competitors many who sell both the domestic and imported products, and who, in the course and conduct of their business, honestly and truthfully represent their merchandise.

PAR. 6. The above and foregoing representations, as shown by the labels, display advertising and otherwise, used by respondents, as described in paragraph 3, have the capacity and tendency to, and do mislead and deceive the purchasing public into the belief that the said flavoring extracts so labeled and represented are prepared, compounded and packaged abroad, and imported into the United States, and have the capacity and tendency to, and do induce the said purchasing public, acting in such erroneous belief, to purchase respondents' product, thereby diverting trade to the respondents from those of their competitors who do not misrepresent and falsely label their products; and in this manner respondents do substantial injury to competition in interstate commerce.

PAR. 7. The above acts and things done or caused to be done by the respondents, were and are each and all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "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 the 21st day of August 1936, issued and served its complaint in this proceeding upon the respondent Anna R. Barletta, an individual, trading as Barletta Manufacturing and Packing Company, and Hercules A. Barletta, 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 the said complaint were introduced by Astor Hogg, attorney for the Commission, before W. W. Sheppard, a trial examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Joseph M. Ficco, attorney for the respondents. The 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 other evidence, and briefs in support of the complaint and in opposition 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 Anna R. Barletta is an individual trading and doing business as Barletta Manufacturing and Packing Company, and Hercules A. Barletta is the husband of said Anna R. Barletta, and is one of the operators of the business of the concern, having charge of the management of said business and directing its sales policy. Their office and principal place of business is located at 2100-2102 East 177th Street, in the Borough of Bronx, city and State of New York. For several years last past respondents have been engaged in the business of manufacturing, compounding, selling and distributing a variety of flavoring extracts. They sell and distribute said products in commerce between and among the various States of the United States, and ship their products when sold from their place of business in the city of New York to the purchasers thereof located in the various States of the United States other than the State of New York. Respondents are now, and for more than one year last past have been in substantial competition with other

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individuals, firms, partnerships, and corporations likewise engaged in the business of selling and distributing flavoring extracts in commerce between and among the various States of the United States.

PAR. 2. Respondents, in offering for sale and selling their flavoring extracts in interstate commerce, affixed and affix to the bottles containing such extracts, labels which bear an Italian coat of arms and the following wording:

Estratti Finissimi
 Prodotti Importati
 Strega
 Laboratorio Moderno
 Italiano
 Napoll Milano
 Italia

The English translation of the foregoing Italian wording is as follows:

Finest Extracts
 Imported Products
 Strega
 Modern Italian Laboratory
 Naples Milan
 Italy

* * *

ESTRATTI FINISSIMI
 PRODOTTI INSUPERABILI
 STREGA
 LABORATORIO MODERNO
 Italiano Co.
 Premiati
 FIRENZE ITALIA
 MCMXXXIV

The English translation of the above Italian language is as follows:

Finest extracts
 Insuperable products
 Modern Laboratory Italian Company
 Prize, Florence, Italy, 1934
 Premiata Croce al Merito e Medaglia d'Oro
 FIRENZE—1934
 Distributors
 Barletta Mfg. & Packing Co.
 New York, N. Y.

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Respondents furnished counter display cards to the purchasers of their flavoring extracts for use in displaying the same to the purchasing public. Upon said cards the following expressions appear in large and conspicuous lettering:

Estratti	Finissimi	Importati
Premiata Con Medaglia D'Oro		
Laboratorio Moderno Italiano Napoli, Milano, Italia		
Distributore:		
Barletta Mfg. & Packing Co.,		
New York, N. Y.		

The English translation of the foregoing Italian wording is as follows:

Finest	Imported	Extracts
Premium with Gold Medal		
Modern Italian Laboratory—Naples, Milan, Italy		
Distributors:		
Barletta Mfg. & Packing Co.,		
New York, N. Y.		

PAR. 3. In and by such representations made by the respondents upon the labels affixed to the bottles of their flavoring extracts and on the display cards furnished as aforesaid, they represented to members of the purchasing public that the said flavoring extracts were manufactured, compounded and packaged by the Modern Italian Laboratory at Milan, Italy, and were imported into the United States, and that respondents had won a gold medal at an Exposition held in Florence, Italy, in 1934, on account of the excellence of their extracts, and that they were distributors of Italian made extracts.

PAR. 4. As a matter of fact said flavoring extracts so labeled and described were not manufactured, prepared, compounded or packed in Italy by any company, and are not and were not imported into the United States. Respondents are not distributors of extracts of Italian origin. On the contrary said flavoring extracts were compounded and made up wholly in the United States, and none of the extracts sold by respondents are of Italian origin. The evidence shows that in the year 1934 samples of respondents' extracts were displayed at an Exposition held in Florence, Italy, and that as a result thereof the officials of the said Exposition awarded respondents a Certificate of Merit, but the samples so exhibited were compounded and made up in the United States and sent by respondents from the United States to such Exposition. All of the flavoring

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extracts sold by respondents are manufactured by them at their place of business in New York City.

PAR. 5. There are a large number of Italian-Americans among the purchasing public in the United States who have a distinct preference for flavoring extracts produced in Italy, under the belief that such extracts are superior to those produced in this country. These purchasers are led to believe because of the statements contained on the labels, cartons, and other advertising literature of respondents, and the fact that such representations are in the Italian language, that they are buying imported extracts of Italian origin for which they have a preference. To label a domestic extract as one of Italian origin causes such extract to have added sales value, and enables dealers in extracts so labeled to sell same more readily than would otherwise be the case.

PAR. 6. The above and foregoing representations have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said flavoring extracts are and were prepared, compounded, and packaged in Italy and imported into the United States, and have the capacity and tendency to induce the purchasing public acting under such erroneous belief to purchase respondents' products, thereby unfairly diverting trade to the respondents from their competitors who rightfully and truthfully represent their merchandise and who do not in any wise falsely represent their products; and in this manner respondents do substantial injury 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 respondents, Anna R. Barletta and Hercules A. Barletta 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, in

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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 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, Anna R. Barletta and Hercules A. Barletta, individually and trading as Barletta Manufacturing and Packing Company, or trading under any other name or names, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of flavoring extracts or compounds in interstate commerce and in the District of Columbia, do cease and desist from:

Representing, directly or indirectly, through the use of any foreign language, symbol, or picturization, or through any other means or device, or in any manner, that flavoring extracts compounded or manufactured in the United States are manufactured or produced in Italy or in any other foreign country and imported into the United States.

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

PERFECTION STEEL BODY COMPANY, TRADING AS
PERFECTION BURIAL 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 AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2325. Complaint, Mar. 12, 1935—Decision, Apr. 12, 1937

Where a corporation engaged in the manufacture of air-seal type, ferreous metal burial vaults, and in the sale thereof to jobbers and funeral directors and undertakers, in substantial competition with those engaged in the sale and distribution of metal, stone, concrete, cement, and other burial vaults in commerce between and among the various States—

(a) Represented, through certificates of warranty and through magazines, booklets, circulars, and other advertising media having wide circulation among its customers and prospective customers in the several States, prior to, but not since, year 1932, that its said vaults were rust-resisting and waterproof and verminproof and had the capacity to resist corrosion, exclude water and other substances and vermin from entrance from the grave into the casket, and that its said vaults afforded perfect protection; and

(b) Made use of warranties or guaranties, in connection with sale and offer of said vaults, under which, prior to, but not since, the year 1932, it undertook, irrespective of location or conditions in any plot of a cemetery where original vault was buried, and regardless of care or lack of care with which same was originally placed in the grave, to furnish a new vault without cost to the purchaser "upon proof of claim that this vault failed to give protection";

Facts being that, while (1) its said vaults were made by it with great care, by skilled workmen, of specially processed and considerably more costly metals of highest grade and quality obtainable in domestic market, and, by their very nature, exclusive of air, moisture, vermin, and water until the natural process of rust and corrosion, to which they were resistant, but which they could not prevent, had advanced to stage of producing tiny holes or pits permitting penetration, (2) were equal to standard metal vaults made by responsible and reputable members of the industry in question, and were an established part of the funeral supply industry and a lawful subject for sale, purchase, and transportation in interstate commerce, and (3), at time of sealing, were capable of sustaining weight of earth incident to burial and protecting remains from accelerated decay due to entrance of moisture, air, water, and vermin and other deleterious agents for period of years, depending upon underground and climatic conditions in particular locality, and below set forth conjunction of circumstances, no ferreous metal, buried, has absolute or predictable rate of corrosion, which varies with locality, particular underground conditions, and qualities and chemical content of different soils, all ferreous metal burial vaults will rust

¹ Count 2 of the complaint alleging violation of the National Industrial Recovery Act dismissed November 9, 1935.

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and corrode after burial, irrespective of type of construction, corrosive properties of soil, and other conditions so vary in different sections that, while given metal vault, buried, would resist penetration for more than one hundred years in some sections, such resistance would not exceed more than eight or ten in highly corrosive soils, ideal conjunction of conditions, which frequently does not obtain, must exist for air-seal principle to function as intended, and, due to climatic, geographical, chemical, and mineralogical conditions not subject to its control, no prediction could be made by anyone as to the period during which such vaults would continue to protect casket and contents, as above set forth;

With capacity to mislead purchasers of said products, and with capacity and tendency to induce public to purchase and use same in the erroneous belief that the aforesaid various statements and representations as to resistance of metals involved to rust and corrosion, etc., and as to air-tight and other qualities of said products, and protection afforded, were true, and to divert trade unfairly to it from its said competitors:

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

Mr. E. J. Hornibrook for the Commission.

Mr. Herman L. Weisman, of New York City, for respondent.

COMPLAINT

Acting in the public interest and pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the Perfection Burial 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

PARAGRAPHS 1. The respondent, Perfection Burial 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,

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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 sell the same to ultimate purchasers thereof for use in the burial of their dead.

PAR. 4. Respondent issues with each vault for delivery to ultimate purchasers thereof and they are so delivered, a written purported warranty which provides in substance:

Perfection Burial Vault Company

Fifty Year (50) Warranty Certificate No ----

The Perfection Steel Body Company, manufacturer of Perfection Steel Burial Vaults, hereby warrants that:

1. This vault is made of 12 gauge metal, has been constructed by skilled workmen, has been tested by being submerged under pressure, and upon careful inspection was found to be free from any defects in material and workmanship, and to be waterproof and airtight.

2. When properly closed, it will protect the casket and its contents against entrance of water from external sources for a period of fifty years, and the underground service and protection to the contents of this vault will not be impaired by rust or corrosion for at least fifty years.

3. Upon proof of claim that this vault within fifty years from the date of interment failed to give this protection against the effects of rust, or corrosion and the entrance of water from external sources, the manufacturer will replace it without cost to the purchaser.

This agreement is a valid warranty of protection and replacement as applied to vault ----- interred ----- day of ----- 19----, from the date of said interment as countersigned by the funeral director below.

In witness whereof the corporate seal and signature of the President, duly authorized by the Board of Directors are affixed.

Countersigned The Perfection Burial Vault Company,

Funeral Director

Division of the Perfection Steel Body Company,

Galion, Crawford County, Ohio.

II. COHEN, *President.*

PAR. 5. The statements and representations described in the preceding paragraph are false and misleading in that respondent's said grave vaults will not remain waterproof and airtight for a period of fifty years; that in many instances said vaults are not waterproof and airtight or either at the time of sale to the ultimate purchasers

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thereof; that in many instances when closed as directed it will not protect the casket and its contents against entrance of water from external sources for a period of fifty years; that the underground service and protection to the contents of said vaults will often become impaired by rust and corrosion in many soils of the United States within a period of fifty years; that respondent's said vaults are made of metals which will corrode; there is a vast difference in the corrosive properties of soils throughout the United States, 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; whether respondent's said vaults or the materials of which they are made will last under burial conditions in any soil for a period of fifty years has never been determined; in many soils respondent's vaults will corrode and pit so as to let water into them; in many soils they will corrode and rust so as to cave-in or collapse; respondent's said vaults when buried underground are not airtight and waterproof and will, and often do, permit air and water to enter therein. Either air or water entering respondent's vault, when buried underground, promote and cause disintegration of the coffin and body encased therein. 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 the same.

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 which will endure as such under burial conditions. 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 vaults. One hole the size of a pin appearing in the hood of said vaults will destroy the sealing thereof and permit water, if there is water in the grave, to enter the same. 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, or whether same will corrode, pit, or rust. 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 in instances where the same are entirely defective, not waterproof or airtight. 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 herein have and have had the capacity and tendency to induce the public to purchase and use said 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 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 causes said products when so sold to be transported from its principal place of business in the city of Galion, State of 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 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 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 Commis-

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 12th day of March 1935, issued and served its complaint in this proceeding upon respondent, Perfection Steel Body Company, a corporation, trading as Perfection Burial Vault 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 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 Federal Trade 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 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 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 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. Respondent named above as Perfection Burial Vault Company, is in truth the Perfection Steel Body Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio. The lawful trade name of respondent is Perfection Burial Vault Company. Respondent's factory and principal place of business is located in the city of Galion 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 outside of the State of Ohio. When orders are received therefor, they are filled by respondent by shipping the vaults 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

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residences of such purchasers. Respondent calls its said vaults the "Perfection Steel Burial Vaults." Respondent has built up a very substantial business in this product.

PAR. 2. In the course and conduct of its said business respondent is in substantial competition with other individuals, copartnerships, and corporations engaged in the sale and transportation of metal, stone, concrete, cement, and other grave vaults, in commerce 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 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 only for a temporary period of time, not permanently. The function of a metal burial vault is further to delay such process of decay and disintegration by preventing acceleration of such process through the entrance of water and other deleterious substances from the grave into the casket.

PAR. 5. The burial vaults manufactured by Perfection Burial Vault Company are made with great care by skilled workmen, of United States Standard 12 gauge metal. They are useful, proper and suitable receptacles for the interment of the dead; and are equal to the standard metal vaults manufactured by the reputable and responsible members of the metal vault industry. Such metal vaults are an established part of the funeral supply industry and may be lawfully sold, bought, and transported in interstate commerce.

PAR. 6. Ferreous metals called Armco Ingot iron and copper bearing steel are used by respondent in the manufacture of its said burial vaults. These metals are specially processed and rolled from the highest grade and quality of metals which can be obtained by respondent in the domestic market for the manufacture of its burial vaults. Their cost is considerably higher than the cost of ordinary commercial steel. They are fabricated under the best, modern, scientifically controlled steel-making processes which reduce impurities and tend to increase their durability in underground service. Their manufacturers are of recognized responsibility and integrity and make rigid inspection and tests of each sheet of said metal before shipment to the respondent. These metals, by their very nature, will exclude air, moisture, vermin, and water until the natural process of rust and corrosion, which these metals will resist but can not prevent,

has advanced to the stage of producing tiny holes or pits which will permit penetration of said metals.

PAR. 7. There is a vast difference in the corrosive properties of soils found in the cemeteries in the various parts of the United States and also a great difference in the surface and subsurface drainage conditions in various sections of the country.

PAR. 8. All burial vaults made of ferrous metals will rust and corrode after burial underground. No ferrous metal, buried underground, has an absolute or predictable rate of corrosion. Such rate will vary with the locality, with particular underground conditions, and with the qualities and chemical content of different soils.

PAR. 9. There is no material yet known or devised, adaptable for construction into a receptacle useful in the burial of the dead, which when placed underground, would not in time deteriorate and cease to resist penetration of air, moisture, water, or vermin. The rate of deterioration would be slow in some soils and more rapid in others, depending upon the climatic conditions of the locality and the chemical and mineral composition and content of the soil in a particular place.

PAR. 10. The process of deterioration above referred to would affect every type of metal vault irrespective of whether its type of construction involved closing upon the so-called air-sealing or diving-bell principle, or depended upon mechanical locks or clamps. No principle of mechanics or physics, no process of construction and joiner of metals, and no method for sealing metal burial vaults are available to enable any manufacturer thereof to warrant or predict that such vaults, when placed underground, would endure as airtight, vermin proof and waterproof for any fixed or stated period of time.

PAR. 11. In many sections of the United States, the corrosive properties of the soil and other conditions are such that a United States Standard 12 gauge metal vault placed underground would resist penetration for a period of more than one hundred years; in some of the more corrosive soils in the United States a similar vault would resist such penetration by corrosion for only fifty years, while in still other highly corrosive soils penetration would be accomplished within eight to ten years.

PAR. 12. The Perfection Burial Vault is what is known in the trade as an air-seal vault. It consists of two parts (1) a pan (or base) and (2) a hood (dome or top) and operates on the principle of a diving bell. The confined air in the inverted airtight dome is supposed to resist the entrance of water rising from below. The top and sides of the hood are made of one piece of iron. The pan

is also made of one piece of iron. The entire base resembles an inverted pan. Small raised portions, or bosses hold the bottom of the casket a fraction of an inch above the top of the pan. The bottom rim or flange of the hood (dome or top) rests on the outside flange of the pan, the width of the metal from the grave floor. This type of vault is not airtight or waterproof until sealed by water to the level of the highest point on the rim of the inverted dome which rests on the flange of the pan. Water rising from the bottom in the grave forces the air from the cavity under the base through holes at each corner of the pan, into the hood. As the pressure of the outside water increases, the resistance of the compressed air increases, and, in theory the vault is sealed against the further entrance of water to the extent that it will not reach the casket within. The mechanism provided by respondent for sealing said vaults will not at all times prevent the entrance of water into said vaults, with resulting damage to the coffin and body placed therein. In addition, in order for them to remain waterproof for any considerable length of time, they must be buried and remain buried under ideal conditions, which are:

1. An airtight hood,
 2. A level base,
 3. The air space underneath the pan must not be occupied by dirt or other materials that will reduce the amount of air to be forced into the dome,
 4. There must be no appreciable change of temperature in the grave from that obtaining when the vault is first buried,
 5. There must be no appreciable changes in atmospheric pressure.
- These said "ideal" conditions do not obtain in a large number of cases of burial where said vaults are used.

PAR. 13. Respondent's metal vaults, at the time of their sale, are capable of sustaining and will sustain the weight of earth incident to burial.

PAR. 14. Respondent's metal vaults at the time of their sale are capable of protecting and will protect the remains within the casket from accelerated decay and decomposition due to the entrance from the grave into the casket of moisture, water, vermin, or other deleterious agents for a period of years depending upon the underground and climatic conditions in the locality where any such vault is used and the conditions mentioned in paragraph 12 above.

PAR. 15. No prediction can be made by anybody as to the period within which respondent's vaults will continue after burial to protect the casket and its contents from accelerated decay and decomposition, because climatic, geographic, chemical, and mineralogical

conditions, not subject to respondent's control, determine the duration of such period.

PAR. 16. Instances of disinterments are rare when compared with the total number of burials, but disinterments are not unusual occurrences. Changes in a cemetery, or removal of a section of a cemetery or even of an entire cemetery necessitates disinterments followed by reburial in some other cemetery. Disinterments are often brought about by the wishes of surviving relatives to change to better or differently located burial plots or to some different plot or cemetery where other members of the same family are buried. Such disinterments are followed by reburial. Irrespective of the actual state of decay and disintegration of the remains within the casket when disinterment of the vault takes place, surviving relatives concerned in the reburial have a proper interest as to whether the conditions of the original vault makes reburial thereof practical or whether such receptacle needs to be replaced.

PAR. 17. At the time when the complaint herein (dated March 12, 1935) was issued and since about May 1, 1932, respondent offered to issue, and from time to time did issue, incident to the sale of its burial vaults, a warranty, offering under stated conditions, to furnish a new vault without cost, irrespective of the location of or conditions in any plot or cemetery where the original vault was buried, and regardless of the care or lack of care with which the same was originally placed in the grave; said warranty reciting that:

1. This Vault is made of 12 gauge metal, has been constructed by skilled workmen, has been tested by being submerged under pressure, and upon careful inspection was found to be free from any defects in material and workmanship.

2. Upon proof of claim that this Vault failed to give protection, the manufacturer will replace it without cost to the purchaser.

PAR. 18. Respondent has a legitimate interest in making known to the undertakers and dealers in funeral supplies who purchase its burial vaults for resale and to the ultimate purchasers of said vaults, its willingness, without cost, to furnish a new vault under the conditions stated in such warranty.

Such warranty is of value to the recipients thereof, any one of whom may some time after original burial find it necessary to arrange for reburial, after disinterment, in some other plot or cemetery.

PAR. 19. Respondent has made and issued said certificates of warranty in good faith and is, and at all times has been, financially able, ready, and willing to comply fully with, and perform the full terms of, its certificates of warranty.

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PAR. 20. Prior to 1932, but not since that year, including the period since the filing of the complaint herein, respondent did represent in certificates of warranty, substantially different from the certificate above referred to, and in magazines, booklets, circulars, and other advertising media, having a wide interstate circulation among its customers and prospective customers residing in the several States of the United States, in connection with the sale and promotion of the sale of its said burial vaults, in substance, that its said vaults were rust-resisting, waterproof and verminproof and had the capacity to resist corrosion, exclude water and other substances, and vermin from entrance from the grave into the casket.

Respondent, in 1932, and prior to the issuance of the complaint herein, dated March 12, 1935, has voluntarily abandoned, and in the usual course of business ceased to use, and it does not now make, issue, or use, the above representations or statements, or any of them, either in certificates of warranty or in any advertising media or in any other manner.

PAR. 21. Respondent's use of representations to the effect that its burial vaults would, under all underground conditions, remain waterproof, rust-resisting and verminproof, had the capacity to mislead the purchasers of said vaults. Because of the great variation in the corrosive properties of soils in different sections of the country and in the subterranean water-level conditions and the surface drainage conditions, and also because of the conditions set forth in paragraph 12 hereof, any universal representation as to the endurance qualities of said vaults in underground service is inaccurate and misleading.

PAR. 22. The following statements and representations made by the respondent, its agents, employees and representatives, in connection with the offering for sale or selling in interstate commerce the types of ferrous metal burial vaults, above described, in certificates of warranty and in advertising, to the effect that:

1. The metal of which respondent's vaults are made is able, for a stated period of fifty years, or for any fixed or stated period of time, to resist rust and corrosion or the effects thereof when placed underground;

2. The said vaults will remain airtight, verminproof, or waterproof for any fixed or stated period of time after being placed underground;

3. Or any other representation of like import;

4. And the use of certificates of warranty such as described in paragraph 20 hereof in aid of the sale of said vaults,

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are untrue, deceptive, and misleading, and have and have had the capacity and tendency to induce the public to purchase and use respondent's vaults under the erroneous belief that said statements and representations are true and have and have had the tendency and capacity to unfairly divert trade to respondent from its 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, and 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, Perfection Steel Body Company, a corporation, trading as Perfection Burial Vault Company, 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:

1. The use of representations in certificates of warranty or guaranty in advertising, or in any other manner, to the effect that:

- (a) The metal of which respondent's vaults are made is able for a stated period of 50 years, or for any fixed or stated period of time, to resist rust and corrosion, or the effects thereof, when placed underground.
- (b) The said vaults will remain airtight, verminproof, or waterproof for any fixed or stated period of 50 years, or for any fixed or stated period of time, after being placed underground.
- (c) Or any other representation, of like import.

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2. 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.

Syllabus

IN THE MATTER OF
PAUL GREENBERG, DOING BUSINESS AS BEVERLY
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 2644. Complaint, Dec. 5, 1935—Decision, Apr. 14, 1937

Where an individual engaged in the sale and distribution among the various States of certain medicinal preparations known and described, respectively, as "Beverly Femin Tablets" and "Beverly Menses Tablets," in substantial competition with others engaged in sale and distribution among the various States and in the District of Columbia of various preparations similar in kind, and of preparations intended for and adapted to the purposes and uses for which his said products were adapted, and including among his said competitors those who do not make such false and misleading representations as made by said individual as hereinbelow set forth, but truthfully and accurately state the purposes for which their said products may be used and the effects thereof; in advertising his said preparations in newspapers and magazines circulated to the purchasing public in various parts of the United States, and, chiefly, through circular letters and other advertising material distributed to purchasing public in the various States by mail or otherwise—

- (a) Represented that said "Beverly Femin Tablets" preparation constituted an effective, potent, and powerful antiseptic and germicide for use by women in preventing and destroying germ life causative of female and sexual diseases, and for use in promoting feminine hygiene by reason of such properties, and was a cure, remedy, or competent and adequate treatment for leucorrhoea and cervicitis, and could be used safely and without fear of harmful results, and, by innuendo and suggestion, that said preparation was a contraceptive which gave absolute protection and could be depended upon for such purpose without limitation, and that one "Prof. John R. Baker, M. A., Ph. D., of Oxford University" had established the fact, through investigations as to the antiseptic powers of feminine hygiene preparations on the market, that said tablets represented the furthest advance in vaginal therapy, and, through statements attributed to them by purported quotations, that physicians had endorsed and recommended such tablets, facts being said preparation was not an effective, potent, and powerful germicide under conditions of use when employed by women to prevent and destroy germ life, nor a proper or effective treatment for aforesaid diseases, and could not be used safely and without fear of harmful results as a germicide, due to fact that infection, preventable through use of an effective germicide, might result by reason of said preparation's ineffective and limited action in such respect, and said preparation was not a dependable contraceptive under all conditions or in all cases, and did not afford positive protection as such, in view of the nature of the circumstances attending the use thereof, and representations and intimations that it might be depended upon absolutely in such respect were inaccurate, greatly overdrawn and misleading; and

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(b) Represented, as aforesaid, that his said preparation "Beverly Menses Tablets" was a cure, remedy, or competent and adequate treatment for diseases peculiar to women, and especially for delayed, painful, and suppressed menstruation, and that its action in such respects was certain, and that it was harmless and produced no distressing after-effects, and, by innuendo and suggestion, that said preparation was an abortifacient and could be absolutely depended upon for such purpose, facts being said medicine was not a cure, remedy, or competent and adequate treatment for such diseases generally, or for delayed, painful, or suppressed menstruation, use thereof might be harmful and produce distressing after-effects, it was not an abortifacient and could not be depended upon for such purpose, and was of no effect in many diseased and abnormal conditions of the feminine organs, nor effective in the treatment of the underlying causes of many female troubles and diseases, and his said representations in regard thereto were inaccurate and much too broad and inclusive to express true therapeutic effects thereof;

With tendency and capacity to confuse, mislead, and deceive members of the public as to the properties and therapeutic effects of said medicines in the particulars hereinbefore set forth, and to cause and induce them to buy and use the same because of the erroneous belief thus engendered, and to divert trade to him from competitors engaged in sale of preparations of the same or similar kind or adapted to and used for the legitimate purposes for which he recommended his said products as aforesaid, and with result, through suggestions and innuendos above set forth, of supplying merely added inducements for purchase and use of said products, and giving added sales appeal, to the disadvantage of similar preparations not thus represented:

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* and *Mr. Robert S. Hall*, trial examiners.

Mr. Harry D. Michael for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Paul Greenberg, doing business under the name and style of Beverly Products Company, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That said respondent, Paul Greenberg, doing business under the name and style of Beverly Products Company, is now and has been engaged for more than one year last past in the sale

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and distribution in interstate commerce of certain preparations designed and intended for the use of women and represented as having certain therapeutic, medicinal, or antiseptic and germicidal functions, which said preparations are known and described, respectively, as Beverly Femin Tablets and Beverly Menses Tablets, the last named being in two forms called "Standard" and "Triple X Formula," respectively. The office of respondent, doing business as aforesaid, and principal place of business is and has been located in the city of Springfield, in the State of Massachusetts. Said respondent, in the course and conduct of his said business, causes the said preparations sold by him to be transported in interstate commerce from his said place of business in Massachusetts to, into, and through States of the United States other than Massachusetts to various and numerous persons in such other States to whom such preparations are or have been sold.

PAR. 2. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of preparations similar in kind to those of respondent or intended for and adapted to the ostensible uses for which respondent's said preparations are recommended as hereinafter set out. Such other individuals, firms, and corporations have caused and do now cause their said preparations when sold by them, to be transported from the various States of the United States where they are located, 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 preparations with such other individuals, firms, and corporations.

PAR. 3. That respondent, in connection with the sale of his said preparations as aforesaid, has made use of advertisements inserted in newspapers and other publications circulated to the purchasing public in various parts of the United States. He also has advertised and does now advertise his said preparations by means of circular letters and other advertising material which he causes to be distributed to the purchasing public in various States of the United States by mail or otherwise.

PAR. 4. By the means aforesaid respondent has represented or does represent that said preparation known as Beverly Femin Tablets is an effective, potent, and powerful antiseptic and germicide for use by women in preventing and destroying germ life, causative of female and sexual diseases, and for use in promoting feminine hygiene. It has been or is represented by respondent or implied from representations made by him that said preparation is a cure, remedy, or compe-

tent and adequate treatment for leucorrhœa and cervicitis. It is further so represented that said preparation can be used safely and without fear of harmful results.

In truth and in fact, said preparation is not an effective, potent, and powerful antiseptic or germicide, particularly under the conditions of use, for the purposes recommended. It does not have such germicidal properties as to destroy the germs causative of venereal diseases nor does it constitute a proper or effective treatment for such diseases or for leucorrhœa or cervicitis. Moreover, said preparation cannot be used safely and without fear of harmful results because of its ineffective and limited action as a germicide, the use of which, in cases of exposure, results in infection that might be prevented by an effective germicide.

By the means aforesaid, respondent, by innuendo and suggestion, makes representations which imply that said preparation is a contraceptive, that it gives absolute protection against pregnancy and that it can be depended upon for such purpose without limitation. In truth and in fact, said preparation is not a dependable contraceptive under all conditions or in all cases nor does it afford positive protection against pregnancy. The use of said preparation cannot be depended upon to destroy all of the spermatozoa that may be present in the female organ after copulation.

By the means aforesaid, respondent also represents or implies that an investigation conducted by Prof. John R. Baker of Oxford University disclosed that Beverly Femin Tablets represented "the furthest advance in vaginal therapy" when, in truth and in fact, Prof. Baker made no investigation involving said preparation as such and did not mention Beverly Femin Tablets in his report.

By the means aforesaid, respondent represents that numerous doctors have recommended Beverly Femin Tablets in accordance with their statements supposedly quoted in respondent's literature when, in truth and in fact, respondent's preparation, Beverly Femin Tablets, was not mentioned in the statements of the doctors whose ostensible statements are quoted by respondent.

PAR. 5. That respondent, by the means aforesaid, represents that said preparation, Beverly Menses Tablets, is a cure, remedy or competent and adequate treatment for diseases peculiar to women and especially for delayed, painful, and suppressed menstruation; that its action is certain and that it is harmless and produces no distressing after-effects. That, in truth and in fact, said preparation is a mere temporary palliative and its use cannot be depended upon to relieve said conditions nor is it effective in cases of the kind produced by many abnormal conditions and diseases. Moreover, the use of said

preparation is not harmless nor is it true to state that it produces no distressing after-effects but, on the other hand, its use may be harmful.

By the means aforesaid, respondent, by innuendo and suggestion, makes representations which imply that said preparation is an abortifacient and that it can be absolutely depended upon for that purpose and that it will produce such results when, in truth and in fact, such is not the case.

PAR. 6. That the representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public in the particulars as aforesaid and to cause and induce them to buy and use respondent's said preparations because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale of preparations of the same or similar kind as those sold by respondent or of those adapted to and used for the purposes, or some of them for which respondent recommends his said preparations as aforesaid. There are, among the competitors of respondent, those who in no wise make the same or similar false and misleading representations as made by respondent as herein set out and who truthfully and accurately state the uses for which such preparations may be used and the effects thereof.

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

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 5, 1935, issued and served its complaint in this proceeding upon respondent, Paul Greenberg, doing business under the name and style of Beverly Products 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 Harry D. Michael, attorney for the Commission, before John J. Keenan and

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Robert S. Hall, examiners of the Commission, theretofore duly designated by it, respondent having failed to introduce testimony and other evidence in opposition to the allegations of the complaint; 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, respondent having failed to file a brief, although given an opportunity so to do, and having failed to appear at the time and place set for oral argument after due notice thereof; 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, Paul Greenberg, doing business under the name and style of Beverly Products Company, was, at the time of issuance of the complaint herein, and for more than three years prior thereto, engaged in the sale and distribution in commerce between and among the various States of the United States of certain medicinal preparations known and described, respectively, as Beverly Femin Tablets and Beverly Menses Tablets. In the conduct of said business as aforesaid, respondent had his office and principal place of business in the city of Springfield, in the State of Massachusetts. His last office address in said city and State was 66 Vernon Street. Said respondent, in the course and conduct of his said business, caused the said preparations sold by him to be transported in commerce from his said place of business in Massachusetts to, into and through States of the United States, other than Massachusetts, to various and numerous persons in such other States to whom such preparations had been sold.

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 commerce between and among the various States of the United States, and in the District of Columbia, of preparations similar in kind to said preparations so sold by respondent and of preparations intended for and adapted to the purposes and uses for which respondent's said preparations are adapted. Such other individuals, firms, and corporations have caused and do now cause their said preparations, when sold by them, to be transported from the various States of the United States, where

they are located, to, into and through States other than the States of origin of the shipment thereof to the purchasers of the same in such other States. Respondent was, during the aforesaid time, in substantial competition, in the sale of his said preparations in commerce between and among the various States of the United States, with such other individuals, firms, and corporations.

PAR. 3. Respondent's usual method of business was to sell his said preparations by mail direct to members of the consuming public. At one time, respondent advertised his said preparations in newspapers and magazines circulated to the purchasing public in various parts of the United States. His chief means of promoting the sale of said preparations was by means of circular letters and other advertising material which he caused to be distributed to the purchasing public in various States of the United States by mail or otherwise.

PAR. 4. By means of one or both of the means of advertising aforesaid, respondent represented that said preparation known as Beverly Femin Tablets is an effective, potent, and powerful antiseptic and germicide for use by women in preventing and destroying germ life causative of female and sexual diseases, and for use in promoting feminine hygiene by reason of such properties; that it is a cure, remedy or competent and adequate treatment for leucorrhoea and cervicitis; and that it can be used safely and without fear of harmful results. Respondent, also, made representations in regard to said preparation, by the means aforesaid, which, by innuendo and suggestion, implied that said preparation is a contraceptive, that it gives absolute protection against pregnancy and that it can be depended upon for such purpose without limitation.

Examples of such representations, as aforesaid, are the following:

Femin Tablets are designed to give Dependable Antiseptic Safeguarding in feminine hygiene.

Women all over America have learned that they can absolutely rely on Femin's active ingredient for dependable ethical antiseptic germ-destroying power. * * * They realize that a product they can fully trust may cost a little more, but that it is fully worth the price.

* * * germ-destroying foam (from Beverly Femin Tablet) * * *

* * * a rather dry foam remains in the vagina (after using Beverly Femin Tablets) for many hours to absolutely safeguard against any further infiltrations of inherent, infectious germ-laden discharges and secretions.

* * * they (women) are not slow in understanding why they may at last have no further concern about the efficiency and safety of their method in intimate feminine hygiene when using Beverly Femin Tablets.

* * * extremely potent * * *

* * * an effervescent germ-destroying foam (from Beverly Femin Tablets) which expands, spreads, pushes the terrific, yet absolutely harmless germ-

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destroying ingredients into every tiny fold and crevice,—to attack and kill every vestige (vestige) of germ life. * * *

This foam (from Beverly Femin Tablets) can be left in for as long as eight hours, to continue its antiseptic mission, * * *

Women * * * are not slow in understanding why they may at last have no further concern about the efficiency and safety of their method in intimate feminine hygiene when using Beverly Femin Tablets!

Femin Tablets are designed to give DEPENDABLE ANTISEPTIC SAFEGUARDING in feminine hygiene.

It was further represented by respondent, by the means aforesaid, that one "Prof. John R. Baker, M. A., Ph. D., of Oxford University" carried on investigations as to the antiseptic powers of feminine hygiene preparations on the market and that he thus "established the fact that Beverly Femin Tablets represent the furthest advance in vaginal therapy; * * *." Also, that physicians had endorsed and recommended Beverly Femin Tablets by the statements attributed to them in purportedly quoted statements. The following is an example of such representations:

Dr. Walther, A University Professor, says: "have used Beverly Femin Tablets and after thorough clinical tests can say that it is a superior product, * * *."

PAR. 5. By means of one or both of the means of advertising aforesaid, respondent represented that his said preparation, "Beverly Menses Tablets" is a cure, remedy, or competent and adequate treatment for diseases peculiar to women, and especially for delayed, painful and suppressed menstruation, and that its action in such respects is certain, and that it is harmless and produces no distressing after effects. It was further represented by respondent, by the means aforesaid, by innuendo and suggestion that said preparation is an abortifacient and that it can be absolutely depended upon for that purpose.

PAR. 6. The formula of Beverly Menses Tablets (Triple X) is as follows:

Ex. Cotton Root.....	1 gr.
Ergotin, Bonjean, P. T.....	1 gr.
Ferrous Sulph. Exsic.....	1 gr.
Ext. Black Hellebore.....	1 gr.
Aloe, Purified.....	1 gr.
Oil Savin.....	¼ min.

The Beverly Femin Tablets are composed of two percent "Panto-sept" with a base of tartaric acid and sodium bicarbonate.

PAR. 7. In truth and in fact, said preparation, "Beverly Femin Tablets," is not an effective, potent, and powerful germicide under the conditions of use when used by women for the purpose of preventing and destroying germ life. Neither is said preparation a

proper or effective treatment for sexual diseases or for leucorrhoea or for cervicitis. Moreover, said preparation cannot be used safely and without fear of harmful results, when used as a germicide, because of its ineffective and limited action in such respect and the fact that, in cases of exposure, infection might result that could have been prevented by the use of an effective germicide. Said preparation is not a dependable contraceptive under all conditions or in all cases, nor does it afford positive protection against pregnancy. On account of the structure of the female organ and the difficulty of reaching all parts of the surfaces of the folds thereof, a preparation such as this, under the conditions of use, cannot be depended upon to come in contact with all of such surfaces and to destroy all of the spermatozoa that may be present. Representations and intimations that said preparation may be absolutely depended upon in such respect are therefore inaccurate, greatly overdrawn and misleading.

In truth and in fact, Prof. John R. Baker of Oxford University never mentioned "Beverly Femin Tablets" nor used it as such in conducting investigations and experiments, nor did the doctors who were represented by respondent as having endorsed said preparation ever use "Beverly Femin Tablets" as such, nor did they mention said preparation by name in any of their purported endorsements.

PAR. 8. In truth and in fact, said medicine, "Beverly Menses Tablets," is not a cure, remedy, or competent and adequate treatment for female diseases generally or for delayed, painful, or suppressed menstruation. Its use may be harmful and it may produce distressing after effects. It is not an abortifacient, nor can it be depended upon to bring about the resumption of menstruation after conception has taken place. Said preparation is of no effect in many diseased and abnormal conditions of the female organs, nor is it effective in the treatment of the underlying causes of many female troubles and diseases. The representations of respondent in regard thereto are not accurate and are much too broad and inclusive to express the true therapeutic effects of said medicine.

PAR. 9. The representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public as to the properties and therapeutic effects of said medicines in the particulars as herein set forth and to cause and induce them to buy and use said preparations because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale of preparations of the same or similar kind as those sold by respondent or adapted to and used for the legitimate purposes for which respondent recommends his said preparations as aforesaid. The representations

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by suggestion and innuendo as to uses of respondent's preparations as a contraceptive and as an abortifacient, respectively, merely serve as added inducements for their purchase and use and give an added sales appeal to the disadvantage of similar preparations not so represented. There are among the competitors of respondent those who do not make the same or similar false and misleading representations as made by respondent as herein set out but who truthfully and accurately state the purposes for which their preparations may be used and the effects thereof.

CONCLUSION

The aforesaid acts and practices of respondent, Paul Greenberg, doing business under the name and style of Beverly Products 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 John J. Keenan and Robert S. Hall, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and brief in support of the complaint, respondent having failed to introduce evidence in his behalf, and having failed to file a brief, although given opportunity so to do, and having failed to appear at the time and place set for oral argument, after due notice of the same, 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, Paul Greenberg, doing business under the name and style of Beverly Products Company, trading under his own name, or under said trade name, or under any other trade name or names, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of Beverly Femin Tablets and Beverly Menses Tablets, respectively, or of any medicines of the same formulae designated and described by any other means, or of any medicines of substantially the same formulae desig-

nated and described by the aforesaid names, or by any other names in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication, or by innuendo or suggestion, or by use of the statements of others:

1. That said preparation "Beverly Femin Tablets" is an effective, potent, and powerful germicide under the conditions of use for feminine hygiene; or that it is effective in the treatment of sexual diseases, leucorrhoea or cervicitis; or that it can be used safely and without fear of harmful results so far as the prevention of infection is concerned; or that it can be absolutely dependent upon or relied upon for results; or that it is a positive or dependable contraceptive under all conditions, or in all cases; or that said preparation has been tested or endorsed by physicians or other persons when no such endorsements have been given, or no such tests have been made of the specific preparation.

2. That said "Beverly Menses Tablets" is a cure, remedy, or competent and adequate treatment for female diseases generally or for delayed, painful, or suppressed menstruation; or that it is beneficial in any or all of such conditions regardless of the cause thereof; or that it is an abortifacient, or that it is harmless and produces no distressing after effects.

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

IN THE MATTER OF
MAPLE CITY 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 2916. Complaint, Aug. 28, 1936—Decision, Apr. 17, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which consisted of a number of candy bars and a box of candy, together with push card, for sale under a plan and in accordance with said card's explanatory legend, pursuant to which purchaser received, for 5¢ paid, one, two, three, or four bars of candy, in accordance with particular number pushed by chance therefrom, and purchaser of last disk was entitled to receive, without charge, in addition to bars secured, aforesaid box of candy—

Sold, to wholesalers and jobbers for display and resale to purchasing public by their retailer-vendees, in accordance with aforesaid plan, such assortments and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its said product in accordance with such plan, contrary to public policy, long recognized by the common law and criminal statute, and to an established public policy of the United States Government, and in competition with many who, unwilling to offer and sell candy so packed and assembled or otherwise arranged and packed for sale to the purchasing public as to involve a game of chance, or to adopt and use any method involving such a game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, 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 above set forth, and thereby induced to purchase such candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to it trade from its competitors as aforesaid, exclude from such trade all competitors who are unwilling to and do not use such or an equivalent practice or method as unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors as use same or an equivalent method, 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 method:

Held, That such acts and practices 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.

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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 Maple City 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, Maple City Candy Company, is a corporation organized and operating under the laws of the State of Indiana, with its principal office and place of business located at 405 Tyler Street, La Porte, Ind. Respondent is now, and for six months 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 and has caused its said products, when so sold, to be transported from its principal place of business in La Porte, 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 six 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 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 an 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 manufactured and distributed by respondent is composed of a number of candy bars and a box of candy, together with a device commonly called a push card. 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 number is disclosed. Sales are 5¢ each and the card bears statements informing customers and prospective customers that certain specified numbers entitle the customer to one bar of candy, that certain other specified

numbers entitle the customer to two bars of candy, that certain other specified numbers entitle the customer to three bars, and that certain other specified numbers entitle the customer to four bars of candy. The purchaser of the last disc on said push card is entitled to receive, and is to be given free of charge, in addition to one of said bars of candy, the box of candy heretofore referred to. The numbers 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 bars of candy which a customer receives for the price of 5¢ is thus determined 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 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 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 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 August 28, 1936, issued and served its complaint in this proceeding upon the respondent, Maple City Candy Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On April 2, 1937, respondent filed its answer dated March 31, 1937, 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 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 Commissioner, 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, Maple City Candy Company, is a corporation organized and operating under the laws of the State of Indiana, with its principal office and place of business located at 405 Tyler Street, La Porte, Ind. Respondent is now, and for six months 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. Respondent causes and has caused its said products when sold to be transported from its principal place of business in La Porte, Ind., to purchasers thereof in other States of the United States at their respective places of business. There is now, and has been for six 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 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 an 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 manufactured and distributed by respondent is composed of a number of candy bars and a box of candy, together with a device commonly called a push card. Candy contained in said assortment is distributed to purchasers in the following manner:

The pushcard 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 informing customers and prospective customers that certain specified numbers entitle the customer to one bar of candy; that certain other specified

numbers entitle the customer to two bars of candy; that certain other specified numbers entitle the customer to three bars; and that certain other specified numbers entitle the customer to four bars of candy. The purchaser of the last disc on said pushcard is entitled to receive, and is to be given free of charge, in addition to one of said bars of candy, the box of candy heretofore referred to. The numbers 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 bars of candy which a customer receives for the price of 5¢ is thus determined 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. 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 box of candy, or additional bars 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 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 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 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, Maple City Candy Company, 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, 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

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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 respondent, Maple City Candy Company, its officers, representatives, agents, and employees, in the offering for sale, sale, and distribution in interstate commerce of candy, do cease and desist from:

1. Selling and distributing to wholesale dealers and jobbers 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 wholesale dealers and jobbers assortments of candy which are used, or which 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 contained in said assortments to the public.

3. Supplying to or placing in the hands of wholesale dealers and jobbers a device commonly called a "pushcard," either with assortments of candy or separately, for use, or which is designed to be used, in the sale and distribution of said candy to the purchasing public.

It is further ordered, That the respondent herein 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.

MEMORANDUM

The Commission, as of April 20, 1937, made substantially similar findings and order in the case of WINIFRED SORENSON AND EDWARD BEALES, TRADING AS SORENSON-BEALES CANDY COMPANY, Docket 3056, in which complaint issued as of Feb. 12, 1937, and in which said respondents, as found, sold to their wholesale dealer and jobber customers two push card assortments for resale by said wholesalers' and jobbers' retail dealer-vendees by game of chance, as set forth in the principal case, namely (a) plan under which purchaser received, in addition to the bar of candy for his 5¢, additional or larger

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bars, depending upon chance selection of certain specified numbers, while purchaser of last push in each of the two sections into which board was divided was further entitled to one of the packages of loaf candy included therewith; and (b) plan under which purchaser paid from 1¢ to 5¢, depending upon number pushed by chance, for candy purchased from the assortment of bars of uniform size, shape and quality.

Mr. Henry C. Lank and Mr. P. C. Kolinski for the Commission.

Complaint

IN THE MATTER OF

ZION HOLY SPIRITUAL MISSION, AND EUSTACE N. FRENCH, DOING BUSINESS THROUGH ZION HOLY SPIRITUAL MISSION AND UNDER TRADE NAME OF ZION HOLY SPIRITUAL MISSION LABORATORIES

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

Docket 2963. Complaint, Oct. 31, 1936—Decision, Apr. 21, 1937

Where a corporation and an individual, who did business through it and under a trade name including corporate name of the other and word "Laboratories," engaged in sale of medicines under trade name "Bry-O-Lyn"—

Represented, in labels upon their said products and other advertising matter published and distributed in the various States, that they operated a laboratory or laboratories in which the medicines offered for sale and sold by them were manufactured, and that said medicines were made by them, facts being that they did not own any such laboratory or laboratories or any interest in any manufacturing establishment from which their products were obtained, but medicines offered and sold by them under the aforesaid trade name were made and compounded by pharmaceutical laboratories in which they had no interest whatsoever, and were sold to them in regular course of trade;

With tendency and capacity to deceive and mislead substantial portions of purchasing public into the erroneous belief that such representations were true, and with result that consuming public, as a direct consequence of such mistaken and erroneous beliefs, thus engendered, was persuaded to purchase a substantial volume of its said products, and trade was unfairly diverted to them from competitors engaged in selling commodities of the same kind and nature, and who truthfully advertise and represent the character, quality and source of their 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. Robert S. Hall*, trial examiner.

Mr. John Darsey for the Commission.

Mr. Blaine G. Alston of Ellis & Westbrooks, 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 Zion Holy Spiritual Mission, an Illinois corporation, and Eustace N. French, an individual, doing business through the Zion Holy Spiritual Mission

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and under the trade name of Zion Holy Spiritual Mission Laboratories, Chicago, Ill., 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. The respondents, Zion Holy Spiritual Mission, a corporation organized and existing by virtue of the laws of the State of Illinois, and Eustace N. French, an individual doing business through the Zion Holy Spiritual Mission and under the trade name of Zion Holy Mission Laboratories, and having a place of business at 3338 South State Street, Chicago, Ill., are now, and for several years last past have been, engaged in the sale and distribution of correspondence courses in spiritual development, magic and mysticism, success seals, good luck coins, talismen, books, and medicines, in commerce between and among the various States of the United States, and in the course of sale and distribution of the aforesaid articles cause the same to be transported into and through the various States of the United States.

PAR. 2. The respondents, in the sale and distribution of the aforesaid products, have been and are in competition with other individuals, firms, partnerships, and corporations engaged in the sale and distribution, in interstate commerce, of similar and like products and articles and of products and articles to be used for the same and similar purposes.

PAR. 3. In the course of sale of the aforesaid articles and products, the respondents cause statements and representations to be made in advertisements, pamphlets, circulars, and other printed matter, which said advertisements or printed matter are published or distributed in the various States of the United States, to the following effect, gist, or meaning:

1. That respondent, Eustace N. French, is an ordained minister of the Spiritualist church;

2. That respondent, Eustace N. French, is a graduate of a Theological Seminary of the Spiritualist Church;

3. That respondent, Eustace N. French, has received a degree or degrees from the Theological Seminary entitling him to use the titles "Doctor" or "Reverend Doctor," as a prefix to his name or signature, or to use the initials "B. D." or "D. D." after his name or signature;

4. That respondents maintain and operate a laboratory or laboratories in which the aforesaid products or articles are manufactured, produced, or developed;

5. That the respondents' correspondence courses will give complete instructions in Magical Spiritual Arts and Science and are complete courses in religious, educational, and spiritual development based on the Bible;

6. That respondents' courses will equip students to give readings, healings, blessings, and spiritual advice, and will enable its students to make and use spiritual lucky goods, such as holy oils, incense, talismen, seals, herbs, remedies, etc.;

7. That respondents will give legal protection to graduates in these courses to work in any State they desire and will make its students independent by giving them a life trade or business;

8. That students of respondents' courses will begin making money immediately upon beginning the course and will earn many times the price of the course before they have finished the same;

9. That respondents' correspondence courses will enable one to have good friends, make money, and be wise;

10. That respondents' "success seals" will enable one to obtain what he wants, to be successful in love and marriage, to win in all games, to conquer enemies, and to have power and influence over all things;

11. That respondents' "success seals" are products of the Orient;

12. That respondents' "success seals" are reproduced on genuine imported parchment paper made from the skin of lambs and are based on the 6th and 7th Books of Moses:

13. That respondents' "Book of Power" will unfold the mystic records of all the secrets of the ages and enable one to know the particular day and hour to do anything he desires, gain control of and bend the will of enemies, regain lost love, bring happiness to broken homes, regain youth and vigor, understand motives, of people around him and determine machinations of their minds, to choose words according to ancient holy methods of the Old Cuthian and Chaldean forms, to chant one's desires in the silent tongue so that one may be reached anywhere, to make people walk in their sleep and do one's bidding;

14. That respondents are the first to reveal the secrets of the "Book of Powers"; that the regular price of the said "Book of Power" is \$2.00, but that the special coupon accompanying said representation will entitle one to said book for an additional dollar;

15. That respondents' book "The Truth About Candles" discloses the secrets of the candle, other startling facts, and will make one master of his own destiny and make dreams come true; that the regular price of respondents' book "The Truth About Candles" is \$3.00, but that the special coupon accompanying said representation will entitle one to said book for an additional \$2.00;

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16. That knowledge gained from respondents' book "How to Make Your Dreams Come True" will make dreams come true and enable one to dream winning numbers, etc.; that the regular price of respondents' book "How to Make Your Dreams Come True" is \$2.00, but that the special coupon accompanying said representation will entitle one to said book for an additional dollar;

17. That respondents' publication "The Ten Lost Books of Moses" is the key to knowledge and will disclose "The Mystery of Sinai—Things Never Told Before" and is the Fountain of Wisdom and the Way to All Power;

18. That respondents' Bry-O-Lyn is an effective remedy for chronic constipation and indigestion and is a product of the laboratory or laboratories of respondents.

PAR. 4. All of the representations and statements made by the respondents in the manner indicated in paragraph 3 hereof are false and untrue and have no foundation in fact. Respondent Eustace N. French is not an ordained minister of the Spiritualist Church, is not a graduate of a Theological Seminary of said Church, and has received no degree or degrees from any Theological Seminary entitling him to use the titles hereinabove indicated. Respondents do not maintain or operate any laboratory in which any of their products are manufactured or produced. Respondents' various courses of instruction and books do not give complete instructions in magical spiritual arts, are not complete courses in educational, religious and spiritual development, and do not equip the purchasers thereof with the powers to accomplish the many results claimed from a purchase of said courses of instruction or books. Respondents' "Success Seals" will not accomplish the results claimed and are not products of the Orient. The knowledge gained from a study of the various books sold by the respondents will not enable the purchasers thereof to acquire the powers claimed and the regular price of said books is not as claimed by the respondents. The regular price of said books is, in truth and in fact, the price at which they are sold under the respondents' so-called "special sale price." Respondents' "Bry-O-Lyn" is not an effective remedy for chronic constipation and indigestion and is not made in laboratories of respondents, but is, in truth and in fact, made and compounded by pharmaceutical laboratories and sold to the respondents in the regular course of trade.

PAR. 5. Each and all of the false and misleading statements and representations made by the respondents, as hereinabove set out, in their advertising in newspapers and otherwise, in offering for sale and in selling their several products was, and is calculated to, and

had, and now has, the tendency and capacity 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 the mistaken and erroneous beliefs induced, as aforesaid, the consuming public has purchased a substantial volume of respondents' several products with the result that trade has been unfairly diverted to the respondents from competitors engaged in selling products and articles of the same kind and nature in commerce, as hereinabove set out, and who truthfully advertise and represent the character and quality of their said products. As a result thereof, substantial injury has been, and is now being done by respondents to competition in commerce, as hereinabove set out.

PAR. 6. The aforementioned methods, acts and practices of respondents are all to the prejudice of the public and 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 October 31, 1936, issued and served its complaint in this proceeding upon respondents, Zion Holy Spiritual Mission and Eustace N. French, doing business through the Zion Holy Spiritual Mission and under the trade name, Zion Holy Spiritual Mission Laboratories, 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' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John Darsey, 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 Blaine G. Alston, 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 briefs in support of the complaint and in opposi-

tion 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Zion Holy Spiritual Mission, is a corporation organized and existing by virtue of the laws of the State of Illinois. The respondent, Eustace N. French, is an individual doing business through the Zion Holy Spiritual Mission and under the trade name of Zion Holy Spiritual Mission Laboratories. All of the aforesaid respondents have their principal place of business located at 3338 South State Street, Chicago, Ill., and are now and for several years last past have been engaged in the sale of medicines under the trade name, "BRY-O-LYN." The respondents cause their medicines when sold to be transported from their 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.

PAR. 2. There are other individuals, firms, partnerships, and corporations engaged in the sale and distribution in commerce among and between the various States of the United States of similar and like medicines, or medicines to be used for the same and similar purposes, and with such individuals, firms, partnerships, and corporations the respondents have been and are in competition in such commerce.

PAR. 3. In the course of sale of the aforesaid products, the respondents cause statements and representations to be made upon labels placed on products and other advertising matter which are published and distributed in the various States of the United States to the effect that the respondents operate a laboratory or laboratories in which the medicines offered for sale and sold are manufactured, and that the medicines are manufactured by respondents.

PAR. 4. The respondents do not own, operate, or maintain a laboratory or laboratories in which the medicines are manufactured nor do they own any interest in any manufacturing establishment from which the products are obtained. The medicines offered for sale and sold by respondents under the trade name, "BRY-O-LYN", are made and compounded by pharmaceutical laboratories in which the respondents have no interest whatsoever and are sold to the respondents in the regular course of trade.

The representations and statements made by respondents to the effect and meaning of those set forth in paragraph 3 above are cal-

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culated to and have the tendency and capacity to deceive and mislead substantial portions of the purchasing public into the erroneous belief that such representations are true. As a direct consequence of such mistaken and erroneous beliefs so induced, the consuming public is persuaded to purchase a substantial volume of respondents' products with the attendant result that trade is unfairly diverted to respondents from competitors engaged in selling commodities of the same kind and nature in commerce as hereinbefore set out, who truthfully advertise and represent the character, quality and source of their said products. Substantial injury is thereby done by respondents to competition in commerce as hereinabove set forth.

CONCLUSION

The aforesaid acts and practices of the respondents, Zion Holy Spiritual Mission and Eustace N. French, doing business under the trade name, Zion Holy Spiritual Mission Laboratories, 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 respondents, 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 briefs 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 the respondents, Zion Holy Spiritual Mission, a corporation, and its officers, and Eustace N. French, doing business through the Zion Holy Spiritual Mission and under the trade name, Zion Holy Spiritual Mission Laboratories, or under any other trade name, their respective representatives, agents, and employees, in connection with the offering for sale, sale and distribution of their medicine products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

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Representing, through the use of the words "Laboratories" and "Manufacturers" or any other word or words of similar import and effect, alone or in conjunction with other words, or through any other means, device, or in any manner, that they compound, make, or manufacture said medicine products until and unless they actually own and operate or directly and absolutely control a laboratory or plant wherein such products are made.

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
OLSON RUG COMPANY

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

Docket 2976. Complaint, Nov. 9, 1936—Decision, Apr. 21, 1937

Where a corporation engaged in the manufacture, distribution, and sale of
rugs—

Represented and implied, through advertisements in periodicals of general
circulation, and through letters of solicitation, price lists, sample books,
pamphlets, folders, and other advertising literature, and through its cata-
logs and order blanks, that the rugs sold by it were made from the identical
materials sent in to it by each customer, together with other materials
furnished by it, such as new wool, through such statements, among others,
as “* * * you too will find it fascinating to send away a bundle of
your worn carpets, rugs, clothing, and other woollens and get back beautiful
deep piled rugs that will win the praise of your family and friends,”
“Strange but true, one may send old carpets, rugs, or clothing and have
them converted into new rugs of any color and design,” “By the magic
which turns your old wool into new rugs— * * *,” “* * * woven
from old wool which you collect and send in,” and “Please make the Olson
rugs as ordered below”;

Facts being that old materials sent in to it by customers are not segregated
and used in the manufacture of a rug to fill the specific order of the
particular customers, but are commingled with other materials sent in by
others and made into rugs to be carried in stock for sales to other pur-
chasers, and it fills orders sent in with old materials with rugs already
in stock and made from such materials previously sent in by other cus-
tomers, or with rugs woven to special order of customers from old materials
previously sent in by others, and does not make a practice of manufacturing
rugs sent to its respective purchasers from the specific materials sent in
by them;

With capacity and tendency to cause a portion of the purchasing public to
form the erroneous and mistaken impression and belief that when they sent
in old materials and ordered rugs from it said products would be made in
part from specific materials sent in, and to cause them to purchase its
said rugs on account of such belief, and with result that trade was thereby
diverted to it from competitors, including those who make, distribute, and
sell rugs made, in part at least, from specific materials sent in to them by
customers, and those who do not make the rugs sold to customers from such
materials sent in by the respective customers, but from other materials,
and who have not made use of any statements or representations calculated
to cause purchasers to form erroneous impression and belief that their
respective products are made from materials other than those from which
they are actually made; to the 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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Mr. J. T. Welch for the Commission.

Kirkland, Fleming, Green, Martin & Ellis, 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 Olson Rug 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, Olson Rug Company, is a corporation, 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 2800 North Crawford Avenue, city of Chicago, State of Illinois. Respondent is now, and has been for a number of years, engaged in the business of manufacturing, distributing, and selling rugs, in commerce as herein set out.

PAR. 2. Respondent, being engaged in business as aforesaid, causes said rugs, when sold by it, to be transported from its office and principal place of business in the State of Illinois to the respective purchasers thereof located at various points in States of the United States other than the State of Illinois. For more than one year last past, the respondent has maintained a constant current of trade in the rugs manufactured, distributed, and sold by it, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now, and has been for many years, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling rugs, 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 customers and prospective customers to purchase said rugs, respondent has, from time to time, caused advertisements to be inserted in newspapers, magazines, and periodicals of general circulation throughout the United States and has printed and circulated throughout the several States to said customers and prospective customers, through the United States mails and otherwise,

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letters of solicitation, price-lists, sample books, pamphlets, folders, and other advertising literature, in which it has caused its corporate name, Olson Rug Company, to be prominently and conspicuously displayed, together with such statements as the following:

Send your materials just as they are. You may order any rug pictured in this book, regardless of the colors in your old materials. It does not matter whether the material you send is all old carpets or rugs or a part of it is clothing. Don't hesitate to send even badly worn materials. There is more good material in them than you can imagine.

I am sure you too will find it fascinating to send away a bundle of your worn carpets, rugs, clothing and other woolens and get back beautiful deep piled rugs that will win the praise of your family and friends.

Within a week, we will weave Olson rugs in any of the fashionable, new plain or two-tone colors, or exquisite oriental or early American patterns shown in this book regardless of the color of your materials.

Though all illustrations in this book are reproduced from actual color photographs by the finest printing process known, I guarantee that the rugs we make for you will be even richer in character.

In its catalogue, respondent has also made use of statements attributed to editorial writers for various magazines. Through the use of these statements in its catalogue, it vouches for the correctness of the statements claimed to have been made by such editors. These statements are as follows:

Strange but true, one may send old carpets, rugs or clothing and have them converted into new rugs of any color and design.

By the magic which turns your old wool into new rugs—this Persian type rug comes from the looms of the Olson Rug Company.

Think of being able to use your old carpets and materials to create a rug like this.

For it (the rug) is one of those amazing manufactured products woven from old wool which you collect and send in.

On its order blanks, is the following language:

Gentlemen: Please make the Olson rugs as ordered below.

All of said statements, together with other similar statements purport to be descriptive of respondent's business and the product manufactured and sold by it. In the various catalogues, circulars, and pamphlets distributed as aforesaid by the respondent, there appear numerous statements, including those hereinabove set out, wherein the respondent represents, either directly or through implication, that the rugs which it sells are made on the special order of the customer and are made from the identical materials sent in to it by each customer, together with other materials, such as new wool furnished by it.

PAR. 5. In truth and in fact, when old materials are sent in to the respondent by customers, these identical materials are not segre-

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gated and used in the manufacture of a rug to fill the specific order of said customer, but are commingled with other materials sent in by other customers and made into rugs to be carried in stock for sales to other purchasers. When customers send in old materials and order rugs to be made for them, the respondent supplies said customer with rugs already carried in stock which have been made from old materials previously sent in by other customers. The respondent does not make a practice of manufacturing the rugs which are sent to the respective purchasers from the specific materials sent in by said purchasers.

PAR. 6. Many of respondent's competitors, who manufacture, distribute, and sell rugs, truthfully represent the materials from which said rugs are made and when said competitors represent that the rugs sold by them will be made in part from the customers' own materials, they actually make said rugs in compliance with said representation.

PAR. 7. The false and misleading representations made by the respondent, as hereinabove set out, in the offering for sale and sale of its rugs were, and are, calculated to, and had, and now have, a capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that when they send in old materials and order rugs from the respondent, that said rugs will be made, in part, from the specific materials sent in, and into the purchase of respondent's rugs on account of the erroneous beliefs induced as aforesaid. As a result thereof, trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling rugs made from old materials, who truthfully advertise and represent the nature and character of their respective businesses and of their respective products. As a consequence 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. 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 Com-

mission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on November 9, 1936 issued and served its complaint in this proceeding upon respondent, Olson Rug 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 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, Olson Rug Company, is a corporation, 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 2800 North Crawford Avenue, city of Chicago, State of Illinois. Respondent is now, and has been for a number of years, engaged in the business of manufacturing, distributing, and selling rugs, in commerce as herein set out.

PAR. 2. Respondent, being engaged in business as aforesaid, causes said rugs, when sold by it, to be transported from its office and principal place of business in the State of Illinois to the respective purchasers thereof located at various points in States of the United States other than the State of Illinois. For more than one year last past, the respondent has maintained a constant current of trade in the rugs manufactured, distributed, and sold by it, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now, and has been for many years, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling rugs, in commerce among and between the various States of the United States and in the District of Columbia.

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PAR. 4. In the course of the operation of said business, and for the purpose of inducing customers and prospective customers to purchase said rugs, respondent has, from time to time, caused advertisements to be inserted in newspapers, magazines and periodicals of general circulation throughout the United States and has printed and circulated throughout the several States to said customers and prospective customers, through the United States mails and otherwise, letters of solicitation, price-lists, sample books, pamphlets, folders, and other advertising literature, in which it has caused its corporate name, Olson Rug Company, to be prominently and conspicuously displayed, together with such statements as the following:

I am sure you too will find it fascinating to send away a bundle of your worn carpets, rugs, clothing and other woolens and get back beautiful deep piled rugs that will win the praise of your family and friends.

Within a week, we will weave Olson rugs in any of the fashionable, new, plain or two-tone colors, or exquisite oriental or early American patterns shown in this book regardless of the color of your materials.

Though all illustrations in this book are reproduced from actual color photographs by the finest printing process known, I guarantee that the rugs we make for you will be even richer in character.

In its catalogue, respondent has also made use of statements attributed to editorial writers for various magazines. Through the use of these statements in its catalogue, it vouches for the correctness of the statements claimed to have been made by such editors. These statements are as follows:

Strange but true, one may send old carpets, rugs or clothing and have them converted into new rugs of any color and design.

By the magic which turns your old wool into new rugs—this Persian type rug comes from the looms of the Olson Rug Company.

Think of being able to use your old carpets and materials to create a rug like this.

For it (the rug) is one of those amazing manufactured products woven from old wool which you collect and send in.

On its order blanks, is the following language:

Gentlemen: Please make the Olson rugs as ordered below.

All of said statements, together with other similar statements, purport to be descriptive of respondent's business and the product manufactured and sold by it. In the various catalogues, circulars, and pamphlets distributed, as aforesaid, by the respondent, there appear statements, including those hereinabove set out, which have the capacity and tendency to cause a portion of the purchasing public to form the mistaken belief that the rugs which the respondent

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sells are made from the identical materials sent in to it by each customer together with other materials, such as new wool, furnished by it.

PAR. 5. When old materials are sent in to the respondent by customers, these identical materials are not segregated and used in the manufacture of a rug to fill the specific order of said customers but are commingled with other materials sent in by other customers and made into rugs to be carried in stock for sales to other purchasers. When customers send in old materials and order rugs to be made from them, the respondent either supplies said customers with rugs already carried in stock which have been made from old materials previously sent in by other customers, or with rugs woven to the special order of said customers from old materials previously sent in by other customers. The respondent does not make a practice of manufacturing the rugs which are sent to its respective purchasers from the specific materials sent in by said customers.

PAR. 6. There are among respondent's competitors those who manufacture, distribute, and sell rugs made, in part at least, from the specific materials which have been sent in to them by customers. There are also among respondent's competitors others who do not manufacture the rugs which they sell to their customers from the specific materials sent in by the respective customers but manufacture said rugs from other materials. The aforesaid competitors have not made use of any statements or representations that have the capacity and tendency to cause purchasers to form the erroneous impression and belief that their respective products are made from materials other than those from which they are actually made.

PAR. 7. The use by the respondent of the statements and representations hereinabove set out, in the offering for sale and sale of its rugs had, and now has, the capacity and tendency to cause a portion of the purchasing public to form the erroneous and mistaken impression and belief that when they send in old materials and order rugs from the respondent that said rugs will be made, in part, from the specific materials sent in, and to cause them to purchase respondent's rugs on account of such belief. As a result thereof, trade has been diverted to the respondent from those competitors likewise engaged in the business of selling and distributing rugs described in paragraph 6 hereof. As a consequence thereof, 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.

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CONCLUSION

The aforesaid acts and practices of the respondent, Olson Rug 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 and the answer filed herein on December 21, 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, Olson Rug Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of rugs in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or through implication, that said rugs will be made, in whole or in part, from the specific materials sent in to it by the respective customers ordering said rugs;

2. Using in its advertising, or in any other manner, language descriptive of its product which has the capacity and tendency to cause members of the purchasing public to form the impression or belief that in sending materials to the respondent and ordering rugs, they will receive rugs made, in whole or in part, from the identical materials sent in by each of them.

It is further ordered, That the respondent shall, within 90 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
 PEDODYNE 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 3048. Complaint, Feb. 4, 1937—Decision, Apr. 21, 1937

Where a corporation and three individuals, officers and owners thereof and directors and in control of its sales policies and business operations, engaged in the sale and distribution, under name "Pedodyne," of a product sold and recommended as a bunion treatment; in widely advertising their said product in newspapers and periodicals of general circulation throughout the States, and in advertising folders, literature, circular letters and other advertising matter printed and circulated throughout the several States to customers and prospective customers—

- (a) Represented that said product would penetrate beneath the outer skin and give permanent results, and would banish, cure, or heal bunions and give perfect foot comfort and end torture or misery thereof and soothe and heal the instant used, through such statements, among others, as "BUNION TORTURE needless. Pain stops almost instantly. * * *." " * * * penetrates to the tender, inflamed, diseased tissue," etc., "You want PERMANENT results. You want ENTIRE FREEDOM and complete foot comfort. You want to BANISH the misery for good," etc.;
- (b) Represented that said "Pedodyne" was a scientific product and a recent discovery, or improvement of a scientific discovery, through such statements as "For many years the true nature of bunions was not understood. Now Science has conquered," and "PEDODYNE is Scientific"; and
- (c) Represented that competing products were of no value in treatment of bunions, through such statements as "Perhaps you have tried other methods—pads, plasters, appliances of one type or another—without satisfactory results. It is not surprising if you have failed to get the relief you sought," "How can you expect some little pad or appliance that does not penetrate beneath the outer skin to heal your bunion? I say that I do not believe that it can be done that way";

Facts being that, while product in question would, in numerous cases, temporarily relieve pain and torture caused from bunions and do so with reasonable promptness and, absent any bone deformity, aid in reducing the swelling and inflammation, it would not banish, cure or heal such ailments or conditions, but efficacy thereof was limited to temporary relief of pains and discomforts caused thereby, formula in question had been used for many years in treating such ailments and conditions and could not correctly be termed a recent discovery nor an improvement of a scientific discovery, product would not penetrate to the affected parts of the foot in cases of such conditions, and there were other products on the market sold and recommended for treatment of bunions, of which some were helpful in relieving pains caused thereby, and some in correction thereof; and

- (d) Represented to purchasing public, through circulars, letters, and literature issued and mailed to prospective purchasers, that they were making a "special offer" to particular person thus contacted, and that price quoted

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In the literature was a special one, facts being such "special offers" pointed out in their follow-up letters and literature were not thus limited, but were made indiscriminately to any prospective purchaser, and price quoted was the regular selling price of the product;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and into buying a substantial volume of their said product on account of such beliefs, thus induced, and with result that trade was diverted to them from those likewise engaged in sale and distribution of products prepared, designed, intended and sold for substantially same purpose and use for which their said product was advertised and sold, and who truthfully advertised the same and the efficacy thereof; to the injury of competitors and 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. Floyd O. Collins 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 Pedodyne Company, Inc., a corporation, George J. Katz, individually and as president of Pedodyne Company, Inc., Rose M. Katz, individually and as vice president and treasurer of Pedodyne Company, Inc., and Robert L. Keats also known as Robert L. Katz, individually and as secretary of Pedodyne Company, Inc., 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 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, Pedodyne Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located in the city of Chicago, State of Illinois. Respondent, George J. Katz, is president and general manager of Pedodyne Company, Inc. Respondent, Rose M. Katz, is vice president and treasurer of Pedodyne Company, Inc. Respondent, Robert L. Keats, also known as Robert L. Katz, is the secretary of Pedodyne Company, Inc. The individual respondents own all the stock of Pedodyne Company, Inc., and direct and control its sales policies and business operations. The respondents are now, and have been for several years past, engaged in the sale and distribution of a preparation for the treatment of

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bunions known as "Pedodyne." The respondents cause said product, when sold, to be shipped and transported in interstate commerce from their place of business located in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State of Illinois. They now maintain, and have at all times mentioned herein maintained, a constant current of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondents, in the course and conduct of their business, are now, and at all times herein referred to have been, in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of other preparations and appliances, prepared, designed, manufactured, advertised, and sold as treatments for bunions, in commerce among and between the various States of the United States.

PAR. 3. Respondents, in the course and conduct of their business as aforesaid, and for the purpose of inducing individuals to purchase said bunion treatment, "Pedodyne," have caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, and have printed and circulated throughout the several States of the United States, through the United States mail and otherwise, to customers and prospective customers, certain advertising folders and literature, circular letters and other advertising matter, in all of which the respondents have caused the firm name and the name of the product to be prominently and conspicuously displayed and in which the following statements are made:

A. BUNION TORTURE needless. Pain stops almost instantly. The swelling and inflammation is so quickly reduced you can wear smaller, neater shoes with ease.

Now then, if you actually want to get rid of this misery, if you want to enjoy perfect foot ease, this is your opportunity.

The Most Torturing Bunions Surrender to Pedodyne.

If you can positively get rid of your bunion irritation and humiliation, do so by all means. Thousands say that PEDODYNE will do this for you, thereby increasing your happiness and your efficiency!

PEDODYNE is a real friend to every person who has bunions—just starting or of longer standing.

You want PERMANENT results. You want ENTIRE FREEDOM and complete foot comfort. You want to BANISH the misery for good.

For many years the true nature of bunions was not understood. Now Science has conquered.

PEDODYNE is Scientific.

As soon as PEDODYNE comes in contact with the bunion it quickly softens the hard, dead outer epidermis and penetrates to the tender, inflamed, diseased tissue and bursal sac. * *

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B. Permitted to go untreated, or relieved through clumsy appliances or by slitting your shoes to "relieve the pressure", your bunion may cause serious foot disorders.

Perhaps you have tried other methods—pads, plasters, appliances of one type or another—without satisfactory results. It is not surprising if you have failed to get the relief you sought.

How can you expect some little pad or appliance that does not penetrate beneath the outer skin to heal your bunion? I say that I do not believe that it can be done that way.

C. Respondents further state, by way of purporting to quote alleged testimonials, that:

My bunions are showing such rapid improvement that it seems almost a miracle.

I am very happy to inform you your Pedodyne treatment has acted like magic.

All of said statements, together with many other similar statements appearing in respondents' advertising and literature, purport to be descriptive of respondents' product "Pedodyne." In all of respondents' advertising matter and literature the respondents represent, through the statements herein set out and through other statements of like import and effect, that:

1. Pedodyne will end bunion torture;
2. Pedodyne will stop pain caused from bunions almost instantly;
3. Pedodyne will quickly reduce swelling and inflammation caused by bunions;
4. Pedodyne will rid the user of misery caused by bunions;
5. Pedodyne will give perfect foot comfort;
6. Pedodyne will soothe and heal the first instant it is used;
7. Pedodyne will give permanent results;
8. Pedodyne will banish, cure and heal bunions;
9. Pedodyne is superior to other bunion treatments;
10. Pedodyne is a scientific product, and that it is a recent discovery or an improvement of a scientific discovery;
11. Pedodyne is penetrative;
12. Other competing products are of no value in the treatment of bunions.

PAR. 4. The claims and representations made by the respondents with respect to the therapeutic value of the product, Pedodyne, are grossly exaggerated, false, and misleading. In truth and in fact respondents' product, Pedodyne, will not end bunion torture. It will not stop pain caused from bunions almost instantly. It will not quickly reduce swelling and inflammation. It will not rid the user of the pain and misery caused from bunions. It will not give perfect foot comfort. It will not soothe and heal the first instant it is used. It will not give permanent results. It will not banish, cure, or heal

bunions. It will not, without danger, enable the user to wear smaller shoes. It will not penetrate, neither is it a new or improved scientific treatment. In addition, said claims and representations serve to falsely disparage bunion treatments prepared and marketed by respondents' competitors in that said statements falsely represent that the products sold by respondents' competitors are of no value as bunion treatments. In truth and in fact the products sold by respondents' competitors are of some value as bunion treatments in that they will relieve pain and assist in correcting the trouble caused by certain types of bunions.

PAR. 5. The respondents further represent to prospective purchasers, through a series of letters and literature, that the respondents are making special reduced prices to the prospect and that the offer is for a limited time only. The truth is that the respondents make the representations and concessions indiscriminately to prospective purchasers and the time of acceptance is without limitation.

PAR. 6. There are among respondents' competitors many who manufacture, distribute and sell to the purchasing public, appliances and treatments for bunions, who in no way misrepresent the quality, efficacy, or therapeutic value of their product and who do not falsely disparage the products manufactured and sold by their competitors; and who do not falsely represent that their products are being sold at special prices for limited periods of time when such is not the case.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents in designating and describing the product, "Pedodyne," and its effectiveness, as hereinabove set out, in offering for sale and selling said product were, and are, calculated to, and had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true, and into the further erroneous belief that the appliances and preparations devised, manufactured, and sold by respondents' competitors are inferior in quality and less effective than respondents' product. Further, as a direct consequence of said mistaken and erroneous beliefs, induced by the acts and representations as hereinabove set out, a substantial number of the consuming public has purchased a substantial amount of respondents' product with the result that trade has been unfairly diverted to the respondents from competitors likewise engaged in selling and distributing appliances and preparations for the treatment of bunions and who do not misrepresent the price, quality, and efficacy of their products. As a result of the unfair acts and false and misleading representations of the respondents, injury has been, and is now being done by respondents to competition

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in commerce among and between the various States of the United States and the District of Columbia.

PAR. 8. The above and foregoing acts, practices and representations of the respondents have been and are all to the prejudice and injury of the public and respondents' competitors, 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 February 4, 1937, issued, and on February 5, 1937, served, its complaint in this proceeding upon respondents, Pedodyne Company, Inc., a corporation, and George J. Katz, Rose M. Katz, and Robert L. Keats, also known as Robert L. Katz individually and as officers of the Pedodyne Company, Inc., charging respondents 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, the Commission, by an order entered herein, granted respondents' 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 substituted answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on 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 Pedodyne Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located in the city of Chicago, State of Illinois. Respondent George J. Katz is president and general manager of Pedodyne, Inc. Respondent Rose M. Katz is vice president and treasurer of Pedodyne Company, Inc. Respondent Robert L. Keats, also known as Robert

L. Katz, is secretary of Pedodyne Company, Inc. The individual respondents own all the capital stock of the respondent corporation and direct and control its sales policies and business operation.

The respondents have been engaged for several years in the sale and distribution in commerce among and between the various States of the United States and the District of Columbia of a product designated "Pedodyne." The product designated "Pedodyne" is sold and recommended as a bunion treatment. Respondents caused said product, when sold, to be shipped from their place of business in Chicago, Ill., to the purchasers thereof located at various points in the States of the United States other than the State of Illinois. Respondents do now and have for several years last past maintained a constant current of trade in commerce among and between the various States of the United States and the District of Columbia in the product "Pedodyne."

There are likewise other corporations, firms, individuals, and partnerships engaged in selling and distributing in commerce among and between the various States of the United States and the District of Columbia of other preparations and appliances sold and recommended as bunion treatments. Respondents are now and have been in active substantial competition with these other corporations, firms, individuals, and partnerships in the sale of their respective products.

PAR. 2. For the purpose of inducing the purchase of the product "Pedodyne" respondents have widely advertised said product in advertisements inserted in newspapers and magazines of general circulation throughout the United States. Respondents have also printed and circulated throughout the several States of the United States to customers and prospective customers advertising folders, literature, circular letters, and other advertising matter.

In all of the advertisements and advertising matter hereinabove mentioned the respondents have caused the corporate name and name of the product "Pedodyne" to be prominently and conspicuously displayed, together with such statements as:

BUNION TORTURE needless. Pain stops almost instantly. The swelling and inflammation is so quickly reduced you can wear smaller, neater shoes with ease.

Now then, if you actually want to get rid of this misery, if you want to enjoy perfect foot ease, this is your opportunity.

The Most Torturing Bunions Surrender to Pedodyne.

If you can positively get rid of your bunion irritation and humiliation, do so by all means. Thousands say that PEDODYNE will do this for you, thereby increasing your happiness and your efficiency!

PEDODYNE is a real friend to every person who has bunions—Just starting or of longer standing.

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You want PERMANENT results. You want ENTIRE FREEDOM and complete foot comfort. You want to BANISH the misery for good.

For many years the true nature of bunions was not understood. Now Science has conquered.

PEDODYNE is Scientific.

As soon as PEDODYNE comes in contact with the bunion it quickly softens the hard, dead outer epidermis and penetrates to the tender, inflamed, diseased tissue and bursal sac, * * *

Permitted to go untreated, or relieved through clumsy appliances or by slitting your shoes to "relieve the pressure", your bunion may cause serious foot disorders.

Perhaps you have tried other methods—pads, plasters, appliances of one type or another—without satisfactory results. It is not surprising if you have failed to get the relief you sought.

How can you expect some little pad or appliance that does not penetrate beneath the outer skin to heal your bunion? I say that I do not believe that it can be done that way.

My bunions are showing such rapid improvement that it seems almost a miracle.

I am very happy to inform you your Pedodyne treatment has acted like magic.

The statements above set out, together, with many similar statements appearing in respondents' advertising literature purport to be descriptive of respondents' product. Through these statements and other statements of like import and effect the respondents represent that (1) Pedodyne will end bunion torture; (2) Pedodyne will stop pain caused from bunions almost instantly; (3) Pedodyne will quickly reduce swelling and inflammation caused by bunions; (4) Pedodyne will rid the user of misery caused by bunions; (5) Pedodyne will give perfect foot comfort; (6) Pedodyne will soothe and heal the instant it is used; (7) Pedodyne will give permanent results; (8) Pedodyne will banish, cure and heal bunions; (9) Pedodyne is superior to other bunion treatments; (10) Pedodyne is a scientific product, and that it is a recent discovery or an improvement of a scientific discovery; (11) Pedodyne penetrates beneath the outer skin; and (12) Other competing products are of no value in the treatment of bunions.

PAR. 3. In truth and in fact it is generally understood and believed by the public that any enlargement of or on the metatarsophalangeal joint, whether bursitis or hallux valgus, is a bunion. The product designated "Pedodyne" will, in numerous cases, temporarily relieve the pain and torture caused from bunions and will do so with reasonable promptness, and where there is no bone deformity Pedodyne will aid in reducing the swelling and inflammation. The product Pedodyne will not banish, cure, or heal bunions, but its efficacy is limited to temporary relief of pains and discomforts caused by

bunions. The Pedodyne formula has been used for many years in treating bunions and it cannot be correctly termed a recent discovery; neither is it an improvement of a scientific discovery. Pedodyne is not penetrative in a sense meaning it will penetrate to the affected parts of the foot in cases of bunions. There are other products on the market which are sold and recommended for use in treating bunions and some of said products are helpful in relieving pains caused by bunions and some are helpful in the correction of bunions.

PAR. 4. Further the respondents represent to the purchasing public by issuing and mailing to prospective purchasers circular letters and literature that the respondents are making a "special offer" to the particular person so contacted and that the price quoted in the literature is a special price.

In truth and in fact, the special offers pointed out in respondents' follow-up letters and literature are not limited to the one to whom the letter is addressed but such offers are made indiscriminately to any prospective purchaser and the price quoted is the regular selling price of said product.

PAR. 5. There are among respondents' competitors many who sell and distribute preparations and appliances as bunion treatments who do not misrepresent the quality or character of their respective product or its efficacy in treating bunions.

PAR. 6. The various statements and misrepresentations made by respondents in describing the product "Pedodyne" and the effectiveness of said product when used had, and now have, a capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and into the purchase of a substantial volume of respondents' product on account of such beliefs induced by the respondents' representations as above set out. As a result thereof, trade has been diverted to respondents from corporations, firms, individuals, and partnerships likewise engaged in the business of selling and distributing their products prepared, designed, intended, and sold for substantially the same purpose and use for which the respondents' product is advertised and sold, and who truthfully advertise their products and the efficacy of their products when used. As a consequence thereof, 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 the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents are to the prejudice of the public and of respondents' competitors and constitute

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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 March 26, 1937, 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, Pedodyne Company, Inc., a corporation, its officers, representatives, agents, and employees, and George J. Katz, Rose M. Katz, and Robert L. Keats, also known as Robert L. Katz, in connection with the offering for sale, sale, and distribution of Pedodyne in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That Pedodyne will banish, cure or heal bunions or give perfect foot comfort;
2. That Pedodyne will end bunion torture or rid the user of the misery caused by bunions;
3. That Pedodyne acts with other than reasonable promptness;
4. That Pedodyne will give permanent results;
5. That Pedodyne is scientific in a sense meaning that Pedodyne is a recent discovery or a recent improvement of a scientific discovery;
6. That Pedodyne will penetrate beneath the outer skin;
7. That competing products are of no value in the treatment of bunions;
8. That a stated price is the regular price, where periodic reductions are offered in follow-up form letters; or that the price stated is a special offer to the particular person contacted, where the offer is made indiscriminately to any prospective purchaser.

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

LOUIS KIPILMAN, DOING BUSINESS AS MAJESTIC
LABORATORIES

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

Docket 3080. Complaint, Mar. 17, 1937—Decision, Apr. 21, 1937

Where an individual engaged in the manufacture of a pharmaceutical preparation known as "Kipzeme Ointment," intended and designed to remedy and cure leg sores, eczema, and other skin diseases and kindred ailments, and in the sale thereof in substantial competition with others engaged in the manufacture of like and similar products and sale thereof among the various States and in the District of Columbia, including those who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products, and those who do not advertise or otherwise represent that such products have merit or therapeutic value which they do not have—

Represented and implied, in advertisements of said "Kipzeme Ointment," in various newspapers, periodicals, and publications and in other forms of printed matter, and by radio broadcast and in other ways, that preparation in question was a competent and adequate remedy for leg sores, running sores, aggravated cases of eczema, and other skin eruptions and kindred ailments, through such statements as "Leg sores all healed," "Druggist Makes Discovery for OPEN LEG SORES, OLD Leg Sores, . . . running sores, aggravated eczema. Send for KIPZEME * * *," facts being said preparation does not heal all such sores and is not a competent and adequate remedy in cases of aggravated eczema or in the case of old leg sores, running sores, and other skin conditions, and representations in question, as respects nature and effect of said product, are exaggerated, misleading, and deceptive, and preparation, in many cases, will not accomplish results claimed therefor;

With capacity to mislead and deceive purchasers and prospective purchasers into erroneous belief that such representations were true and into purchase of substantial quantities of product in question, on account of such belief induced as aforesaid, and with result that trade was unfairly diverted to him from competitors who do not similarly advertise their respective 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.

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 Louis

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Kipilman, an individual doing business under the trade name Majestic Laboratories, 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, Louis Kipilman, is an individual, having his principal office and place of business located at 128-04—111th Avenue, in the city of Richmond Hill, Long Island, in the State of New York. Respondent for more than one year last past has been and still is, engaged in the manufacture of a pharmaceutical preparation, known as "Kipzeme Ointment" intended and designed to remedy and cure leg sores, eczema, and other skin diseases and kindred ailments, 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 his 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 one 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 one year last past has been in substantial competition with other individuals and with partnerships, corporations, 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. In the course and conduct of his business as aforesaid, the respondent, in soliciting the sale of and selling his pharmaceutical preparation known as "Kipzeme Ointment," 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 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:

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Leg sores all healed.

Druggist Makes Discovery for OPEN LEG SORES, OLD Leg Sores, . . . running sores, aggravated eczema. Send for KIPZEME, the ointment discovery which helped me heal up my 20-year-old leg sores after everything else had failed.

Relieves Itching Immediately.

For Eczema, Open Leg Sores, . . . KIPZEME OINTMENT.

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and others similar thereto, have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's product into the belief:

(a) That Kipzeme heals all leg sores;

(b) That Kipzeme Ointment heals open leg sores, old leg sores, running sores, aggravated eczema;

(c) That Kipzeme Ointment is an adequate remedy in the treatment of old, aggravated leg sores, skin eruptions, eczema, and kindred ailments.

In truth and in fact, "Kipzeme Ointment" does not heal all leg sores, nor is it an adequate remedy in cases of aggravated eczema, or in the healing of old leg sores, running sores and other skin conditions. In truth and in fact, the representations made by the respondent with respect to the nature and effect of his pharmaceutical preparation when used are grossly exaggerated, false, misleading, and untrue, as said preparation will not accomplish in all cases the results claimed for it.

PAR. 4. There are among the competitors of the respondent in commerce as herein described, manufacturers of like and similar products who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products. There are also among such competitors of the respondent, manufacturers, sellers, and distributors of like and similar products who do not advertise and otherwise represent that such products have merit or 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 erroneous beliefs described in paragraph 3 hereof and into the purchase of respondent's product in such beliefs. Thereby trade is unfairly diverted to respondent from those competitors referred to in paragraph 4 in interstate commerce as herein described. As a consequence thereof, substantial injury is 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. Said acts and practices of respondent are all to the prejudice of the public and of respondent's competitors, and constitute

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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 17, 1937 issued and served its complaint in this proceeding upon respondent, Louis Kipilman, an individual doing business under the trade name of Majestic Laboratories, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On March 24, 1937, 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 stated 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. The respondent, Louis Kipilman, is an individual, having his principal office and place of business located at 128-04 111th Avenue, Richmond Hill, Long Island, N. Y. Respondent for more than one year last past has been and still is, engaged in the manufacture of a pharmaceutical preparation, known as "Kipzeme Ointment," intended and designed to remedy and cure leg sores, eczema, and other skin diseases and kindred ailments. He offers for sale and sells this product 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 his place of business in the State of New York to purchasers 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 one 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 one year last past has been in substantial competition with other individuals and with partnerships, corporations, 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. In the course and conduct of his business as aforesaid, the respondent, in soliciting the sale of and selling his pharmaceutical preparation known as "Kipzeme Ointment," 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 advertisements to be issued, published, and circulated to and among the general public of the United States in various newspapers, 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, misleading, and deceptive statements with reference to the alleged therapeutic value of said product and its effect upon the users thereof. Among other statements and representations thus made by the respondent are the following:

Leg sores all healed.

Druggist Makes Discovery for OPEN LEG SORES, OLD Leg Sores, . . . running sores, aggravated eczema. Send for KIPZEME, the ointment discovery which helped me heal up my 20-year-old leg sores after everything else had failed.

Relieves itching immediately.

For Eczema, Open Leg Sores, . . . KIPZEME OINTMENT.

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and others similar thereto, have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's product into the belief that said preparation is a competent and adequate remedy for leg sores, running sores, aggravated cases of eczema, and other skin eruptions and kindred ailments.

PAR. 4. In truth and in fact, "Kipzeme Ointment" does not heal all leg sores, nor is it a competent and adequate remedy in cases of aggravated eczema, or in the healing of old leg sores, running sores and other skin conditions. The representations made by the respondent with respect to the nature and effect of his pharmaceutical

preparation when used are exaggerated, misleading, and deceptive. As a matter of fact, said preparation will not accomplish in many cases the results claimed for it.

PAR. 5. There are among the competitors of the respondent in commerce as herein described, manufacturers of like and similar products who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products. There are also among such competitors of the respondent, manufacturers, sellers, and distributors of like and similar products who do not advertise and otherwise represent that such products have merit or therapeutic value which they do not have.

PAR. 6. The above alleged acts and practices of respondent have the capacity to mislead and deceive purchasers and prospective purchasers into the erroneous belief that said representations are true and into the purchase of substantial quantities of respondent's product on account of such belief induced as aforesaid. Thereby trade is unfairly diverted to respondent from competitors who do not similarly advertise their respective products. As a consequence thereof, substantial injury is 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 Louis Kipilman, an individual doing business under the trade name of Majestic Laboratories, 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 on March 24, 1937, 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

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Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Louis Kipilman, as an individual, and doing business under the trade name of Majestic Laboratories, or under any other trade name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a pharmaceutical preparation now designated as "Kipzeme Ointment" or of a product of substantially the same ingredients or therapeutic effect sold under the name "Kipzeme Ointment" or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That said preparation heals open leg sores, old leg sores, all leg sores, running sores, and aggravated cases of eczema;

2. That said preparation is a competent and adequate remedy or treatment for aggravated leg sores, skin eruptions, eczema, and kindred ailments;

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 him of this order file with this Commission a report in writing setting forth the manner and form in which he has complied with this order.

IN THE MATTER OF

I. B. KLEINERT RUBBER COMPANY

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

Docket 2852. Complaint, June 26, 1936—Decision, Apr. 24, 1937

Where a corporation engaged in the manufacture of various types of water-proof garments for women and children, including baby pants sold under trade name "SOFTEX," and in sale thereof in competition with others engaged in sale of similar products or products for same and similar purposes who truthfully represented the same—

Caused representations and statements to be made in advertising matter circulated and distributed in the various States, to the effect that its said products were absolutely free from latex or any other form of gum rubber and were rubberless, facts being they were not thus free or rubberless, but contained rubber in waist bands and in leg openings;

With tendency to deceive and mislead substantial portions of purchasing public into erroneous belief that such representations were true, and with the result, as a direct consequence of such mistaken and erroneous beliefs thus induced, that consuming public was persuaded to purchase substantial volume of its products, and trade was unfairly diverted to it from competitors engaged in selling products of same kind and nature in commerce and who truthfully advertised and represented the character and quality thereof, and means of deceiving consuming public was also placed in the hands of the retail purchaser by it in the labeling of its products as aforesaid; 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* and *Mr. John J. Keenan*, trial examiners.

Mr. John Darsey for the Commission.

Nordlinger, Riegelman & Cooper, 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 I. B. Kleinert Rubber Company, 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, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 485 Fifth Avenue, in the city of New York, in said State. It is now, and for some time past has been, engaged in the manufacture of various types of waterproof garments for women and children, among which said products is a baby pant, which it offers for sale and sells under the trade mark "Softex," which products the respondent sells and has sold and distributed in commerce between and among the various States of the United States, causing the same 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 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 various other corporations, partnerships, firms, and individuals engaged in the sale of similar products or products to be used for the same and similar purposes, which competitors cause their products when sold to be transported to purchasers thereof located in the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1, supra, the respondent causes its aforesaid products to be advertised by means of trade publications and in newspapers having circulation in the various States of the United States. It distributes circulars and leaflets pertaining to said products in and among the various States of the United States. It also furnishes mats and display cards for the use of, and which are used by, the trade located in the various States of the United States in advertising and selling the said products. In the course of offering for sale and sale of the baby pant under the trade mark "Softex" the respondent causes representations and statements to be made in such advertisements and advertising matter to the following effect, gist, or meaning:

But they are absolutely free from Latex or any other form of gum rubber. They're rubberless,

and which products so advertised and represented the respondent sells in commerce between and among the various States of the United States, as aforesaid; when in truth and in fact said products have a waistband of an elastic fabric made from gum rubber, and also an elastic banding at the leg opening made of rubber, and therefore said products are not properly and correctly represented and referred to as "being absolutely free from Latex or any other form of gum rubber" or as "rubberless."

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PAR. 3. Under the foregoing facts and circumstances, the representations, statements, and terms used by respondent in its advertising matter, as set forth in paragraph 2 supra, are false and misleading and have the capacity and tendency to deceive and do deceive the ultimate purchasers and consumers into buying that which they do not intend to buy; and through and by virtue of the use of such representations, statements, and terms in its advertising matter, as aforesaid, the respondent has placed and is placing in the hands of its wholesaler and retailer purchasers the means of deceiving the ultimate purchasers and consumers. The aforesaid practices have the capacity and tendency to divert to respondent the trade of competitors engaged in selling in commerce between and among the various States of the United States products of the same kind and nature as those of respondent, which products are truthfully advertised and described, and thereby substantial injury is done by respondent to substantial competition in commerce between and among the various States of the United States.

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 June 26, 1936, issued and served its complaint in this proceeding upon respondent, I. B. Kleinert Rubber 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 John Darsey, attorney for the Commission, before Robert S. Hall and John J. Keenan, examiners of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Harold Riegelman, 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 briefs in support of the complaint and in defense 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. I. B. Kleinert Rubber Company is a New York corporation with its principal place of business located at 485 Fifth Avenue in the city of New York in said State. It is engaged in the manufacture of various types of waterproof garments for women and children, among which products is a baby pant which sells under the trade name, "SOFTEX." When its products are sold, the respondent causes the same to be shipped from its place of business in the State of New York to purchasers thereof located in the various States of the United States.

There are other corporations, partnerships, firms, and individuals engaged in the sale of similar products, or products to be used for the same and similar purposes, who truthfully represent their products and who cause the same when sold to be transported from their respective places of business to purchasers thereof located in the various other States of the United States, and with such corporations, partnerships, firms, and individuals the respondent is in competition.

PAR. 2. In connection with the promotion of sale and sale of its products as aforesaid, the respondent causes representations and statements to be made in advertising matter which is circulated and distributed in the various States of the United States to the effect that its products are absolutely free from latex or any other form of gum rubber and that they are rubberless.

The products offered for sale and sold by respondent in the manner set forth above are not absolutely free from latex or any other form of gum rubber and are not rubberless. The products contain rubber in the waist bands and in the leg openings.

PAR. 3. The representations and statements made by respondent to the effect and meaning of those set forth in paragraph 2 supra are calculated to and have the tendency to deceive and mislead substantial portions of the purchasing public into the erroneous belief that such representations are true. As a direct consequence of such mistaken and erroneous beliefs so induced, the consuming public is persuaded to purchase a substantial volume of respondent's products with the attendant result that trade is unfairly diverted to respondent from

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competitors engaged in selling products of the same kind and nature in commerce as hereinbefore set out, who truthfully advertise and represent the character and quality of their products. A means of deceiving the consuming public is also placed in the hands of the retailer-purchaser by respondent when its products are so labeled. Substantial injury is thereby done by respondent to competition in commerce as hereinabove set forth.

CONCLUSION

The aforesaid acts and practices of the respondent I. B. Kleinert Rubber 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 respondents, testimony and other evidence taken before Robert S. Hall and John J. Keenan, examiners 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 the respondent, I. B. Kleinert Rubber Company, its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of its baby pant products in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

That said products are free from latex or any other form of gum rubber or that they are rubberless when said products have latex or some form of rubber in said products at waist or leg bands or openings or in any other capacity.

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 this order.

Complaint

IN THE MATTER OF

RUSSEK'S FIFTH AVENUE, INC.

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

Docket 3066. Complaint, Feb. 25, 1937—Decision, Apr. 24, 1937

Where a corporation engaged as retailer of women's wares, such as furs, coats, dresses, and other items of wearing apparel, in shipping from its place of business to the purchasers thereof in other States articles of merchandise sold by it—

Made use of words "silk" or "satin" in soliciting sale of its products to purchasers in various States, through advertisements and advertising matter in newspapers circulating among the various States, through representing, designating, and referring to products thus offered as "satin and silk jersey dresses" or as "silk afternoon dresses," as case might be, notwithstanding fact dresses respectively thus described were not composed of silk, product of the cocoon of the silk worm, as long specifically and definitely understood in mind of purchasing public from words "silk" or "satin," as long associated in said mind with the long and highly esteemed silk fabrics, and preeminent quality thereof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and to cause them to buy such dresses on account of such erroneous belief, and to unfairly divert trade to it from competitors engaged in the sale of dresses and other women's wearing apparel, who do not misrepresent the kind of dresses offered, but truthfully advertise and represent the nature and kind 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 L. Hornor*, trial examiner.

Mr. Astor Hogg for the Commission.

Weisman, Quinn, Allen & Spett, 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 Russek's Fifth Avenue, 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 complaint, stating its charges in that respect as follows:

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PARAGRAPH 1. Respondent, Russek's Fifth Avenue, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located on 5th Avenue at 36th Street, in the city of New York in said State.

Respondent is now, and has been for several years last past, engaged in business as a retailer of women's wear, such as furs, coats, dresses, and other items of wearing apparel. It sells, and has sold and distributed, such articles of merchandise to members of the purchasing public located in various States of the United States, and in the District of Columbia. Respondent now causes, and during the time herein mentioned has caused, its articles of merchandise, when sold, to be shipped from its place of business in New York City to the purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by the respondent in said articles of merchandise between and among the various States of the United States, and in the District of Columbia.

Respondent is now and at all times herein mentioned has been in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution of women's wearing apparel, including furs, coats, and dresses in commerce 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, the respondent, in soliciting the sale of and selling its products to purchasers located in the various States of the United States, caused advertisements and advertising matter to be inserted in newspapers having circulation in and among the various States of the United States, wherein certain of its dresses were represented, designated, and referred to as "satin and silk jersey dresses," while certain other dresses were represented, designated and referred to as "silk afternoon dresses." Such statements and representations served as representations on the part of respondent that such dresses, so advertised and offered for sale, were silk dresses.

The representations hereinbefore set forth, are grossly false and misleading in that said dresses so represented, designated and referred to as being silk and satin silk are not and were not composed of silk, the product of the coon of the silkworm, but were composed of a material, or materials, other than silk.

PAR. 3. The word "silk" for many years past, has had and still has, in the minds of the consuming public, a definite and specific

meaning, to wit, the product of the cocoon of the silkworm. Silk fabrics for many years have held, and still hold great public esteem and confidence for their preeminent qualities. Silk fibre has long been woven into a variety of fabrics and a variety of distinctive terms have been applied to the fabrics resulting from different types of weaving. The term "satin" has been for a long time, and at the present time still is associated in the public mind with a fabric made from the cocoon of the silkworm, commonly known and understood by the public as silk.

PAR. 4. The use by respondent of the representations set forth herein has had and now has the capacity and tendency to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such representations are true, and to cause them to purchase such dresses on account of such erroneous belief engendered as above set forth. There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, individuals, partnerships and firms engaged in the sale of dresses and other women's wearing apparel who do not misrepresent the kind of dresses offered for sale, but who likewise advertise, sell and distribute their dresses among the various States of the United States and in the District of Columbia. By the representations aforesaid trade is unfairly diverted to respondent from such competitors, and thereby substantial injury is being, and has been, done by respondent to competition in commerce as herein set out.

PAR. 5. The above alleged acts and practices of respondent are all to the injury and 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 February 25, 1937, issued and served its complaint in this proceeding upon respondent Russek's Fifth Avenue, 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, the attorneys of record for said respondent tendered and

entered into a stipulation as to the facts with the Chief Counsel for the Commission, subject to the approval of the Commission, by which it is agreed that the statement of facts therein contained may be taken as the facts in this proceeding, and in lieu of testimony in support of the charges stated in the complaint and in opposition thereto; and that the 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; which said stipulation has been approved by the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, and the said stipulation and statement of 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, Russek's Fifth Avenue, 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 on Fifth Avenue at 36th Street in the city of New York in said State. Respondent is, and has been for several years last past, engaged in business as a retailer of women's wares such as furs, coats, dresses, and other items of wearing apparel. It sells and distributes such articles of merchandise to members of the purchasing public located in the various States of the United States. It causes, and has caused, its articles of merchandise when sold to be shipped from its place of business in New York City to the purchasers thereof located in the various States of the United States other than the State of New York. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by the respondent in said articles of merchandise between and among the various States of the United States. Respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations, and with firms, partnerships, and individuals engaged in the sale and distribution of women's apparel, including furs, coats, and dresses in commerce among and between the various States of the United States.

PAR. 2. Respondent in soliciting the sale of and selling its products to purchasers located in the various States of the United States,

caused advertisements and advertising matter to be inserted in newspapers having circulation in and among the various States of the United States, wherein certain of its dresses were represented, designated, and referred to as "satin and silk jersey dresses," while certain other dresses were represented, designated, and referred to as "silk afternoon dresses." In and by such representations and statements, respondent represented that such dresses so advertised and offered for sale were silk dresses. Such statements and representations thus made are and were false and misleading in that said dresses so represented as being "silk" and "satin and silk" are not and were not composed of silk, the product of the cocoon of the silk worm but were composed of materials other than silk.

PAR. 3. The word "silk" for many years last past has had and still has in the minds of the purchasing public a definite and specific meaning, to wit: the product of the cocoon of the silk worm. Silk fabrics for many years have held and still hold great public esteem and confidence for their preeminent qualities. Silk fibre has long been woven into a variety of fabrics, and a variety of distinctive terms have been applied to the fabrics resulting from different types of weaving. The term "satin" has been for a long time, and at the present time is associated in the public mind with a fabric made from the cocoon of the silk worm, commonly known and understood by the public as "silky."

PAR. 4. The use by the respondent of the representations set forth herein have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true and to cause them to purchase such dresses on account of such erroneous belief brought about as above set forth. There are among the competitors of the respondent as mentioned in paragraph 1 hereof, corporations, individuals, partnerships, and firms engaged in the sale of dresses and other women's wearing apparel, who do not misrepresent the kind of dresses offered for sale, but who truthfully advertise and represent the nature and kind of dresses sold by them. The representations made by respondent as aforesaid, have the capacity and tendency to unfairly divert trade to respondent from such competitors; thereby substantial injury is being done and has been done by the respondent to competition in commerce as herein set out.

CONCLUSION

The aforesaid acts and practices of the respondent, Russek's Fifth Avenue, Inc., are to the prejudice of the public and of respondent's

competitors, and constitute unfair methods of competition in commerce, within 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, Russek's Fifth Avenue, Inc., 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 Russek's Fifth Avenue, Inc., its officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution of its merchandise, dress goods and garments in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Using the word "silk" either alone or in conjunction with any word or words to describe or refer to the fabric of merchandise, dress goods, or garments not composed entirely of silk, the product of the cocoon of the silk worm.

(2) From using the word "satin" either alone or in conjunction with any other word or words to describe or refer to the fabric merchandise, dress goods, or garments not made wholly from silk, the product of the cocoon of the silk worm.

It is further ordered, That the respondent, Russek's Fifth Avenue, Inc., 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.

Syllabus

IN THE MATTER OF

NOLAN ATZ, GUSTA ATZ AND JOHN EDWARD ATZ, TRADING AS ATZ'S HATCHERY, ATZ'S BLUE MOUNT HATCHERY AND ATZ'S MAMMOTH HATCHERY

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

Docket 2886. Complaint, Aug. 3, 1936—Decision, Apr. 27, 1937

Where an individual engaged in the hatching, advertisement, sale and shipment of baby chicks by mail and express to purchasers in various States, in substantial competition with others similarly engaged; in advertising her said baby chicks in periodicals of national circulation and among farmers, more particularly—

- (a) Represented that same were hatched from the eggs of hens or old hens, and not pullets, through such statements as "Superior grade from old hens' eggs," "from all old hens' eggs," facts being not more than ten percent of the flocks from which she purchased eggs, gathered by trucks from the various farmers and poultry raisers for hatching and sale of chicks were composed entirely of old hens, and there was no practical way for a large hatchery to obtain or definitely select and separate the old hens' eggs, chicks from which, as meaning hens that have completed one or more laying seasons, are preferred by many purchasers as more likely to live than those from eggs of a young hen or pullet;
- (b) Represented that the eggs from which her said chicks were hatched had been "blood tested" for either eleven or twelve consecutive years, facts being that, while individual in question did make annual tests of the flocks from which she bought eggs for hatching, such testing did not and could not make any flock 100% free from the diseases or blood tested at the various times at which the eggs were obtained for hatching; and
- (c) Represented that she had at all times had chickens of various breeds or types available for immediate delivery, facts being she did not at all times have ample supply of various breeds and types, as represented, available for such delivery, and at times made substitutions of different breed or type from those specifically ordered, without obtaining purchaser's consent, or failed to make shipment or notify purchasers promptly of her inability to fill order or return money forwarded therewith, or failed to make shipment within time specified or a reasonable time thereafter or to notify purchasers of such unreasonable delay;

With result that purchasers were misled and injured by such misrepresentations and practices as respects such matters of major importance to purchaser as time of delivery and delivery of kind ordered, and a substantial portion of the purchasing public were misled and deceived into the erroneous belief that the said representations, as above set forth, were true, and, acting thereon, were induced to order and buy her said products, and trade was diverted to her from those of her competitors who do not misrepresent their products or engage in such practices; to the substantial injury of competitors in commerce and of the public:

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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. John W. Norwood*, trial examiner.

Mr. Wm. T. Chantland for the Commission.

Mr. C. B. Hays, of Corydon, Ind., 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 Nolan Atz, Gusta Atz, and John Edward Atz, trading under the names Atz's Hatchery, Atz's Blue Mound Hatchery, and Atz's Mammoth Hatchery, 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 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. Respondents Nolan Atz, Gusta Atz, and John Edward Atz, are individuals doing business at all times since on or about 1924, under the trade names Atz's Hatchery, Atz's Blue Mound Hatchery, and Atz's Mammoth Hatchery with their principal places of business located in Milltown and Huntingburg in the State of Indiana.

Respondents are now, and have been for several years last past, engaged in the business of hatching, selling, and distributing poultry, more particularly young chickens which are commonly known and referred to as "baby chicks." The business in which the respondent is engaged is commonly known as and is hereinafter referred to as the chick hatchery business. Respondents in the course and conduct of their business sell and distribute said "baby chicks" to members of the public and cause said "baby chicks" when sold to be transported from the State of Indiana, or the State of origin of the shipment, to purchasers thereof located at points in the various States of the United States other than the State of Indiana, or the State of origin of the shipment. There is now, and has been during all the times herein mentioned, a constant current of trade in commerce in products sold by respondents 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, respondents are now, and have been during all the times herein mentioned, en-

gaged in substantial competition with various other individuals, firms, and corporations engaged in hatching, selling and offering for sale "baby chicks" to members of the general public in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Many purchasers of "baby chicks" believe that a "baby chick" hatched from the egg of an "old hen" is more likely to live than one hatched from a young hen, commonly known as a pullet; and the term or designation "old hen" refers to a hen that has completed one or more laying seasons. There is a preference among purchasers of "baby chicks" for "baby chicks" hatched from the eggs of "old hens."

In the course and conduct of their business as aforesaid in soliciting the sale of and in selling their "baby chicks" in said commerce, respondents advertise and have advertised in periodicals having national circulation, more particularly among farmers. In said advertisements respondents falsely represent, among other things, that the "baby chicks" advertised and offered for sale by them are hatched from the eggs of "old hens."

When in truth and in fact not all the "baby chicks" advertised and offered for sale are hatched from the eggs of "old hens" but many are hatched from the eggs of young hens or pullets with no definite determination of percentage of either.

PAR. 4. To purchasers of "baby chicks" the term "blood tested" means and refers to poultry flocks that have been tested for certain diseases common to poultry and from which flocks the diseased poultry have been eliminated, and it is believed by such purchasers that "baby chicks" hatched from the eggs of flocks that have been "blood tested" for a period of several years are less likely to be infected with said diseases than are those from flocks that have not been "blood tested" over such period of time. There is a preference among such purchasers for "baby chicks" hatched from the eggs of poultry flocks that have been "blood tested" for a period of several years.

In the course and conduct of their business as aforesaid, in soliciting the sale of and in selling their "baby chicks" in interstate commerce respondents, by the means and in the manner above alleged, falsely represent, among other things, that flocks producing the eggs from which respondents' chicks are hatched have been "blood tested" for either 11 or 12 consecutive years.

When in truth and in fact the flocks producing the eggs from which respondents' chicks are hatched have not been "blood tested" for a period of either 11 or 12 consecutive years.

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PAR. 5. There are various breeds and types of chickens, each having its own characteristic and value to purchasers of "baby chicks."

In the course and conduct of their business as aforesaid, in soliciting the sale of and in selling their "baby chicks" in said commerce, respondents, by the means and in the manner above alleged, falsely represent that they have chickens of various breeds or types available for immediate delivery.

When in truth and in fact said respondents do not have the various breeds and types of chickens as represented, available for immediate delivery; and upon receipt of orders for specific breeds or types from purchasers, substitute a different breed or type of "baby chick" from those specifically ordered without first obtaining the consent of the purchasers for such substitution.

PAR. 6. The time at which delivery of "baby chicks" is made is of major importance to the purchaser, for the business is of a seasonal and hazardous nature and unless delivery is made as specified in the contract of purchase the "baby chicks" are worthless or of much less value to the purchaser than they are when delivered as specified. Because of these facts, "time of the delivery of baby chicks becomes of the essence" in every contract for the purchase and sale of "baby chicks."

In the course and conduct of their business respondents, by the means and in the manner above alleged, falsely represent, among other things, that their "chicks are hatched by the thousands daily for immediate delivery."

When in truth and in fact said respondents have not "baby chicks" of specific breed or types available for immediate delivery in all cases. In this connection, in many instances, the respondents do not make any shipment at all, nor do they notify the purchasers of their inability to fill the orders or return the purchase money forwarded with the orders. In other instances, shipment is not made within the time specified or within a reasonable time thereafter, and purchasers are not notified of this unreasonable delay, nor do the respondents offer to or return the purchase money paid.

PAR. 7. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, those engaged in the business of producing, selling and offering for sale in said commerce "baby chicks" who do not in any way misrepresent their "baby chicks"; and who do not substitute a type of breed of chickens different from those ordered; and who do not delay or refuse shipment.

PAR. 8. The acts and practices of the respondents as above alleged in the course of selling and offering for sale their "baby chicks" in commerce as aforesaid, have the capacity and tendency to

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mislead and deceive and have misled and deceived a substantial portion of the purchasing public into the erroneous belief that the said representations are true and, acting on such erroneous belief, the said purchasing public has been induced to purchase and has purchased respondents' products, thereby diverting trade to the respondents from those of its competitors who do not misrepresent their products, whereby substantial injury is done to respondents' competitors in interstate commerce and to the injury of the public.

PAR. 9. The above and foregoing acts and practices have been and are all to the prejudice of the public and the respondents' competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of "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 3, 1936, issued and served its complaint in this proceeding upon respondents, Nolan Atz, Gusta Atz, and John Edward Atz, trading under the names Atz's Hatchery, Atz's Blue Mount Hatchery, and Atz's Mammoth Hatchery, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 10, 1936, respondent, Nolan Atz, filed his answer to said complaint. Thereafter, on October 27 a separate stipulation was entered into between said Nolan Atz and the Federal Trade Commission, pursuant to which an order was entered on October 30, 1936, closing the case as to Nolan Atz.¹

On August 11, 1936, respondent, Gusta Atz, filed an answer on behalf of herself and respondent, John Edward Atz. Thereafter testimony and evidence in support of the allegations of said complaint were introduced by William T. Chantland, attorney for the Commission, before John W. Norwood, an examiner of the Com-

¹ "This matter coming on for consideration by the Commission upon the record and it appearing that the respondent, Nolan Atz, has entered into a stipulation of the facts and an agreement to cease and desist from certain enumerated practices, which stipulation and agreement, on the 27th day of October 1936, was 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 against Nolan Atz, respondent, growing out of the complaint hereinbefore issued on August 3, 1936, be, and the same hereby is, closed as to the said Nolan Atz, respondent, without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint as to said Nolan Atz, respondent, in accordance with its regular procedure."

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mission theretofore duly designated by it, and in defense of the allegations of the complaint by C. B. Hays, attorney for the respondent Gusta Atz; 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, and brief in support of the complaint, respondents having filed no 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, Gusta Atz and Nolan Atz, since about 1924 and up to July 1, 1935, were associated in the business of hatching baby chicks and of advertising them for sale and selling and shipping same by mail and express to purchasers in various States of the United States from a hatchery and place of business at Milltown, Ind., and since November 1, 1935, also from a hatchery at Huntingburg, Ind. Said business is commonly known as the chick hatchery business. Since July 1, 1935, respondent, Gusta Atz, has personally owned and conducted said businesses except that for a part of the "off season" of 1935, the Milltown plant and business was turned over to her son, John Edward Atz, and his wife, to conduct on their own and make what they could out of it. The advertisements then used were prepared and the business policy controlled by respondent, Gusta Atz.

PAR. 2. At all times during said period there has been a constant current of trade in baby chicks sold by respondent, Gusta Atz, in commerce between and among various States of the United States. The volume at times in the late winter and early spring, in what is known as "the season," was such that it brought in receipts up to \$1,000.00 per day. For 1934, the gross receipts for chicks shipped outside the State of Indiana was approximately 80% of \$28,813.47. In 1936 the gross sales were \$94,034.78 from Huntingburg and \$71,525.73 from Milltown.

PAR. 3. In the course and conduct of her business, respondent, Gusta Atz, is now, and has been during all the times herein mentioned, engaged in substantial competition with various other individuals, firms, and corporations engaged in hatching, selling and offering for sale baby chicks to members of the general public in commerce among and between the various States of the United States

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and in the District of Columbia. Quite a number of such competitors are located throughout southern Indiana, in the vicinity of respondent's plants.

PAR. 4. In the course and conduct of her business as aforesaid in soliciting the sale of and in selling baby chicks in said commerce, respondent, Gusta Atz, advertises and has advertised in periodicals having national circulation, more particularly among farmers. In said advertisements she has represented, among other things, that the baby chicks advertised and offered for sale by her are hatched from the eggs of hens or old hens, meaning thereby birds of a prior season's hatch, and not pullets. In such advertisements respondent made, among others, the following representations as to the chicks offered for sale by her:

Superior grade from old hens' eggs;
 from all old hens' eggs;
 from hens' eggs; and
 these (baby chick) cockerels and pullets are from old hens' eggs and our special matings.

The baby chicks sold by respondent, Gusta Atz, following the making of such representation were not in fact all hatched from hens or old hens, in that not more than 10% of the flocks from which said respondent has purchased eggs which are gathered by trucks from the various farms and poultry raisers for hatching and sale of chicks were composed entirely of old hens, and there is no practical way for a large hatchery to obtain or definitely select and separate old hens' eggs from pullets' eggs.

Such advertising is an inducement to purchase chicks from said respondent, in that many purchasers of baby chicks believe that a baby chick hatched from the egg of an old hen is more likely to live than one hatched from a young hen, commonly known as a pullet; and the term or designation "hen" or "old hen" refers to a hen that has completed one or more laying seasons, and there is therefore a preference among purchasers of baby chicks for baby chicks hatched from the eggs of hens or old hens.

PAR. 5. In the course and conduct of her business as aforesaid, in soliciting the sale of and in selling baby chicks in interstate commerce respondent, Gusta Atz, represents in her advertising that flocks producing the eggs from which respondent's chicks are hatched have been "blood tested" for either 11 or 12 consecutive years.

Such advertising is an inducement to buy said respondent's chicks in that, to purchasers of baby chicks the term "blood tested" means and refers to poultry flocks that have been tested for certain diseases common to poultry and from which flocks the diseased poultry have

been eliminated, and it is believed by such purchasers that baby chicks hatched from the eggs of flocks that have been blood tested for a period of several years are less likely to be infected with said diseases than are those from flocks that have not been blood tested over such period of time. Blood testing, as generally understood in the chick hatchery business and by poultry buyers, is made on each bird of a flock, and is for reactions to disclose the presence either of "B. W. D.", (bacillary white diarrhea) or fowl typhoid, which are two serious ailments to poultry.

Respondent, Gusta Atz, in fact did make annual tests of the flocks from which she bought eggs for hatching, but such testing did not and could not make any flock 100% free from the diseases or blood tested at the various times at which the eggs were obtained for hatching. Such blood testing is a beneficial and highly necessary practice, as is evidenced by the fact that on first tests of a new flock, the reactions would run around 20% to 25% of the number tested, whereas tests in flocks from blood tested parentage would show perhaps only 1% or 2% reactions. There, is therefore, a preference among such purchasers for baby chicks hatched from the eggs of poultry flocks that have been blood tested for a period of several years.

PAR. 6. In the course and conduct of her business as aforesaid, in soliciting the sale of and in selling baby chicks in said commerce, respondent, Gusta Atz, has represented that she has at all times had chickens of various breeds or types available for immediate delivery.

Such advertising is an inducement to buy said respondent's chicks, in that the time at which delivery of baby chicks is to be made is of major importance to the purchaser, for the business is of a seasonal and hazardous nature, and unless delivery is made of the kind ordered and at the time specified in the purchase order, the baby chicks are worthless or of much less value to the purchaser, than they are if delivered promptly as specified or promised. Thus time and accuracy as to specified breed and kinds and sex of the delivery of baby chicks is a strong inducement to those ordering baby chicks.

Respondent, Gusta Atz, did not at all times have an ample supply of the various breeds and types of chickens as represented, available for immediate delivery; and at times, upon receipt of orders for specific breeds or types from purchasers, substitutions of a different breed or type of baby chicks from those specifically ordered were made, without first obtaining the consent of the purchasers for such substitution. The result was the purchasers were misled to their injury by such misrepresentations and practices of respondent.

In other instances, said respondent did not make any shipment at all, or notify the purchasers promptly of her inability to fill the or-

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ders or return the purchase money forwarded with the orders. In still other instances, the shipment was not made within the time specified or within a reasonable time thereafter, and purchasers were not notified of this unreasonable delay. In other instances undue delay occurred before adjustments were made. These acts and practices resulted in injury to the purchasers.

PAR. 7. There are among the competitors of respondent, Gusta Atz, those engaged in the business of producing, selling, and offering for sale in commerce baby chicks who do not in any way misrepresent their product or its character and origin; and who do not substitute a type or breed of chickens different from those ordered; and who do not unduly delay or neglect to ship.

PAR. 8. The acts and practices of the respondent, Gusta Atz, alleged in the course of selling and offering for sale her baby chicks in commerce as aforesaid, have the capacity and tendency to mislead and deceive and have misled and deceived a substantial portion of the purchasing public into the erroneous belief that the said representations are true and, acting on such erroneous belief, the said purchasing public has been induced to purchase and has ordered and purchased said respondent's products, thereby diverting trade to said respondent from those of her competitors who do not misrepresent their products or engage in such practices, whereby substantial injury is done to respondent's competitors in interstate commerce, and to the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Gusta Atz, are to the prejudice of the public and of the 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 against respondents, Gusta Atz and John Edward Atz, and the answer of said 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 said complaint and in opposition thereto, brief in support of the complaint, respondents' counsel having waived the filing of a brief, and the Commission having made its findings as to the facts and its conclusion that said respondent, Gusta

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Atz, 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, Gusta Atz, personally and trading as Atz's Hatchery, Atz's Blue Mount Hatchery, and Atz's Mammoth Hatchery, her representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of baby chicks in interstate commerce or in the District of Columbia, do forthwith cease and desist, directly and indirectly, from representing:

1. That baby chicks hatched from pullet eggs are hatched from hens' eggs or from old hens' eggs;

2. That baby chicks are from eggs of flocks 100% blood tested at the time the eggs are purchased for setting, when said eggs are from flocks over which she has not had continuous control and supervision since said flocks were tested;

3. That prompt delivery of baby chicks of the kind and quantity ordered is guaranteed, or can and will be made, when such is not the fact;

4. That prompt adjustments or refunds on complaints will be made, when such is not the fact, and when no advice is promptly given of inability, for any reason, properly and promptly to fill any order.

It is further ordered, That this proceeding as to John Edward Atz be, and the same is hereby, dismissed.

It is further ordered, That the respondent, Gusta Atz, 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.

Syllabus

IN THE MATTER OF

KING TRADING 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 2655. Complaint, Sept. 14, 1936¹—Decision, Apr. 28, 1937

Where the names, letters, and symbols "Marconi," "Victor," "R. C. A.," "Edison," "Bell," and representation of a bell, "Majestic," "Brunswick," and the letters "G. E." in a circle with scroll-like interior decorations, as names and designations of well-known and long-established individuals, companies, and corporations, and long used and extensively advertised by the various owners thereof, had come to be known and identified with the radio sets, radio parts, and like products of said owners, and constituted their standard brands and symbols when used as company, corporate and trade names, and, as well-known marks and brands on such products thus identified, had a fixed and stable value in the trade and industry generally, throughout the United States and foreign countries, upon which well-known brands, etc., purchasing public relied when thus used on radio sets, etc., and in said industries, as indicating high standard, reliable and genuine products, and use of such names, letters, and symbols influenced purchase thereof and increased sales, and said names, letters, and symbols, thus attached, had value to the thousands of dealers engaged in the sale and distribution of such standard brand products, and were valuable to the owners thereof, who had used and used and employed the same in commerce; and thereafter

- (1) Two corporations and three individuals, officers and agents thereof, engaged in manufacture of escutcheons and name plates upon which they etched or stamped names, marks, brands, and symbols for use on radio sets and radio parts, and in sale thereof to manufacturers and dealers in such products;
- (2) Two corporations and three individuals, in their individual capacity and as agents of said corporations, engaged in manufacture, assembly, and sale of radio sets upon which they placed and caused to be placed escutcheons and name plates purchased from the hereinabove described manufacturers and sellers thereof; and
- (3) Four corporations and two individuals engaged in sale and distribution of such products purchased from the hereinbefore described concerns and individuals and upon which there were affixed, as above set forth, escutcheons and name plates with names, marks, brands, and symbols etched or stamped thereon to designate the names, etc., of the makers and brand names of the said products; in furtherance of a scheme engaged in by such various manufacturers and dealers to deceive the public and compete unfairly with other manufacturers and dealers in such sets and parts, and escutcheons and name plates, through affixing such articles, bearing names, marks, brands and symbols of corporations and individuals well known and long established in the radio and similar industries, and

¹ Amended and supplemental.

without the authority or consent of the legal owners and users of such various names, etc., respectively, and as the case might be—

- (a) Sold, distributed, and furnished name plates and escutcheons for radio sets and similar products, bearing names, letters and symbols "Marconi," "Edison," "Bell," "Victor," "Majestic," "Brunswick," "R. C. A.," and "G. E." and colorable imitations or simulations thereof, to manufacturers and assemblers of and dealers in such products as hereinbefore described, and without consent of the lawful owners or licensees of such various names, etc.; and
- (b) Represented, through use of such names, marks, letters, or symbols, and such colorable simulations and imitations thereof as "Marconi-International," "Marconi Radio Corporation," "Edison-International," "Edison-Bell" with representation of a bell, "Edison Radio Stores, Inc.," "Victor International," "Majestic International," "Brunswick," letters "R. C. I.," "R. S. A.," and "E. B.," and without the permission of the lawful owners thereof, that the radio sets, parts and like devices, appliances or products made or assembled for or by, and sold by, said various corporate and individual manufacturers of and dealers in such said parts, etc., were made, assembled, sponsored, endorsed, and approved, or licensed by Thomas A. Edison or Thomas A. Edison, Inc., American Telephone & Telegraph Co., Western Electric Co., Marconi Wireless Telegraph Corporation of America, Radio Corporation of America, Victor Talking Machine Company, Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., Brunswick Radio Corporation, Grigsby-Grunow Company, Majestic Radio & Television Corporation, or General Electric Company, or by the agents, representatives, successors, or assigns of such various individuals and concerns;

With result that public was led to believe that products thus sold and marked and identified were those of the said well known respective companies or interests hereinabove set forth, and there was an appropriation by said manufacturers of escutcheons and name plates, and manufacturers and assemblers of and dealers in sets and parts as hereinbefore set forth, of the good will of the respective competitor companies and interests hereinbefore referred to, and an unfair diversion of business from such competitor companies to such name plate manufacturers, etc., and also such unfair diversion of business from other competitors who do not resort to such practice, and with the result, by reason of such wholly unauthorized use of names, brands, etc., of giving to the goods of aforesaid manufacturers, assemblers and dealers a salability which they would not otherwise have, and of giving to such manufacturers, etc., an advantage over their competitors who do not similarly misrepresent the true origin of their goods and conceal the same under a reputable but false source, and of deceiving the public buying products of said manufacturers, etc., into the false belief that such products originated with well known and reputable concerns, and with the further result of placing in the hands of others, to whom said products thus marked were sold, means whereby injury might be and was done to competitors dealing in the genuine, honestly marked goods:

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

Before *Mr. William C. Reeves*, trial examiner.

Mr. Carrel F. Rhodes and *Mr. John L. Hornor* for the Commission.
Mr. Charles Green, of Philadelphia, Pa., for Harvard Radio Tube Testing Stations of Pa., Inc., and *Julius M. Schoenberg*.

McQuiston & Malcolm, of New York City, for Metal Etching Corp. and M. Herman.

Mr. Herman Goldman, of New York City, for Premier Metal Etching Co. and its officers, directors and agents thereof.

Fuller, Brown, Hubbard & Felt of Utica, N. Y., for American Emblem Co. and its officers, directors, and agents thereof.

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 King Trading Corporation, Royal Radio Company, Inc., Metro Manufacturing Company, Inc., Metro Radio Corporation, Metro Sales Company, Inc., Pyramid Distributors, Inc.; and Murray Auerbach, Regina Gadol, George Levine, A. M. Frank, Max Scafford, and David Morrison individually, and as officers, directors, and agents of said several corporations; and Harvard Radio Tube Testing Stations of Pa., Inc., and Julius M. Schoenberg individually, and as president, director, and agent of said corporation; Ross Distributing Co., and Larry B. Ross individually, and as president, director, and agent of said corporation; Sun Radio and Service Supply Corporation, and Emanuel Rosensweig individually, and as president, director, and agent of said corporation; Schiller Brothers, Inc., and Louis S. Schiller individually, and as president, director, and agent of said corporation; Peter Robbins individually, and trading under the names Robbins Radio Company and Ambassador Radio Company; F. C. Scruggs individually, and trading under the name Call Radio Company; Metal Etching Corporation, and M. Hermann individually, and as president, director, and agent of said corporation; Etched Products Corporation, and Albert Nierenberg and Walter H. Miller individually, and as officers, directors, and agents of said corporation; Electro Chemical & Engraving Company, and F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes and L. S. Southwick individually, and as officers, directors, and agents of said corporation; Premier Metal Etching Company, and Herbert Pape, Carl J. Johnson, Ernest A. Rottach and Hugo Lehrfeld individually, and as officers, directors, and agents of said corporation; Crowe Nameplate and Manufacturing Company, and E. C. Coolidge and I. Robinson Smith individually, and as officers, directors, and agents of said corporation; American Emblem Company, and Paul B. Williams, Clarence S. C. Williams, James Eels, Fred B. King, and Edgar Denton, Jr. individually, and

as officers, directors, and agents of said corporation have been and now 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) Respondents King Trading Corporation, Royal Radio Company, Inc., Metro Manufacturing Company, Inc., Metro Radio Corporation, Metro Sales Company, Inc., and Pyramid Distributors, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York with their principal places of business at 51 Vesey Street, 168 Washington Street, 142 Liberty Street, 217 West 125th Street, and 122 Cypress Street in the city of New York in said State. The officers, directors, and agents of said companies who have participated in the practices herein alleged during all or part of the time here involved, are the following: Murray Auerbach, Regina Gadol, George Levine, A. M. Frank, Max Scafford, and David Morrison.

The said respondent corporations and the said respondent individuals individually, and as officers, directors, and agents of said corporations are, and have been for more than six years last past, engaged in manufacturing, assembling and selling radio sets, radio tubes, and like products. The business carried on by said respondent corporations and said respondent individuals is namely that of manufacturing and assembling radio sets, radio tubes, and like products and selling said products to dealers and the purchasing public, the profits from which enure to said individuals. Said respondents manufacture, sell and ship said radio sets, radio tubes, and like products to dealers and buyers among the purchasing public throughout the United States, and in the District of Columbia, and foreign countries in interstate and foreign commerce.

Other individuals, partnerships, and corporations who have been, and now are, involved in the subject matter of this complaint, are the following:

(b) Respondent Harvard Radio Tube Testing Stations of Pennsylvania, Inc., a corporation organized under and by virtue of the laws of the State of Pennsylvania, domiciled and doing business at 208 North Broad Street in the city of Philadelphia in said State, and respondent Julius M. Schoenberg an individual, individually and as president, director, and agent of said company.

(c) Respondent Ross Distributing Company, a corporation organized under and by virtue of the laws of the State of Pennsylvania, domiciled and doing business at 2020 Chancellor Street in

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the city of Philadelphia in said State, and respondent Larry B. Ross an individual, individually and as president, director, and agent of said company.

(d) Respondent Sun Radio and Service Supply Corporation, a corporation organized under and by virtue of the laws of the District of Columbia, domiciled and doing business at 938 F Street, N. W. in the city of Washington in said District of Columbia, and respondent Emanuel Rosensweig an individual, individually and as president, director, and agent of said company.

(e) Respondent Schiller Brothers, Inc., a corporation organized under and by virtue of the laws of the District of Columbia, domiciled and doing business at 922 F Street, N. W. in the city of Washington in said District of Columbia, and respondent Louis S. Schiller an individual, individually and as president, director, and agent of said company.

(f) Respondent Peter Robbins an individual, individually and trading under the names Robbins Radio Company and Ambassador Radio Company, domiciled and doing business at 940 F Street, N. W. in the city of Washington in the District of Columbia.

(g) Respondent F. C. Scruggs an individual, individually and trading under the name Call Radio Company, domiciled and doing business at 636 H Street, N. E. in the city of Washington, in the District of Columbia.

(h) Respondent Metal Etching Corporation, a corporation organized under and by virtue of the laws of the State of New York, domiciled and doing business at 1001 Essex Street in the city of Brooklyn in said State, and respondent M. Hermann an individual, individually and as president, director, and agent of said company.

(i) Respondent Etched Products Corporation, a corporation organized under and by virtue of the laws of the State of New York, domiciled and doing business at 3901 Queens Boulevard in Long Island City in said State, and respondents Albert Nierenberg, and Walter H. Miller individuals, individually and as officers, directors, and agents of said company.

(j) Respondent Electro Chemical and Engraving Company, a corporation organized under and by virtue of the laws of the State of New York with its principal office and place of business at 1100 Brook Avenue, in the Borough of the Bronx, city of New York in said State, and respondents F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes, and L. S. Southwick individuals, individually and as officers, directors, and agents of said company.

(k) Respondent Premier Metal Etching Company, a corporation organized under and by virtue of the laws of the State of New York,

domiciled and doing business at 2103 44th Avenue in the city of Long Island in said State, and respondents Herbert Pape, Carl J. Johnson, Ernest A. Rottach, and Hugo Lehrfeld individuals, individually and as officers, directors, and agents of said company.

(l) Respondent Crowe Nameplate and Manufacturing Company, a corporation organized under and by virtue of the laws of the State of Illinois, domiciled and doing business at 1749 Grace Street in the city of Chicago in said State, and respondents E. C. Coolidge and I. Robinson Smith, individuals, individually and as officers, directors, and agents of said company.

(m) American Emblem Company a New York corporation with domicile at Rochester, N. Y., and a place of business at 22 East 40th Street in the city of New York in said State, and respondents Paul B. Williams, Clarence S. C. Williams, James Eels, Fred B. King, and Edgar Denton, Jr. (all domiciled in the city of Utica in said State), individuals, individually and as officers, directors, and agents of said corporation.

Said respondents hereinabove described under sub-paragraphs (b), (c), (d), (e), (f), and (g) of paragraph 1 are dealers in radio receiving sets, radio tubes, and like products. Said respondents during the course and conduct of their business sell and ship said radio sets, radio tubes, and like products to the purchasing public in interstate and foreign commerce from their several places of business in Pennsylvania and the District of Columbia through and into other States of the United States, and in the District of Columbia, and foreign countries in interstate and foreign commerce.

Said respondents hereinabove described under sub-paragraphs (h), (i), (j), (k), (l), and (m) of paragraph 1 in the course and conduct of their business manufacture and sell nameplates and escutcheons for use and used upon radio sets to describe or designate the makers or brand names of said products. Said respondents during the course and conduct of their said several businesses, have and do manufacture for sale and sell and ship to respondent King Trading Corporation and the several other respondent corporations, associations, partnerships and individuals designated in paragraph 1 (a), (b), (c), (d), (e), (f), and (g) escutcheons and nameplates to be used and used and sold by said respondents to dealers and others to be used on and in connection with radio sets, radio tubes, and like products as marks or brands to designate the names of the makers and brand names used by makers of said products.

PAR. 2. Respondent King Trading Corporation, and all of the several respondent corporations, associations, partnerships, and individuals described in paragraph 1 (a), (b), (c), (d), (e), (f), and (g) are

now and have been for several years last past engaged in manufacturing, assembling, selling, marketing, and distributing radio sets, radio tubes, and like products and in the course and conduct of their said several businesses respondents have caused and now cause said radio sets, radio tubes, and like products when sold to be transported by them from their several respective places of business into and through the various States of the United States, the District of Columbia and in foreign commerce to the purchasers thereof in such other States, in the District of Columbia and foreign countries in substantial competition with other corporations, partnerships, and persons engaged in the sale and transportation of radio sets, radio tubes, and like products in interstate and foreign commerce.

PAR. 3. For the purpose of selling said radio sets, radio tubes, and like products and to induce the public to buy said products, respondent King Trading Corporation and the several other respondent corporations, associations, partnerships, and individuals set out and described in paragraph 1 (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), and (*m*) cooperating among themselves and together with one another, have been for several years last past and are now, engaged in a scheme to deceive the public and to compete unfairly with other manufacturers and dealers in radio sets, radio tubes, and like products who are in competition with respondents in interstate and foreign commerce. In furtherance of said scheme respondents have adopted, made, used and sold and now make, use, sell and ship in interstate and foreign commerce to distributors, dealers, and others radio sets, radio tubes, and like products, and escutcheons and nameplates (to be used on radio sets, radio tubes, and like products) bearing the names, marks, brands, and symbols of corporations and individuals well-known and long established in the radio and like industries, which names, marks, brands, and symbols were adopted and used and are now being used by respondents and others without authority or consent from the legal owners and users of said names, marks, brands, and symbols.

Among the names, marks, brands, and symbols so made, adopted and used by respondents are the following:

Marconi, Marconi International, Marconi Radio Corporation; Edison, Edison International, Edison-Bell, Edison with a representation of a bell, Edison Radio Stores, Inc.; Bell, Bell with a representation of a bell; Victor, Victor International; Majestic, Majestic International, Majestic Radio Corporation; Brunswick (Brunswick a colorable imitation of the name Brunswick); RCA and (RCI, RSA colorable imitations of the letters RCA); the letters EB (a colorable imitation of the letters GE) standing alone or stamped upon the

representation of a bell, and the names Marconi, Edison, Bell, Victor, Majestic, Brunswick or Bronswick standing alone or in conjunction with other words, names, and devices.

Said respondents, set out and described in paragraph 1 (*h*), (*i*), (*j*), (*k*), (*l*), and (*m*), without authority or consent of the legal owners of said names, marks, brands, and symbols make, use, advertise, sell, and ship in interstate and foreign commerce said nameplates and escutcheons so marked and stamped with said well-known and long established names, marks, brands, and symbols as hereinabove set out, and said respondents, King Trading Corporation and the other respondents, set out and described in paragraph 1 (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), and (*g*), advertise said nameplates and escutcheons, and radio sets and like products upon which said nameplates and escutcheons so marked, stamped, and branded with said well-known and long established names, marks, brands, and symbols of others as hereinabove set out, without authority or consent of the owners thereof, in catalogues, newspapers, and other periodicals circulated in interstate and foreign commerce, and sell and ship said nameplates and escutcheons, and radio sets and like products so marked from their respective places of business to purchasers thereof, located in States other than the State of origin of said shipments and in the District of Columbia and foreign countries in interstate and foreign commerce. All of which said acts and things are committed and done in pursuance and as a part of said scheme entered into, agreed upon, and participated in by King Trading Corporation, its officers, directors, and agents and each and all of the respondents hereinabove designated in paragraph 1 (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), and (*m*).

PAR. 4. The use by respondents of the names, marks, brands, symbols, and devices as set out in paragraph 3 is wholly unauthorized by the owners of said names, marks, brands, symbols, and devices and gives to respondents' goods a salability which they would not otherwise have, and gives to said respondents an advantage over their competitors who do not similarly misrepresent the true origin of their goods and conceal the same under a reputable but false origin as do respondents. The said appropriation and use by said respondents of the reputation and goodwill of others at the expense of and injury to such others who have created such reputation and goodwill has the capacity and tendency to deceive, and deceives the public purchasing said products into believing 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. 5. (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 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, and has been used and extensively advertised by, and is the rightful property of Radio Corporation of America and its subsidiaries.

(b) For many years last past the Victor Talking Machine Company, 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 Company 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 twenty-five years the Victor Talking Machine Company 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 Company 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 and like products is the rightful property of the RCA-Victor Co. and the Victor Division of the RCA Manufacturing Company.

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. Neither said Guglielmo Marconi nor Radio Corporation of America or any of its subsidiaries have ever granted (or consented) to respondents the right to the use of the name Marconi or the name Victor or the letters RCA (or RSA and RCI colorable imitations of the letters RCA) in any manner.

PAR. 6. For more than thirty years prior to his death on October 16, 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 manufacturer 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 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.

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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. Neither Thomas A. Edison or the said Thomas A. Edison, Inc. have ever granted (or consented) to respondents the right to the use of the name "Edison" in any manner.

PAR. 7. 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. Neither the said Alexander Graham Bell nor the American Telephone and Telegraph Company and its subsidiaries nor Western Electric Company, Inc. have ever granted (or consented) to respondents the right to the use of the name "Bell" in any manner.

PAR. 8. 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 were extensively advertised, sold and shipped in interstate and foreign commerce by the said Grigsby-Grunow Company. Said name "Majestic" is now vested in Majestic Radio and Television Corporation of Illinois, which now manufactures, sells and ships in interstate and foreign commerce radio sets, radio tubes, and like products branded or marked with the name Majestic. Neither Grigsby-Grunow Company, its successors or assigns nor Majestic Radio and Television Corporation of Illinois have ever granted (or consented) to respondents the right to the use of the name "Majestic" in any manner.

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PAR. 9. During many years last past the Brunswick-Balke-Collender Co. has been a large manufacturer of billard and pocket billard 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 products. 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 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 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 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 used by the Brunswick-Balke-Collender Co. and the Brunswick Radio Corporation on radio sets, phonographs and combination radio and phonograph sets. Neither Brunswick-Balke-Collender Co., Warner Broth-

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ers Pictures, Inc. or Brunswick Radio Corporation have ever granted (or consented) to respondents the right to the use of the name Brunswick (or Bronswick a colorable imitation thereof) in any manner.

PAR. 10. A device of a circle with scroll-like interior projections enclosing the script letters "GE" 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 "EB" is a colorable imitation of this well-known device. Neither Thomas A. Edison, Thomas Edison Inc., Alexander Graham Bell, American Telephone and Telegraph Company, Western Electric Company, nor said General Electric Company or any of its subsidiaries have ever granted (or consented) to respondents the right to the use of the letters "EB" in any manner.

PAR. 11. The offering for sale and sale and shipment by respondents in interstate and foreign commerce, as set out in paragraphs 1, 2, 3, and 4 hereof, to dealers in radio sets, radio tubes, and like products of escutcheons, or name plates stamped or branded with the well-known names, marks, brands, and symbols of others without their consent, and the offering for sale and sale and shipment in interstate and foreign commerce by respondents of radio sets, radio tubes, and like products branded or marked with the names, marks, brands, and symbols of others without authority or consent of the owners thereof, places in the hands of dealers and others the means whereby injury might be done and is done to competitors and the purchasing public, and all of the acts and things alleged and done by respondents are each and all of them to the injury and 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 14th day of September 1936, issued and served its amended and supplemental complaint, hereinafter

known as the complaint, in this proceeding, upon the following named corporations and individuals:

Respondents, Etched Products Corporation, Albert Nierenberg, Walter H. Miller, Electro Chemical Engraving Company, F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes, L. S. Southwick, Premier Metal Etching Company, Herbert Pape, Karl D. (named Carl J.) Johnson, Ernest A. Rottach, Hugo Lehrfeld, American Emblem Company, Paul B. Williams, Clarence S. C. Williams, James Eels, Fred B. King, Edgar Denton, Jr., Metal Etching Corporation, M. Hermann, Crowe Nameplate and Manufacturing Company, E. C. Coolidge, I. Robinson Smith, King Trading Corporation, Royal Radio Company, Inc., Murray Auerbach, A. M. Frank, David (I.) Morrison, Harvard Radio Tube Testing Stations of Pennsylvania, Inc., Julius M. Schoenberg, Ross Distributing Company, Larry B. Ross, Sun Radio and Service Supply Corporation, Emanuel Rosensweig, Schiller Brothers, Inc., Louis Schiller, Peter Robbins, trading as Robbins Radio Company and Ambassador Radio Company, and F. C. Scruggs, trading as Call Radio Company.

Respondents, Metro Manufacturing Company, Inc., Metro Radio Corporation, Metro Sales Company, Inc., Pyramid Distributors, Inc., George Levine, Max Scafford, and Regina Gadol could not be located and were not served with copies of the complaint.

Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and the answers thereto; and the Commission having duly considered the matter and being now 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

PARAGRAPHS 1. Respondents, Etched Products Corporation, Walter H. Miller, Albert Nierenberg, Electro Chemical and Engraving Company (named in the complaint Electro Chemical Engraving Company), F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes, L. S. Southwick, Premier Metal Etching Corporation, Karl D. (named in the complaint Carl J.) Johnson, Ernest A. Rottach, Hugo Lehrfeld, American Emblem Company, Paul B. Williams, Clarence S. C. Williams, James Eels, Fred B. King, and Edgar Denton, Jr., filed answers in which they deny all the material allegations of the complaint. It appears that said respondents did not participate in the acts and practices charged in the complaint, and the complaint should be dismissed as to said respondents.

PAR. 2. Respondent, Metal Etching Corporation, is a corporation organized under the laws of the State of New York, domiciled and doing business at 1001 Essex Street, Brooklyn, N. Y., and respondent, M. Hermann, was and is an officer and agent of said corporation.

Respondent, Crowe Nameplate and Manufacturing Company, is a corporation organized under the laws of the State of Illinois, domiciled and doing business at 1749 Grace Street, Chicago, Ill., and respondents E. C. Coolidge and I. Robinson Smith are officers and agents of said corporation.

Respondents hereinabove named are now, and have been for several years last past, engaged in the manufacture and sale of escutcheons and nameplates—upon which said products they have etched or stamped names, marks, brands, and symbols—for use as marks and brands on radio sets and radio parts to designate the names, marks, brands, and symbols of the makers and brand names of said radio sets and radio parts. They have sold and shipped and now sell and ship products to manufacturers and dealers in radio sets and radio parts, including the respondents named in paragraphs 3 and 4 hereof. They have caused and now cause said escutcheons and nameplates so marked and branded when sold to be transported from their respective places of business in the States of New York and Illinois to purchasers thereof at their respective points of location in States of the United States other than the State of origin of the shipment and in the District of Columbia and foreign countries.

PAR. 3. Respondent, King Trading Corporation, is a corporation organized under the laws of the State of New York, domiciled and doing business at 51 Vesey Street, New York City, N. Y.; respondent, Royal Radio Company, Inc., is a corporation organized under the laws of the State of New York, doing business at 168 Washington Street, New York City, N. Y., and respondent, Murray Auerbach, was and is an officer and agent of said respondent corporations.

Respondents A. M. Frank, David (I.) Morrison and Murray Auerbach conducted business in an individual capacity as free agents and also as agents of said respondents, King Trading Corporation and Royal Radio Company, Inc., with their principal places of business at 16 Hudson Street, and 168 Washington Street in New York City, N. Y.

The respondents herein named have been for several years last past, and are now, engaged in the manufacture, assembly, and sale of radio sets and radio parts upon which said products they place and cause to be placed escutcheons and nameplates—purchased from respondents set out and described in paragraph 2—with names, letters, marks, brands, and symbols etched or stamped thereon to desig-

nate the makers and brand names of said radio sets and radio parts. They sell and ship said products to the respondents named in paragraph 4 hereof and to other dealers and to the public. They have caused, and now cause, said radio parts and radio sets, escutcheons and nameplates so marked and branded, when sold, to be transported from their respective places of business in the State of New York to purchasers thereof at their respective points of location in States of the United States other than the State of origin of the shipment and in the District of Columbia and to foreign countries.

PAR. 4. Respondent, Harvard Radio Tube Testing Stations of Pennsylvania, Inc., is a corporation organized under the laws of the State of Pennsylvania, domiciled and doing business at 208 N. Broad Street, Philadelphia, Pa., and respondent Jules M. Schoenberg is an officer, representative and agent of said corporation.

Respondent, Ross Distributing Company, is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at 2020 Chancellor Street, in the city of Philadelphia, Pa., and respondent Larry B. Ross is an officer, agent, and representative of said corporation.

Respondent, Sun Radio and Service Supply Corporation, is a corporation organized under the laws of the District of Columbia, domiciled and doing business at 938 F Street N. W., Washington, D. C., and respondent, Emanuel Rosensweig, is an officer, agent, and representative of said corporation.

Respondent, Schiller Brothers, Inc., is a corporation organized under the laws of the District of Columbia, domiciled and doing business at 922 F Street, N. W., Washington, D. C., and respondent Louis S. Schiller is an officer, agent, and representative of said corporation.

Respondent, Peter Robbins, is an individual trading under the names Robbins Radio Company and Ambassador Radio Company, domiciled and doing business at 940 F Street, N. W., Washington, D. C.

Respondent, F. C. Scruggs, is an individual trading under the name Call Radio Company, domiciled and doing business at 636 H Street, N. E., Washington, D. C.

The respondents herein named have been for several years last past, and are now, engaged in the sale and distribution of radio sets and radio parts upon which said products there are affixed escutcheons and nameplates with names, marks, brands, and symbols etched or stamped thereon to designate the names, marks, brands, and symbols of the makers and brand names of said products. Said radio sets and radio parts so offered for sale and sold with said escutcheons and nameplates affixed thereto, were, and are, bought from the several respond-

ents set out and described in paragraphs 2 and 3. Said products, so marked and branded, were, and are, sold by said respondents to the purchasing public, and, when sold, are transported from their several respective places of business in the city of Philadelphia, State of Pennsylvania, and the city of Washington, D. C., to purchasers thereof at their several points of location in States other than the State or point of origin and in the District of Columbia, and in foreign countries.

PAR. 5. For the purpose of selling escutcheons and nameplates and of inducing manufacturers and dealers in radio sets, radio parts and like products to buy said products, the several respondents set out and described in paragraph 2 have been for several years last past, and are now, engaged in a scheme to deceive the public and to compete unfairly with other manufacturers and dealers in escutcheons and nameplates and like products who are in competition with respondents in interstate and foreign commerce;

For the purpose of selling radio sets, radio parts, and like products and of inducing the public to buy said products, the several respondent corporations and the several respondent individuals, individually, and as officers, agents, and representatives of said respondent corporations, herein set out and described in paragraphs 2, 3, and 4, cooperating among themselves and together with one another, have been for several years last past and are now engaged in a scheme to deceive the public and to compete unfairly with other manufacturers and dealers in radio sets, radio parts, escutcheons, and nameplates, and like products, who are in competition with the said respondents in interstate and foreign commerce. In furtherance of said scheme, the said respondents have adopted, made, used, and sold, and now make, use, sell, and ship in interstate and foreign commerce to distributors, dealers and others, escutcheons, and nameplates and radio sets, radio parts, and like products, upon which are attached, or to which are affixed, escutcheons and nameplates bearing the names, marks, brands, and symbols of corporations and individuals well known and long established in the radio and like industries, which names, marks, brands, and symbols were adopted and used and are now being used by said respondents and others without authority or consent from the legal owners and users of said names, marks, brands, and symbols.

Among the names, marks, brands, and symbols so made, adopted, and used by respondents are the following:

"Marconi" and also "Marconi-International," "Marconi Radio Corporation," which are found to be colorable imitations and simulations of said name "Marconi":

"Edison" and also "Edison-International," "Edison-Bell," "Edison" with the representation of a bell, "Edison Radio Stores, Inc.," which are found to be colorable imitations and simulations of said name "Edison";

"Bell" and the representation of a bell, which is found to be a simulation of the name "Bell";

"Victor" and also "Victor International," which is found to be a colorable imitation and simulation of said name "Victor";

"Majestic" and also "Majestic International" and "Majestic Radio Corporation" which are found to be colorable imitations and simulations of the said name "Majestic";

"Brunswick" and also "Bronswick" which is found to be a colorable imitation and simulation of the said name "Brunswick";

The letters "R. C. A." and also "R. C. I." and "R. S. A.," which are found to be colorable imitations and simulations of said letters "R. C. A.";

The letters "G. E.," either alone or in the circle with scroll like interior decorations, and also the letters "E. B.," which are found to be a colorable imitation and simulation of said letters "G. E."; and

"Marconi," "Edison," "Bell," "Victor," "Majestic," "Brunswick," or "Bronswick," standing alone or in conjunction with other words, names or devices, or any other colorable imitations or simulations of said trade names, marks and brands.

Said respondent corporations, and said respondent individuals, individually, and as officers, agents, and representatives, set out and described in paragraph 2, with respect to escutcheons and name plates, and said respondent corporations, and said respondent individuals, individually, and as officers, agents, and representatives, set out and described in paragraphs 3 and 4, with respect to escutcheons, nameplates, radio sets, radio parts and like products, marked and branded with the said well known and long established names, marks, brands, and symbols hereinabove set out and described, advertise said products in pamphlets, circulars, catalogues, newspapers, and other periodicals circulated in interstate and foreign commerce, and in the District of Columbia, and sell and ship said products so marked from their respective places of business to purchasers thereof located in the District of Columbia and in States other than the State or place of origin of said shipments, in interstate and foreign commerce without the authority or consent of the legal owners of said names, marks, brands, and symbols.

PAR. 6. (a) The name "Marconi." 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. Said name "Marconi" is now, and has been used and extensively advertised by, and is the rightful property of Radio Corporation of America and its subsidiaries.

(b) The name "Victor." For many years last past the Victor Talking Machine Company, 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 Company 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 twenty-five years the Victor Talking Machine Company 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 Company 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 and like products is the rightful property of the RCA-Victor Company and the Victor Division of the RCA Manufacturing Company.

(c) The letters or initials "R. C. A." The 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 Company, the Victor Division of the RCA Manufacturing Company and the Radio Corporation of America. Neither said Guglielmo Marconi nor Radio Corporation of America or any of its subsidiaries have ever granted (or consented) to respondents the right to the use of the name Marconi or the name Victor or the letters RCA (or RSA and RCI, colorable imitations of the letters RCA) in any manner.

(d) The name "Edison." For more than thirty years prior to his death on October 16, 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 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

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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 is now used by Thomas A. Edison, Inc., on radio sets, phonographs and other electrical devices and appliances, sold and shipped in interstate and foreign commerce. Neither Thomas A. Edison nor the said Thomas A. Edison, Inc., have ever granted (or consented) to respondents the right to the use of the name "Edison" in any manner.

(e) The name "Bell." 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. Neither the said Alexander Graham Bell nor the American Telephone and Telegraph Company and its subsidiaries Western Electric Company, Inc., have ever granted (or consented) to respondents the right to the use of the name "Bell" in any manner.

(f) The name "Majestic." 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 were extensively advertised, sold and shipped in interstate and foreign commerce by the said Grigsby-Grunow Company. Said name "Majestic" is now vested in Majestic Radio and Television Corporation of Illinois, which now manufactures, sells and ships in interstate and foreign commerce radio sets, radio tubes and like products branded or marked with the name Majestic. Neither Grigsby-Grunow Company, its successors or assigns nor Majestic Radio and Television Corporation of Illinois have ever granted (or consented) to respondents the right to the use of the name "Majestic" in any manner.

(g) The name "Brunswick" (Bronswick). During many years last past the Brunswick-Balke-Collender Company has been a large manufacturer of billiard and pocket billiard tables, bowling alleys and

various other articles, and its products have acquired a wide and favorable reputation and have been in great demand by the trade and purchasing public 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 Company began the manufacture and sale of phonographs and phonograph records, and sometime later began the manufacture and sale of radio sets and combination radio and phonograph sets, on all of which articles the name "Brunswick" was featured in a prominent place on said products. In 1930 the radio and phonograph division of said Brunswick-Balke-Collender Company was sold to Warner Brothers Pictures, Inc., which company organized the corporation under the corporate name 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 some time in the future. The radio sets and combination radio and phonograph sets manufactured by Brunswick-Balke-Collender Company 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.

"Brunswick," the name used by respondents, is a colorable imitation of the name "Brunswick" which has long been used by the Brunswick-Balke-Collender Company and the Brunswick Radio Corporation on radio sets, phonographs and combination radio and phonograph sets. Neither Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., nor Brunswick Radio Corporation have ever granted (or consented) to respondents the right to the use

of the name Brunswick (or Bronswick, a colorable imitation thereof) in any manner.

(h) The letters G. E. in a circle, with scroll-like interior decorations. A device of a circle with scroll-like interior projections enclosing the script letters "GE," 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 "EB," is a colorable imitation of this well known device. Neither Thomas A. Edison, Thomas Edison, Inc., Alexander Graham Bell, American Telephone and Telegraph Company, Western Electric Company, nor said General Electric Company or any of its subsidiaries have ever granted (or consented) to respondents the right to the use of the letters "EB" or "G. E." in any manner.

Said names, letters, and symbols are the names and designations of said 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 parts 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 parts 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 names "Marconi," "Victor," "Bell," "Edison," "Brunswick," "Majestic," and the letters "G. E.," either standing alone or in a circle with scroll-like interior decorations, and the letters "R. C. A.," and the products bearing these names, letters, and symbols, manufactured and sold by the lawful owners thereof; the use by respondents of said names, letters and symbols, and simulaticns 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. 7. The use by respondents of the names, marks, brands, symbols, and devices as set out in paragraph 5 is wholly unauthorized by the owners of said names, marks, brands, symbols, and devices and gives to respondents' goods a salability which they would not otherwise have, and gives to said respondents' an advantage over their competitors who do not similarly misrepresent the true origin of their goods and conceal the same under a reputable but false origin as do respondents. The said appropriation and use by said 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, has the capacity and tendency to deceive, and deceives the public purchasing said products into believing 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.

The purchasing public buying radio sets, radio parts, 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 parts, 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 6 hereof. The name or brand being dependent upon, influences the sale of said products.

Members of the purchasing public have purchased radio sets, radio parts, 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.

The manufacture, sale and delivery by respondents set out and described in paragraphs 2, 3, and 4, of escutcheons and nameplates, and radio sets, radio parts and like products, marked and branded

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with the names, letters and symbols set out and described in paragraph 5, without authority or consent of the legal 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 said products falsely marked, sold and shipped in interstate and foreign commerce. Injury to the lawful owners and users of said standard brands, names, marks and symbols is suffered because of the manufacture, sale, and competition of said respondents' said products.

CONCLUSION

The aforesaid acts and practices of the said respondents, Metal Etching Corporation, M. Hermann, Crowe Nameplate and Manufacturing Company, E. C. Coolidge, I. Robinson Smith, King Trading Corporation, Royal Radio Company, Inc., Murray Auerbach, A. M. Frank, David (I.) Morrison, Harvard Radio Tube Testing Stations of Pennsylvania, Inc., Julius M. Schoenberg, Ross Distributing Company, Larry B. Ross, Sun Radio Service and Supply Corporation, Emanuel Rosensweig, Schiller Brothers, Inc., Louis S. Schiller, Peter Robbins, individually and trading under the names Robbins Radio Company and Ambassador Radio Company, and F. C. Scruggs individually and trading under the name Call Radio Company, are to the prejudice of the public and respondents' 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, ETC.

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission, the answers of those respondents, upon whom the complaint was served, some of which answers deny the material allegations of the complaint and some of which admit the material allegations of the complaint, and the Commission being fully advised in the premises,

It is ordered, That the complaint issued herein be and the same is hereby dismissed as to the respondents, Etched Products Corporation and Albert Nierenberg and Walter H. Miller; Electro Chemical

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& Engraving Company and F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes and L. S. Southwick; Premier Metal Etching Company and Herbert Pape, Carl J. Johnson (Karl D. Johnson), Ernest A. Rottach and Hugo Lehrfeld; American Emblem Company and Paul B. Williams, Clarence S. C. Williams, James Eels, Fred B. King, and Edgar Denton, Jr., for the reason that there is no evidence to establish the allegations of the complaint as to said respondents.

It is further ordered, That the case growing out of the complaint herein be and the same is hereby closed without prejudice to the right of the Commission to re-open the same for further investigation and action thereon as to the respondents, Metro Manufacturing Company, Inc., Metro Radio Corporation, Metro Sales Company, Inc., Pyramid Distributors, Inc., Regina Gadol, George Levine, and Max Scafford, for the reason that the record shows they were not located and the complaint was not served upon said respondents.

It is further ordered, That the respondent corporations Metal Etching Corporation and Crowe Nameplate and Manufacturing Company, their respective officers, agents, and representatives, and the respondent individuals M. Hermann, E. C. Coolidge, and I. Robinson Smith, individually and their respective agents and representatives, in connection with the offering for sale and sale in interstate and foreign commerce, and in the District of Columbia, of escutcheons and nameplates, cease and desist from: selling, distributing or furnishing name plates and escutcheons for radio sets and like products bearing the names, letters, and symbols, "Marconi," "Edison," "Bell," "Victor," "Majestic," "Brunswick," the letters "R. C. A.," and the letters "G. E." or colorable imitations or simulations of said names, letters and symbols, to any manufacturers, assemblers, or dealers in radio sets and like products, or to any other person, firm, or corporation, except to the manufacturers, assemblers, and dealers owning said trade names or marks, or to the licensees of the owners thereof.

It is further ordered, That the respondent corporations, King Trading Corporation; Royal Radio Company, Inc.; Harvard Radio Tube Testing Stations of Pa., Inc.; Ross Distributing Company; Sun Radio and Service Supply Corporation; Schiller Brothers, Inc., their several officers, agents and representatives, and the respondent individuals, Louis S. Schiller, Murray Auerbach, A. M. Frank, David (I.) Morrison, Julius M. Schoenberg, Larry B. Ross, Emanuel Rosensweig, and respondent F. C. Scruggs, individually and trading under the name Call Radio Company, and respondent Peter Robbins, individually and trading under the names Robbins Radio

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Company and Ambassador Radio Company; and said respondent individuals trading under any other name or names, in connection with the offering for sale and sale in interstate and foreign commerce, and in the District of Columbia, of radio sets, radio parts, and like products, and escutcheons and nameplates, do cease and desist from:

Representing directly or indirectly, through the use in any manner, of the trade names or marks, "Marconi," "Edison," "Bell," "Victor," "Majestic," "Brunswick," or the letters "R. C. A.," or the letters "G. E.," or through the use, in any manner, of any colorable simulations and imitations thereof, such as, but without limitation, "Marconi-International," "Marconi Radio Corporation," "Edison International," "Edison-Bell," "Edison" with the representation of a bell, "Edison Radio Stores, Inc.," the representation of a bell, "Victor International," "Majestic International," "Majestic Radio Corporation," "Brunswick," or the letters "R. C. I.," "R. S. A.," "E. B.," or through the use of any other trade names or marks of which they are not the legal owners, without the permission of the lawful owners thereof, or through any other means or device, or in any manner that the radio sets, radio parts and like devices, appliances or products manufactured or assembled for or by, and sold by any of said respondents, are manufactured, assembled, sold, sponsored, endorsed, approved, or licensed by Thomas A. Edison, Thomas A. Edison, Inc., American Telephone and 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 Majestic Radio & Television Corporation, General Electric Company, or the agents, representatives, successors, or assigns of any of said persons, partnerships or corporations, or that said products are manufactured, assembled, sold, sponsored, endorsed, approved, or licensed by any corporation, association, partnership, or person who, in fact, did not and does not manufacture, assemble, sell, and transport said products.

It is further ordered, That said respondents shall within 60 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.

IN THE MATTER OF

JEAN G. SUBIN, ISRAEL SUBIN, AND JOHN N. KINDER-
MAN, INDIVIDUALLY, AND TRADING AS AMERICAN
REMEDY COMPANY

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

Docket 3013. Complaint, Dec. 10, 1936—Decision, Apr. 28, 1937

Where three individuals engaged in the distribution and sale of the acetyl salicylic acid product known as aspirin, in substantial competition with others engaged in distribution and sale of such products in commerce among the various States and in the District of Columbia, and including many who do not in any manner misrepresent their said products, either as to quality or efficacy in treatment and cure of ailments and conditions of the body; in advertising the same—

- (a) Represented that their said product was the purest acetyl salicylic acid, commonly known as aspirin, obtainable in America, and that it was registered in the Patent Office, through designation thereof as "American Purest Aspirin," and through statement "Registered U. S. Patent Office"; and
- (b) Represented that it was a competent and effective treatment and cure for colds and aches and pains of whatever nature;

Facts being it was not thus registered, and had not been, as believed by many by virtue of such supposed registration, tested and approved, and was not, by reason thereof, superior to similar products offered by competitors, and was no better than or different from product of many of its competitors, and was not a competent and effective treatment and cure for all colds, aches, and pains, in that it had no effect on causative factors of such conditions in the body;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations and implications were true and that products of competitors were inferior to and less effective than that of said individuals, and with result that a substantial number of the purchasing and consuming public, as a result of such erroneous beliefs thus engendered, bought their said product and thereby diverted trade to them from their competitors who truthfully advertise their products; to their injury and that of the public:

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. William L. Taggart for the Commission.

Mr. Herman Lipman Cohen, of Philadelphia, Pa., for respondents.

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 Jean G. Subin, Israel Subin, and John N. Kinderman, individually and trading as American Remedy Company, 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. Respondents, Jean G. Subin, Israel Subin, and John N. Kinderman, individually and trading as American Remedy Company, a fictitious trade name registered under the requirements of an act of the General Assembly of Pennsylvania, are engaged in business with their principal office and place of business located at 131 Market Street and 301 Green Street, Philadelphia, Pa. Respondents are now, and have been for sometime in the past, engaged in the business of distributing and selling in commerce, as herein set out, a certain acetyl salicylic acid product designated by them as "American Purest Aspirin."

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said aspirin when sold, to be transported from their principal place of business in the State of Pennsylvania to purchasers thereof located at various points in other States of the United States and in the District of Columbia. Respondents now maintain, and have maintained at all times, a constant current of trade and commerce in said aspirin so distributed and sold by them, among and between 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, firms, and individuals likewise engaged in the business of distributing and selling acetyl salicylic acid products such as aspirin, in commerce among and between 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 individuals, firms, and corporations to purchase said "American Purest Aspirin," respondents have caused the said product to be advertised in various ways and by various means through which representations as to said product are circulated throughout the various States of the United States. In all of said advertisements, respondents have caused the name of said product,

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to wit, "American Purest Aspirin" to be prominently and conspicuously displayed, together with the following statements:

5 Grain Tablets
 American
 Purest
 Aspirin
 Registered U. S. Patent Office
 ———
 For Colds, Aches and Pains
 Guaranteed Genuine
 ———
 American Purest Aspirin,
 American Remedy Co.
 Philadelphia, Pa.
 ———

For Relief of distress and discomfort due to simple headaches, head colds, simple neuralgia, muscular aches and pains. For a gargle 2 tablets to ½ glass of warm water—gargle every two or three hours. Directions: 1 or 2 tablets with a glass of water.

AMERICAN REMEDY CO.

Phila., Pa.

Distributors.

The use of the word "Registered" in large and conspicuous lettering directly underneath the word "Aspirin" on the container in which the product is sold and in other advertising, has a capacity and tendency to lead the public into the erroneous belief that the product of the respondents has been registered in some way with the United States Patent office, and into the erroneous belief that by virtue of such registration the product itself is a superior brand of aspirin. Likewise the use of the word "Purest" is a conspicuous lettering directly underneath the word "American" and preceding the word "Aspirin" has a tendency to lead the public into the erroneous belief that the product of the respondents is the purest aspirin obtainable in America. The statement "For colds, aches and pains" used in said advertising and labeling as aforesaid, has a tendency to mislead and deceive the public into the erroneous belief that the product is a remedy and cure for all aches and pains when in truth and in fact, there are aches and pains not resulting from colds, from which no benefit would be derived by an individual through the taking of the respondent's product.

PAR. 5. The representations made by respondents with respect to the nature and effect of their aspirin when used as above set forth are grossly exaggerated, false, misleading and untrue. Said product

is not fully effective for the treatment of pains and cold and it has no effect on the causative factors of such conditions of the human body. Its use does not always bring prompt relief to those suffering from the conditions named, viz, colds, aches and pains. The representation of the respondents with reference to the word "Registered" is false, misleading, and untrue, as the product has never been registered in the U. S. Patent Office, and the further representations that the product is America's Purest Aspirin is likewise false and misleading and untrue, as the product is not the purest aspirin obtainable in America.

PAR. 6. There are among respondents' competitors many who manufacture, distribute and sell aspirin who, in no way, misrepresent that their aspirin is the purest aspirin obtainable on the American market when it is not; that their product has been registered in the United States Patent Office, when it has not or that their respective aspirin has a quality and character or an effectiveness in use for the treatment of various conditions of the human body which it does not have. They do not make unlimited claims for the administering of their product for the relief of all types of colds, aches, and pains in the human body and do not falsely disparage the aspirin products of their respective competitors.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents in designating and describing their product and the effectiveness of their product, as hereinabove set out, in offering for sale and selling "American Purest Aspirin" as a registered product, and as "America's Purest Aspirin" was, and is, calculated to, and had, and now has, the 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 into the further erroneous belief that aspirin products of its competitors are inferior to, and less effective than "American Purest Aspirin." Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and misrepresentations of the respondent, as hereinabove detailed, a substantial number of the consuming public has purchased a substantial volume of respondents' "American Purest Aspirin" with the result that trade has been unfairly diverted to the respondents from competitors likewise engaged in the business of distributing and selling aspirin who truthfully advertise and represent their products and the effectiveness of said products in use. 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 and in the District of Columbia.

PAR. 8. 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 10th day of December 1936, issued and subsequently served its complaint in this proceeding upon the respondents, Jean G. Subin, Israel Subin, and John N. Kinderman, individually and trading as American Remedy 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 respondents' answer, the Commission, by order entered herein, granted respondents' 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 substitute answer, 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. That respondents, Jean G. Subin, Israel Subin, and John N. Kinderman, are individuals trading as American Remedy Company. Respondents have their office and principal place of business at 301 Green Street, Philadelphia. Respondents are now, and for more than one year last past have been, engaged in the business of distributing and selling in commerce, a certain acetyl salicylic acid product, commonly known as aspirin, designated by them as "American Purest Aspirin."

PAR. 2. Said respondents cause said product, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located at various points in other States of the

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United States and in the District of Columbia. Respondents now maintain, and have maintained at all times mentioned herein, a constant current of trade and commerce in said product so distributed and sold by them, among and between 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 corporations, firms, and individuals likewise engaged in the business of distributing and selling acetyl salicylic acid products such as aspirin, in commerce among and between the various States of the United States and in the District of Columbia.

There are, among the competitors of respondents, many who sell and distribute acetyl salicylic acid, commonly known as aspirin, in said commerce, who do not in any manner misrepresent their said products either as to the quality thereof or as to the efficacy thereof in the treatment and cure of ailments and conditions that exist in the human body.

PAR. 4. In the course and conduct of their business in said commerce, and for the purpose of inducing the purchase of their products, the respondents cause advertisements containing representations and implications in regard to said product and its efficacy in the treatment and cure of certain ailments and conditions to be circulated in the various States of the United States and in the District of Columbia. In all such advertisements the respondents make the following statements:

5 Grain Tablets
 American
 Purest
 Aspirin
 Registered U. S. Patent Office
 —————
 For Colds, Aches and Pains
 Guaranteed Genuine
 —————
 American Purest Aspirin,
 American Remedy Co.
 Philadelphia, Pa.
 —————

For Relief of distress and discomfort due to simple headaches, head colds, simple neuralgia, muscular aches and pains. For a gargle 2 tablets to $\frac{1}{2}$ glass of warm water—gargle every two or three hours. Directions: 1 or 2 tablets with a glass of water.

AMERICAN REMEDY CO.

Phila., Pa.
 Distributors.

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By the means and in the manner above stated, the respondents represent and imply that their said product has been and is registered with the United States Patent Office; that it is the purest acetyl salicylic acid, commonly known as aspirin, obtainable in America; and that it is a competent and effective treatment and cure for colds, and aches and pains of whatever nature.

PAR. 5. Respondents' said product is not registered in the United States Patent Office; it is not the purest acetyl salicylic acid obtainable in America, and is no better than or different from the product of many of its competitors; it is not a competent and effective treatment and cure for all colds, aches and pains, in that it has no effect on the causative factors of such conditions in the human body.

Many prospective purchasers of respondents' product believe that the registration of such a product with the United States Patent Office indicates that such a product has been tested and approved and is superior to similar products offered for sale and sold by competitors, and many prospective purchasers believe that the product of the respondents is the purest type of that product sold on the American market, and that such product is a competent and effective treatment and cure for all colds, aches, and pains.

PAR. 6. The above and foregoing representations and implications, so made and used by the respondents in connection with the sale and distribution of their said product in such commerce, as hereinabove set out, have had and do have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations and implications are true, and into the erroneous belief that the products of the competitors of the respondent are inferior to and are less effective than the product of the respondents. As a result of such erroneous beliefs, so engendered, a substantial number of the purchasing and consuming public purchase the respondents' said product, thereby diverting trade to the respondents from their said competitors, who truthfully advertise their products, to the injury of such competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondents, Jean G. Subin, Israel Subin, and John N. Kinderman, individually and trading as American Remedy 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 the Act of Congress, approved September 26, 1914, entitled "An Act to

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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 the 26th day of April 1937, by the 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 respondents, Jean G. Subin, Israel Subin, and John N. Kinderman, their representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of that certain acetyl salicylic acid product, commonly known as aspirin, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

1. That said product is registered in the Patent Office of the United States of America.
2. That said product is the purest aspirin in America and superior to other products composed of similar ingredients.
3. That said product is a cure for colds.
4. That said product is a competent and effective treatment or palliative for all aches and pains.

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 it has complied with this order.

IN THE MATTER OF
MILLINERY QUALITY GUILD, 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 2812. Complaint, May 21, 1936—Decision, April 29, 1937

Where a company, held out as a membership corporation and used as a corporate instrumentality by the fourteen "member" concerns and the ten "affiliate" concerns, which the former associated with them in their purpose and plan of preventing and eliminating, as far as possible, piracy of design and style in women's hats; and said "member" and "affiliate" concerns, engaged in the designing and manufacturing of women's hats at their respective factories in New York and California, and in selling their said products to retailers located in the several States, and in substantial competition with one another, but for the understandings and agreements below set out, and included among the recognized leaders in the field of women's hats as respects style and design, and with their said products, in great demand by the purchasing public throughout the United States, normally required, to an extent, at least by high-grade retail dealers in such products in New York and elsewhere in the United States, in order to offer a full line thereof; in pursuance of their aforesaid plan and purpose and the agreement of said "affiliate" concerns to work in unison and cooperation with said corporate instrumentality or "Guild" and its said "members" in making effective the rulings of the former as respects style piracy, and their agreement to make no sales to and show no merchandise to any retail store which had failed to sign the Guild's agreement or so-called "Declaration of Cooperation"—

- (a) Solicited and secured, through a regular series of circular letters and follow-up literature designed to induce and coerce retailers, and advising them that the Guild membership comprised practically every creative firm in the industry in question, and that only a store subscribing could inspect or purchase their hats, such agreements or so-called "Declarations of Cooperation" from some 1600 high-grade retail dealers in women's hats in the various States, under which agreements or declarations the dealer undertook and agreed (1) not to purchase from manufacturers hats which were copies of designs originated and made by them, or alleged to be such copies, as established through Guild's registration bureau and the committee provided for, and (2) to stamp their orders for hats with a statement that such orders were placed upon the seller's warranty that the styles of such products being purchased were not copies of styles originated by them, and that purchaser reserved right to return any merchandise which was not as warranted, and agreed with one another to make it a condition precedent to the sale of their products to retailers that they must be signatories to and agree to be bound by and act in accordance with aforesaid declarations, and announced that they would refuse, and did refuse, to sell their products to retail dealers of stylish millinery who had failed or refused to sign or to cooperate in said declaration and plan and agreement for elimination of style piracy, and brought about return of hats under

aforesaid warranty in cases in which goods in question were declared by aforesaid Guild to be copies originated by certain of such "members" or "affiliates";

- (b) Failed and refused to sell their products to retailers, on the ground or for the reason that such retail dealers (1) purchased, or had purchased, from manufacturers women's hats that were alleged by them to be copies of hats which they originated and made, or (2) failed or refused to stamp their orders for women's hats purchased from manufacturers with statement that such orders were placed upon seller's warranty that styles of goods being purchased were not copies of styles originated by them, and that purchasers reserved right to return any merchandise which was not as warranted; and
- (c) Expelled from their membership any member or affiliate member, on the ground or for the reason that such member or affiliate solicited sale of, or sold, women's hats to a retailer who failed to sign above agreement or declaration or failed or refused to cooperate in the methods therein set forth;

With result of unduly hindering competition in creating a monopoly in sale of women's hats in interstate commerce, and with capacity and tendency so to do, through (1) limiting manufacturers of stylish hats for women as to the outlets of their products and limiting retail dealers as to their source of supply, (2) depriving public of benefits of normal price competition among retailers of stylish hats for women, (3) preventing such retailers from purchasing their requirements of such products in interstate commerce from manufacturers other than those subject to above set forth limitation and restriction, (4) increasing price of such hats to retailers and consumers through protection of profits resulting from their activities to eliminate from trade alleged copies of styles which they claimed and adjudged themselves to have originated, (5) placing in their hands control of business practices of manufacturers of such hats, to extent of limiting and, as far as possible, eliminating retail outlet for copied styles of manufacturers who copy styles originated by them, (6) eliminating from sale in interstate commerce women's hats which are copies of styles and designs claimed to have been originated by them or others and registered with their said Guild, and (7) limiting interstate commerce in high-class women's hats to models originated and designed by the manufacturer thereof, or to copies produced by permission of alleged originators thereof:

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

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

Mr. Astor Hogg for the Commission.

Mr. Lowell M. Birrell, of New York City, for Millinery Quality Guild, Inc., members thereof and various affiliated respondents.

Mr. Lewis G. Bernstein, of New York City, for Lilly Dache, Inc.

Strauss, Reich & Boyer, of New York City, for Henri Bendel, Inc.

Mr. Maurice M. Cohn, of New York City, for Peggy Hoyt, Inc.

Mr. Sanford Jarrett, of New York City, for La Mode Chez Tappe.

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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 Millinery Quality Guild, Inc., and its members, and Uptown Creators' Guild and its members, 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, Millinery Quality Guild, Inc., is a membership 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 711 Fifth Avenue, in the city of New York, in said State. Its membership consists of corporations, individuals, firms, and partnerships, as hereinafter described, all of whom are engaged in designing and manufacturing ladies' hats at factories located in the State of New York and elsewhere in the United States and especially reproductions of hats originally designed, manufactured, and sold by French milliners, and in the sale of said ladies' hats to retail dealers located in States other than the States of manufacture, causing said ladies' hats, when sold, to be transported from their respective places of manufacture to the purchasers thereof. There has been and now is a constant current of trade and commerce in said products between the members of said Millinery Quality Guild, Inc., and retailers in said hats located throughout the several States of the United States. In the course and conduct of their business the members of said Millinery Quality Guild, Inc., were, prior to the organization of said Guild in competition with each other and were at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of similar products in commerce as hereinabove set out. The membership of said Millinery Quality Guild, Inc. is and has been as follows:

Cooper-Russell, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 15 West 39th Street, city of New York, in said State;

Farrington and Evans, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Dave Herstein Company, a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

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G. Howard Hodge, a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Edgar J. Lorie, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

L. G. Meyerson, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Scherman Hat Company, a corporation existing under the laws of the State of New York, with its principal place of business located at 5 East 37th Street, city of New York, in said State;

Sergin F. Victor, an individual trading under the name and style of "Serge," with his principal place of business located at 15 West 39th Street, city of New York, in said State;

Harry Solomons and May F. Solomons, copartners trading under the name and style of Harry Solomons and Son, with their principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Orlolo Hat company, a corporation existing under the laws of the State of New York, with its principal place of business located at 15 West 39th Street, city of New York, in said State;

John Trinner, Inc., a corporation existing under the laws of the State of New York and doing business under the name and style of "Trinner Hats," with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Vibo Company, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 1 West 39th Street, city of New York, in said State;

Vogue Hat Company, a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Simon Millinery Company, a corporation existing under the laws of the State of California, with its principal place of business located at 989 Market Street, in the city of San Francisco, in the State of California.

PAR. 2. Respondent, Uptown Creators' Guild, is a voluntary unincorporated association of corporations, individuals, firms, and partnerships engaged in designing, manufacturing, selling and distributing millinery, including ladies' hats, to retail dealers located in States other than the State of manufacture, causing said ladies' hats, when sold, to be transported from the respective places of manufacture in the State of New York or State of manufacture to the purchasers thereof located in the various States of the United States. There has been and now is a constant current of trade and commerce in said ladies' hats between the members of said unincorporated association and retail dealers in said hats. In the course and conduct of their respective businesses, the members of said Uptown Creators' Guild were, prior to the time when they began to cooperate with Millinery Quality Guild, Inc., as hereinafter set out, in competition with each

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other and were at all times herein referred to in competition with corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products. The membership of said Uptown Creators' Guild at the time hereinafter referred to was as follows:

Henri Bendel, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 10 West 57th Street, city of New York, in said State;

Lilly Dache, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 485 Madison Avenue, city of New York, in said State;

Gladys and Belle, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 485 Madison Avenue, city of New York, in said State;

Hatnegle Hats, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 711 Fifth Avenue, city of New York, in said State;

Peggy Hoyt, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 16 East 55th Street, city of New York, in said State;

Jay-Thorpe, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 24 West 57th Street, city of New York, in said State;

John-Frederics, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 501 Madison Avenue, city of New York, in said State;

Minnie Kramer, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 501 Madison Avenue, city of New York, in said State;

La Mode Chez Tappe, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 19 West 57th Street, city of New York, in said State;

Nicole de Paris, Inc., a corporation existing under the laws of the State of New York, with its principal place of business at 7 East 55th Street, city of New York, in said State;

Florence Reichman, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 16 East 52nd Street, city of New York, in said State;

Pauline Kahn, an individual trading under the name and style of Mme. Pauline, with her principal place of business located at 6 East 53rd Street, city of New York, in said State;

Marion Valle, Inc., a corporation existing under the laws of the State of New York, with its principal place of business located at 501 Madison Avenue, city of New York, in said State.

PAR. 3. The respondent corporations, individuals, firms and partnerships, hereinabove mentioned, who make up and constitute the Millinery Quality Guild, Inc. and Uptown Creators' Guild are originators of the leading styles of the highest class ladies' hats and are manufacturers and sellers of the highest class ladies' hats. No mem-

ber of either Guild originates or manufactures hats to sell at wholesale at less than \$8.00 per hat. Said members of both said Guilds maintain designing departments and employ highly paid designers who are constantly engaged in the origination of new styles of hats. Such designers at intervals journey to Paris, France, to observe the trend of styles and to secure original French models, from which they later devise various adaptations which are called and known as "originations." The style element is the outstanding factor in the sale of ladies' hats and the late style hats, such as are sold and distributed by the members of both Guilds, are in great demand by the purchasing public throughout the United States. The respondent members of said Guilds are the recognized leaders in the field of ladies' hats so far as style and design are concerned and a majority of the high grade retail dealers and outlets are required to procure at least some of their models from the manufacturers in one or both of said Guilds in order to offer a full line of ladies' hats.

PAR. 4. The professed purpose of the organization of Millinery Quality Guild, Inc. was to prevent piracy of style and design of ladies' hats sold and distributed by members of the Millinery Quality Guild, Inc., as hereinabove set out. Acting in pursuance of such professed purpose, said Millinery Quality Guild, Inc. and its members have adopted and still have in effect the following methods and practices:

(a) The establishment and operation of a department in the Millinery Quality Guild, Inc., known as "Registration Bureau," wherein members of the Millinery Quality Guild, Inc., and no others, had and have the right and privilege of filing and registering the original model or models designed by them. By and through the understanding of the members of the Millinery Quality Guild, Inc., it is mutually agreed by all the members of said Millinery Quality Guild, Inc., that the acceptance of any of its members' models or designs for registration constituted and constitutes a conclusive determination by the Millinery Quality Guild, Inc., that such design or designs was or were original designs and thereafter any imitation or copying thereof is to be considered and treated as design piracy. It is further agreed and understood between the members of the Millinery Quality Guild, Inc., that when registration of any design is granted to any member of said Guild, the hat and design are the particular property of the member which had registered them.

(b) Said Millinery Quality Guild, Inc. and its members further solicited and secured from a large number of retail customers in the various States of the United States an agreement styled "Declaration

of Cooperation" between such retail dealers and the Millinery Quality Guild, Inc., said agreement being incorporated herein and made a part hereof by reference.

(c) Sought and secured the cooperation of the unincorporated group styling themselves the Uptown Creators' Guild in carrying out and enforcing the purpose of its organization, and in that behalf secured the signature of the constituent members of said Uptown Creators' Guild to a certain agreement:

The firms whose signatures are attached hereto have agreed to unite in a circle under a caption of their own choosing. This organization to work in unison with the members of the Millinery Quality Guild on the questions of Style Piracy and the effort to eliminate unfair advertising. The agreement being that the members of this affiliated group will work in unison with the Millinery Quality Guild in making effective the rulings regarding style piracy and unfair advertising. They will display the same sign in their show rooms, stating that on and after July 16 (1934) no sales will be made and no merchandise will be shown to any store who has failed to sign our agreement regarding Style Piracy which is as follows:

This order is placed upon the seller's warranty that the above styles of hats are not copies of styles originated by members of the Millinery Quality Guild, Inc. The purchaser reserves the right to return any merchandise which is not as warranted.

PAR. 5. The constituent members of said Millinery Quality Guild, Inc., for more than three years last past, and the constituent members of the unincorporated association styling themselves the Uptown Creators' Guild, from and after the date of signature by them of the agreement hereinabove set forth, by combination, agreement, and concert of action, made it a condition precedent of the sale of their products to retailers that such retailers must have signed the "Declaration of Cooperation," hereinabove referred to; and by agreement, combination and concerted action, have refused to sell their products to any retailer or retailers who have failed or refused to enlist in the plan and sign the "Declaration of Cooperation." In and by the agreement signed by the retailers of ladies' hats, designated "Declaration of Cooperation," the members of both of said Guilds have coerced and compelled, and now coerce and compel, retail dealers who are desirous of selling such stylish hats as are only produced by the members of said Guilds to refuse to purchase said ladies' hats from manufacturers who have copied hats adjudged and reported by said Guilds to have been designed by said members of said Guilds and to otherwise cooperate with said Guilds in removing from the market hats of manufacturers who are not cooperating with said Guilds in their style protective program set forth herein, under penalty of being blacklisted and boycotted by members of the said

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Guilds. In and by such agreement styled the "Declaration of Cooperation," retailers are coerced and compelled to agree to recognize the property rights in styles created by Guild members and to refrain from purchasing copies of pirated styles created by the members of that association, and to stamp each millinery order made by them with the reading matter shown in paragraph two of the agreement hereinabove set out, and in such a manner as to notify the seller that the order is placed only upon the manufacturer's warranty that the hats so ordered are not copies of styles originated by members of the Millinery Quality Guild, Inc. and the members of the Uptown Creators' Guild. Said Millinery Quality Guild, Inc. claims the right, and by common understanding and agreement of its members and the members of the Uptown Creators' Guild has the right, to expel from its membership and to deprive of the benefit of the protection of its system of registration, and its system of style protection generally, any member of the Millinery Quality Guild, Inc. or Uptown Creators' Guild who solicits the business of or sells its products to a retailer who fails or refuses to sign its "Declaration of Cooperation," and it has so expelled one of the constituent members of the Uptown Creators' Guild for the cause stated, and advertised the fact of such expulsion in periodicals, having an interstate circulation, and by circular letters of notification addressed to approximately 1600 retailers in various States of the United States who had signed the "Declaration of Cooperation" and who were cooperating with the plan of the Millinery Quality Guild, Inc.

PAR. 6. The capacity, tendency, purpose, and result of the combination, conspiracy and agreement, and the acts and practices performed thereunder, by said respondents and the retail dealers hereinabove described, have been and now are to unduly and unreasonably restrain commerce by limiting manufacturers of stylish hats as to the outlets of their products and retail dealers as to the sources of supply; to deprive the public of the benefits of normal price competition among retailers of stylish hats by restraining said retailers, under threat of boycott, who desire to purchase the products of the members of the Millinery Quality Guild, Inc. and the Uptown Creators' Guild from making any purchases unless such retailers sign and enter into the Guilds' agreements; to prevent retailers in stylish millinery from freely purchasing their requirements of said products in interstate commerce from the manufacturers thereof; to substantially increase the price of such hats to the retailers and to the consuming public; to place in the hands of the Millinery Quality Guild, Inc. control over the business practices of the manufacturers of stylish hats for women and the power to exclude from this industry those

who do not conform to the rules and regulations established by said Guild and thus to unduly and unreasonably restrain interstate trade and commerce in stylish millinery and to tend to create a monopoly in the said Millinery Quality Guild, Inc., its members and those cooperating with it.

PAR. 7. The foregoing alleged acts and practices of respondents have been and still are to the prejudice of the buying public generally and the customers and competitors of the members of said respondents 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, 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 21st day of May 1936, issued and served its complaint in this proceeding upon respondents Millinery Quality Guild, Inc., Cooper-Russell, Inc., Farrington and Evans, Inc., Dave Herstein Company; G. Howard Hodge; Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Scherman Hat Company; Oriole Hat Company; John Trinner, Inc., Vibo Company, Inc., Vogue Hat Co., Simon Millinery Company; Lilly Dache, Inc., Gladys and Belle, Inc., Hatnegie Hats, Inc., Jay-Thorpe, Inc., John Frederics, Inc., Minnie Kramer, Inc., Nicole de Paris, Inc., Florence Reichman, Inc., Marion Valle, Inc., Henri Bendel, Inc., Peggy Hoyt, Inc., La Mode Chez Tappe, corporations; Sergin F. Victor, an individual trading as Serge; Pauline Kahn, an individual trading as Mme. Pauline, Harry Solomons and May F. Solomons, copartners trading as Harry Solomons and Sons, 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 said complaint were introduced by Astor Hogg, 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 Lowell M. Birrell, Maurice M. Cohn, Sanford Jarrett, Lewis G. Bernstein, and Strauss, Reich & Boyer, attorneys for the respondents, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding reg-

ularly 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 argument 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, Millinery Quality Guild, Inc., herein-after referred to as the "Guild" 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 711 Fifth Avenue, in the city of New York in said State. Said Guild is now, and for more than three years last past has been, under the domination and control of respondent hat manufacturers hereinafter referred to as "member" respondents, representatives of said member respondents acting as directors of said Guild. Since the month of July 1934, said Guild has held itself out to the public to be a membership corporation with a membership composed of all of the concerns hereinafter named as "member" respondents. Said Guild has been used by all of the said "member" respondents as an instrumentality for the carrying out of the plan, purpose and agreement relative to the prevention of style piracy hereinafter described. The said "member" respondents are:

Cooper-Russell, Inc., a corporation, with its principal place of business at 15 West 39th Street, New York, N. Y.;

Farrington and Evans, Inc., a corporation, with its principal place of business at 711 Fifth Ave., New York, N. Y.;

Dave Herstein Company, a corporation, with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

G. Howard Hodge, a corporation, with its principal place of business at 711 Fifth Ave., New York, N. Y.;

Edgar J. Lorie, Inc., a corporation with its principal place of business at 711 Fifth Ave., New York, N. Y.;

L. G. Meyerson, Inc., a corporation, with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

Scherman Hat Company, a corporation, with its principal place of business at 5 East 37th Street, New York, N. Y.;

Sergin F. Victor, an individual trading under the name and style of "Serge", with his principal place of business at 15 West 39th Street, New York, N. Y.;

Harry Solomons and May F. Solomons, copartners trading under the name and style of Harry Solomons and Son, with their principal place of business at 711 Fifth Avenue, New York, N. Y.;

Oriole Hat Company, a corporation, with its principal place of business at 15 West 39th Street, New York, N. Y.;

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John Trinner, Inc., a corporation, doing business under the name and style of "Trinner Hats", with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

Vibo Company, Inc., a corporation, with its principal place of business at 1 West 39th Street, New York, N. Y.;

Vogue Hat Company, a corporation, with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

Simon Millinery Company, a corporation, existing under the laws of the State of California, with its principal place of business at 989 Market Street, San Francisco, Calif.

PAR. 2. Respondent corporations and individuals hereinafter named and described in this paragraph and hereafter referred to as "affiliate" respondents are:

Lilly Dache, Inc., a corporation, with its principal place of business at 485 Madison Avenue, New York, N. Y.;

Gladys and Belle, Inc., a corporation, with its principal place of business at 485 Madison Avenue, New York, N. Y.;

Hatnegle Hats, Inc., a corporation, with its principal place of business at 711 Fifth Avenue, New York, N. Y.;

Jay-Thorpe, Inc., a corporation, with its principal place of business at 24 West 57th Street, New York, N. Y.;

John-Fredericks, Inc., a corporation, with its principal place of business at 501 Madison Avenue, New York, N. Y.;

Minnie Kramer, Inc., a corporation, with its principal place of business at 501 Madison Ave., New York, N. Y.;

Nicole de Paris, Inc., a corporation, with its principal place of business at 7 East 55th Street, New York, N. Y.;

Florence Reichman, Inc., a corporation, with its principal place of business at 16 East 52nd Street, New York, N. Y.;

Pauline Kahn, an individual trading under the name and style of Madam Pauline with her principal place of business at 6 East 53rd Street, New York, N. Y.;

Marion Valle, Inc., a corporation, with its principal place of business at 501 Madison Avenue, New York, N. Y.

PAR. 3. All of said respondents mentioned in paragraphs 1 and 2 hereof, except the Guild, are engaged in designing and manufacturing women's hats at their respective factories located in the States of New York and California in the United States and in the sale of said women's hats to retail dealers located in the several States of the United States other than the States of manufacture. Said respondents cause said women's hats, when sold, to be transported in interstate commerce from their respective places of manufacture to the purchasers thereof located in practically every State in the Union, and in so doing there is a constant current of trade and commerce maintained by said respondents. In the carrying on of their said respective businesses said respondents are engaged in substantial competition with each other, except as to the understand-

ings and agreements hereinafter set forth, and with other corporations, individuals, firms, and partnerships likewise engaged in the distribution, sale and transportation of similar products in commerce between and among the various States of the United States.

PAR. 4. All of the said respondents hereinbefore named other than the said Guild form a substantial majority of the originators of the leading styles of high grade millinery for women. In general the hats manufactured and sold by said respondents are sold at wholesale for a price of about \$8.00 per hat, but some of the "member" respondents manufacture hats to sell at wholesale at a lower price. Some manufacturers of women's hats, including said respondents, originate their own designs for the hats they make. Some manufacturers do not originate their own designs but copy the designs of other manufacturers. The copying of other manufacturers' designs is commonly known in the industry as style piracy. Manufacturers who originate their own designs are known in the industry as original creators. Many of the said respondents maintain designing departments and employ designers or stylists who are constantly engaged in the origination of new styles of hats for women. Many of such designers visit Paris, France to observe the prevailing French styles and fashions and to determine the style trends. After making such observations and determining the style trends, said designers devise, for their respective manufacturers, design adaptations which are used by said respondents in making their respective hats. Designs prepared in this way are considered in said industry original creations, even though they may not be novel in the sense that nothing like them has ever existed before.

The style element is one of the most important factors in the sale of women's hats. The respondents herein are among the recognized leaders in the field of women's hats so far as style and design are concerned. The leading styles of hats, such as are sold and distributed by said respondents, are in great demand by the purchasing public throughout the United States. The high grade retail dealers in women's hats, both in New York and elsewhere in the United States, in order to offer a full line of women's hats are normally required to procure at least some of their models from the said respondents.

PAR. 5. In the year 1934 the said "member" respondents acting directly and in cooperation with each other and acting through the Guild, entered upon and carried out a plan or purpose to prevent insofar as possible piracy of the style and design of women's hats manufactured and sold by said respondents. In order to more completely effectuate and accomplish said purpose the said "member"

respondents sought and secured the cooperation of the "affiliate" respondents. In carrying out and enforcing their said plan and purpose to eliminate piracy of design and style of women's hats said "member" respondents procured from said "affiliate" respondents an agreement wherein and whereby each and all of said "affiliate" respondents agreed to work in unison and cooperation with said Guild and its said "member" respondents in making effective the rulings of said Guild regarding style piracy, and an agreement that on and after July 16, 1934, they would make no sales to and would show no merchandise to any retail store which had failed to sign a certain agreement entitled a "Declaration of Cooperation" promulgated by said Guild and hereinafter fully set out.

PAR. 6. To facilitate the operation of said plan and purpose a Registration Bureau was established by said Guild cooperating with "member" respondents under the supervision of its officers and employees wherein the creators of original designs and styles might register their models. Once the model is accepted by the Registration Bureau it is the usual practice of said respondents to regard such model as an original design and style of the person registering same, and any imitation or copying thereof in the ordinary course of business is treated by said respondents as design piracy. However, in the case of any alleged design piracy such filing and registration is not deemed conclusive but the matter is determined by a committee consisting of a representative of one or more of the "member" respondents or by the officers and employees of the said Guild.

The said "member" respondents and "affiliate" respondents in order to make their said plan and purpose effective solicited and secured from approximately 1600 high grade retail dealers in women's hats located in various States of the United States the agreement hereinbefore referred to as the "Declaration of Cooperation", which is set forth in full as follows:

DECLARATION OF COOPERATION

BETWEEN ----- AND THE MILLINERY QUALITY
GUILD, INC. IN THEIR EFFORT TO STAMP OUT STYLE PIRACY
IN THE MILLINERY INDUSTRY.

MILLINERY QUALITY GUILD, INC.

452 Fifth Avenue, New York, N. Y.

GENTLEMEN: We wish to express our desire to cooperate with the members of your organization who have decided to confine the sale of their individual merchandise to such retailers as by their conduct indicate their business policy to be that they will recognize the property rights in styles created by your members, and will refuse to countenance so-called "Style Piracy". Believing the

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principles declared by your members to be proper for the protection of the public, the retailer and the manufacturer, we wish to go on record as stating our fixed business policy.

We will instruct all of our buyers in Millinery that we will not buy any copies of pirated styles created by members of your association; that we will explain to them the great damage which the spreading of this practice is doing to our business and ask their complete cooperation.

Furthermore, we will stamp all of our millinery orders with the following clause:

"This order is placed upon the seller's warranty that the above styles of hats are not copies of styles originated by the members of The Millinery Quality Guild, Inc. The purchaser reserves the right to return any merchandise which is not as warranted."

We welcome this opportunity to put ourselves on record to lend you our fullest cooperation for we know it will lessen the confusion in our business and add to the profits.

Very truly yours,

 Store's name
 By -----

 Store's address.

In soliciting and securing said agreements the said respondents, acting by and through the said Guild, employed a regular series of circular letters and follow-up literature designed to induce and coerce retailers to sign the "Declaration of Cooperation." In and by the circular letters sent out to the various retail stores throughout the United States, such retail stores were advised that the membership of the Guild comprised practically every important creative firm in the millinery industry and that only those stores which had subscribed to the "Declaration of Cooperation" can inspect or purchase the women's hats of respondents.

PAR. 7. From and after the date when the "affiliated" member respondents entered into the said agreement with the said "member" respondents, they and said "member" respondents, by mutual understanding, agreement, combination and concert of action made it a condition precedent to the sale of their products to retail dealers throughout the United States that such retailers must be signatories to the "Declaration of Cooperation," and must agree to be bound by and act in accordance with the principles of prevention of style piracy announced in the said "Declaration of Cooperation." Respondents other than the Guild, publicly announced that they would refuse to sell, and in certain cases did refuse to sell their products to retail dealers in stylish millinery who had failed or refused to sign the "Declaration of Cooperation" or who had failed to cooperate in the plan and agreement for the elimination of style piracy.

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In and by the foregoing plan and agreement said respondents have attempted to compel and still are attempting to compel and have compelled retail dealers who are desirous of selling hats manufactured by said respondents to make it a condition precedent to the purchase of women's hats from millinery manufacturers that the order for same be placed only upon the seller's warranty that the hats purchased are not copies of styles originated by respondents, and that in case the warranty fails then the merchandise may be returned. Pursuant to this method the said respondents have, in certain cases, brought about the return of women's hats by retail stores to manufacturers from whom they had purchased the same when such goods were declared by the respondent Guild to be copies originated by certain of respondents.

Pursuant to said plan, purpose and agreement said respondents agreed among themselves to expel from their membership, and to deprive of the benefits of their system of registration, and their system of style protection generally, any member or affiliate member of the Guild who solicits the business of or sells products to a retailer who has failed or refused to sign the said "Declaration of Cooperation." In one instance the respondents did expel Milgrim Hats, Inc., a corporation engaged in the manufacture and sale of women's hats in interstate commerce from their membership upon determination by the respondents that Milgrim Hats, Inc., was not abiding by the terms of said agreement, and notified the retail outlets and the public in general that they had expelled said concern from their membership.

PAR. 8. The respondents Peggy Hoyt, Inc., Henri Bendel, Inc., and La Mode Chez Tappe, all of New York City, are not shown to have participated in the acts complained of and no finding is made against them.

PAR. 9. The capacity, tendency, and result of the said purpose plan and agreement hereinbefore set forth, and the acts and practices performed thereunder by the respondents, as hereinbefore set forth, have been and now are unduly to hinder competition and to create monopoly in the sale of women's hats in interstate commerce:

(a) By limiting manufacturers of stylish hats for women as to the outlets of their products and by limiting retail dealers as to their source of supply;

(b) By depriving the public of the benefits of normal price competition among retailers of stylish hats for women, and

(c) By preventing the retailers of stylish hats for women from purchasing their requirements of said products in interstate commerce from manufacturers except subject to the limitation and restriction of this plan and agreement as hereinbefore set forth, and

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(d) By increasing the price of stylish hats for women to retailers and consumers through the protection of profits resulting from respondents' activities to eliminate from the trade alleged copies of styles which they claim and adjudge themselves to have originated;

(e) By placing in the hands of respondents control of the business practices of the manufacturers of stylish hats for women to the extent of limiting and as far as possible, eliminating the retail outlet for copied styles of manufacturers who copy the styles originated by the respondents;

(f) By eliminating from sale in interstate commerce women's hats which are copies of styles and designs claimed to have been originated by respondents or others and registered with the Millinery Quality Guild, Inc.; and

(g) By limiting interstate commerce in high class women's hats to models originated and designed by the manufacturer thereof or to copies produced by permission of the alleged originators thereof.

CONCLUSION

The practices of the respondents as set forth in the foregoing findings as to the facts, in the circumstances therein set forth, are to the injury and prejudice of the public and respondents' competitors and retailers of women's hats, and constitute unfair methods of competition in interstate commerce in violation of the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of 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 said complaint and in opposition thereto, briefs filed herein, and oral argument by Astor Hogg, counsel for the Commission, and by Lowell M. Birrell, Maurice M. Cohn, Sanford Jarrett, Lewis G. Bernstein, and Strauss, Reich & Boyer, 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, Millinery Quality Guild, Inc., Cooper-Russell, Inc., Farrington and Evans, Inc., Dave Herstein Com-

pany; G. Howard Hodge; Edgar J. Lorie, Inc., L. G. Meyerson, Inc., Scherman Hat Company; Oriole Hat Company; John Trinner, Inc., Vibo Company, Inc., Vogue Hat Co., Simon Millinery Company; Lilly Dache, Inc., Gladys and Belle, Inc., Hatnegie Hats, Inc., Jay-Thorpe, Inc., John Frederics, Inc., Minnie Kramer, Inc., Nicole de Paris, Inc., Florence Reichman, Inc., Marion Valle, Inc., corporations; Sergin F. Victor, an individual trading as Serge; Pauline Kahn, an individual trading as Mme. Pauline; Harry Solomons and May F. Solomons, copartners trading as Harry Solomons and Sons, their respective officers, representatives, agents, and employees, or any group of such respondents or their agents, either with or without the cooperation of persons not parties in this proceeding, cease and desist from following a common course of action pursuant to a mutual understanding, plan, or agreement for the purpose or with the effect, directly or indirectly, of lessening competition in interstate commerce in women's hats, by the following methods, or any one or more thereof, to wit:

1. Soliciting or securing from retail dealers in women's hats any "Declaration of Cooperation" or agreement or understanding whatsoever wherein or whereby said retail dealers undertake or agree to refrain from purchasing, or to refuse to purchase from manufacturers, women's hats that are copies of designs originated and manufactured by respondents, or women's hats alleged by any of the respondents to be such copies; or wherein or whereby said dealers undertake or agree to stamp their orders for women's hats with a statement that such orders are placed upon the seller's warranty that the styles of women's hats being purchased are not copies of styles originated by respondents, and that the purchasers reserve the right to return any merchandise which is not as warranted.
2. Failing or refusing to sell their products to retail dealers on the ground or for the reason that such retail dealers purchase or have purchased from manufacturers women's hats that are alleged by respondents to be copies of women's hats originated and manufactured by respondents.
3. Failing or refusing to sell their products to retail dealers who fail or refuse to stamp their orders for women's hats purchased from manufacturers, with the statement that such orders are placed upon the seller's warranty that the styles of women's hats being purchased are not copies of styles originated by respondents, and that the purchasers reserve the right to return any merchandise which is not as warranted.
4. Expelling from the membership of said Millinery Quality Guild, Inc., any member or affiliate member on the ground or for the reason

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that such member or affiliate member solicited the sale of, or sold women's hats to a retailer who failed to sign the agreement set forth in paragraph 1 hereof, or failed or refused to cooperate in the methods therein set forth.

5. Utilizing any cooperative means among themselves or with retail dealers to accomplish or carry out the methods prohibited in paragraphs 1, 2, and 3 hereof.

It is further ordered, That 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.

It is further ordered, That the complaint as against respondents Peggy Hoyt, Inc., Henri Bendel, Inc., and La Mode Chez Tappe be dismissed on the ground that the allegations of the complaint are not sustained as to them.

IN THE MATTER OF
**HEC BARTH, TRADING AS HEC BARTH LABORATORIES
AND DARK-EYES LABORATORIES**

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

Docket 2608. Complaint, Oct. 31, 1935—Decision, Apr. 30, 1937

Where an individual engaged in sale, under name "Dark Eyes," of a combination two-bottle eyebrow and eyelash stain containing silver nitrate and pyrogallol and prepared in black and in brown, and distributed in practically every State through department stores, drug stores, and beauty shops, and, as thus engaged, in substantial competition with others similarly engaged in sale and distribution, or in manufacture, sale, and distribution, of eyebrow and eyelash stains or dyes in commerce among the several States and in the District of Columbia—

- (a) Represented, in advertising his said products in newspapers and periodicals of general circulation and by radio, that the same was safe and harmless and a new discovery, and that use thereof gave permanent beauty to, or was a permanent darkener of, eyebrows and eyelashes, facts being said product was a caustic which would destroy tissue, possibility of danger through use thereof was enhanced if applied by an unskilled person or in an unskilled manner, and it was neither safe nor harmless nor a new discovery, new growth made new applications necessary, and it did not accordingly give permanent beauty nor permanently darken the eyelashes and eyebrows through use thereof; and
- (b) Represented that he owned, operated, or controlled a laboratory in which said product was made, facts being product in question was made for him by a company which owned the formula thereof, and in which he owned no interest and over which he exercised no control;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with result that such public, as a consequence of mistaken and erroneous beliefs induced by such false and misleading statements, brought a substantial volume of his products, and trade was unfairly diverted to him from competitors likewise engaged in sale and distribution of such darkeners or stains, or in the manufacture, sale and distribution thereof, and who truthfully represent the effects of their products when applied to the eyebrows and eyelashes; 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. DeWitt T. Puckett for the Commission.

Mr. Sid Mogul, of Chicago, Ill., 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 Hec Barth, doing business under the trade names of Hec Barth Laboratories and Dark Eyes Laboratories, hereinafter referred to as respondent, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Hec Barth, is an individual trading as Hec Barth Laboratories and Dark Eyes Laboratories, with his office and principal place of business in the city of Chicago, State of Illinois.

At and from said city and under said trade names, he is now and for several years last past, has been engaged in the sale of beautifying preparations, among which is a product sold by him for use by women in the coloring of their eyelashes and eyebrows under the name of "Dark Eyes."

PAR. 2. This said product, described in paragraph 1 hereof, is sold by respondent to wholesalers and jobbers of beautifying products, to drug stores, beauty parlors, barbershops, and to ultimate consumers thereof, the latter being supplied through the United States mails. Said drug stores sell the same to the consuming public. Said beauty parlors and barber shops use the same in the coloring of the eyelashes and eyebrows of women.

Respondent, when said product is so sold by him, causes the same to be shipped from the said city of Chicago, State of Illinois, into and through other states of the United States, to his said purchasers at their respective places of business or residence.

PAR. 3. In the sale of the said "Dark Eyes," respondent is in substantial competition with corporations, copartnerships and individuals engaged in selling and offering for sale in interstate commerce of compounds, chemicals or materials for use and used in the coloring or dyeing of eyelashes and eyebrows of women.

PAR. 4. Respondent, in aid of the sale of said "Dark Eyes," has advertised and is now advertising the same in newspapers, magazines and periodicals of general circulation in the United States and in pamphlets, booklets, letters, printed testimonials, and other printed matter and by and through the use of photographs and other

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pictures, caused by the respondent to be circulated among said customers and prospective customers, and on labels attached to the containers thereof and in and through radio broadcasts which reach said customers and prospective customers residing in several of the States of the United States. In and through said advertising media, respondent makes the following among other false and misleading representations as to his said product:

1. That respondent owns, operates, or controls a laboratory or laboratories where said product is manufactured by him.

2. "Give your eyes this permanent beauty with Dark Eyes"—"The new permanent darkener"—"Permanent color and beauty with Dark Eyes"—"The new permanent eyelash and eyebrow darkener"—"Lasts from four to five weeks."

3. "Dark Eyes", when used as directed, is safe and harmless.

4. "Dark Eyes" is a new discovery.

5. The use of "Dark Eyes" gives your eyelashes and eyebrows lasting youth or lasting beauty.

6. Thousands of smart women prefer this modern beauty way to possess attractive eyes.

7. "Dark Eyes" is perfectly harmless to use and absolutely safe.

PAR. 5. The representations set forth in the paragraph last above are false and misleading in that:

1. Respondent owns and maintains no laboratory, and the said product "Dark Eyes", is manufactured for him;

2. The use of "Dark Eyes" does not give permanent beauty; it is not a permanent darkener. It does not assure permanent color and beauty; if it is "permanent", it will last longer than four or five weeks, and if it lasts only four or five weeks, it is not permanent. The name "Dark Eyes" is a misnomer; it is the eyebrows and eyelashes and not the eyes that are colored by it;

3. "Dark Eyes" is not safe or harmless, and its use may result in harm to the user thereof; the use of "Dark Eyes" as directed may result in injury to the eye or the skin or flesh about the eye, or elsewhere;

4. "Dark Eyes" is not a new discovery. The ingredients contained in it have been used for many years in the coloring or dyeing of eyebrows and eyelashes;

5. The use of "Dark Eyes" does not give eyelashes and eyebrows lasting youth or lasting beauty.

6. The use of "Dark Eyes" does not constitute a modern or better way to possess attractive eyes.

7. "Dark Eyes" is not perfectly harmless to use or absolutely safe;

PAR. 6. Each and all of the said representations described in Paragraph Four hereof, have and have had the capacity and tendency to mislead and deceive the purchasing public into the erroneous belief that they are true, and each and all of the said representations have and have had the tendency and capacity to induce the purchase of said respondent's product and have and have had

the tendency and capacity to divert trade from and otherwise injure respondent's said competitors.

PAR. 7. The above alleged acts and practices are all to the prejudice of the public and to respondent's said competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on October 31, 1935, issued and served its complaint in this proceeding upon respondent, Hec Barth, an individual, doing business under the trade names of Hec Barth Laboratories and Dark-Eyes Laboratories, 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 DeWitt T. Puckett, 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 Sid Mogul, 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 briefs in support of the complaint and in opposition thereto, no request for oral argument having been made, 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, Hec Barth, is an individual trading as Dark-Eyes Company. Until about a year ago he employed the trade names Hec Barth Laboratories and Dark-Eyes Laboratories. The business is located at 412 Orleans Street, Chicago, Ill. He is now, and since April 1934, has been, engaged in the sale and

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distribution of a product by the name of "Dark-Eyes," an eyebrow and eyelash stain. The product is put up and prepared for the market in small bottles, each containing approximately 1.3 drams of the preparation. Each package contains two bottles. Bottle number one contains primarily silver nitrate, and bottle number two contains primarily pyrogallol. It is prepared in two colors, namely, black and brown.

The formula for the black product is:

Bottle No. 1:

Silver Nitrate U. S. P.-----	4.75 parts
Ammonium Hydroxide C. P.-----	1.30 parts

The above are dissolved in a pectic vehicle in sufficient quantity to make the whole measure 100 parts.

Bottle No. 2:

Pyrogallol (Resublimed U. S. P.)-----	3.25 parts
Solvent (Distilled Water)-----	96.25 parts

The formula for the brown product is:

Bottle No. 1:

Silver Nitrate U. S. P.-----	3.25 parts
Ammonium Hydroxide C. P.-----	.80 parts

Both are dissolved in a pectic vehicle in sufficient quantity to make the whole measure 100 parts.

Bottle No. 2:

Pyrogallol (Resublimed U. S. P.)-----	2.50 parts
Solvent (Distilled Water)-----	97.50 parts

The main difference between the formula for the brown product and the black product is that the brown product contains less silver nitrate and pyrogallol per unit measure.

The product is applied by first applying the liquid in bottle number one to the eyelashes or eyebrows with a camel's hair brush. When the first application is dry the liquid in bottle number two is then applied with another small camel's hair brush. Contact between the two liquids causes an immediate precipitation of color.

When orders are received for respondent's product, he causes it to be shipped and transported from Chicago, Ill., to the purchasers thereof located at various points in States of the United States other than the State of Illinois. The product is distributed in practically every State of the United States through department stores, drug stores, and beauty shops. An introductory or trial size package is sent through the mails direct to the purchasers thereof. The respondent has, since 1934, maintained a constant current of trade in said product, in commerce, among and between the various States of the United States.

At all times since the respondent entered into business, he has been in substantial competition with other individuals, and with partnerships and corporations engaged in the sale and distribution, or in the manufacture, sale and distribution, of eyebrow and eyelash stains or dyes, in commerce, among and between the several States of the United States and in the District of Columbia.

PAR. 2. The respondent has advertised, and is now advertising, said product, in newspapers, periodicals, and magazines of general circulation in the United States. The product was advertised by radio during 1934. Representative of said advertising claims are the following statements:

"Give your eyes this permanent beauty with 'Dark-Eyes'"—"The new permanent darkener"—"Permanent color and beauty with 'Dark-Eyes'"—"The new permanent eyelash and eyebrow darkener"—"Lasts from four to five weeks".

"Dark-Eyes", when used as directed, is safe and harmless.

"Dark-Eyes" is a new discovery.

The use of "Dark-Eyes" gives your eyelashes and eyebrows lasting youth or lasting beauty.

Thousands of smart women prefer this modern beauty way to possess attractive eyes.

"Dark-Eyes" is perfectly harmless to use and absolutely safe.

Each package of the product contains a direction sheet, which bears the expressions, among others, "Permanent," "Harmless," and "Harmless to Eyes, Hair and Skin." On the outside of the package itself appears the word "Permanent."

Respondent represented until about a year ago that he owned and operated a laboratory where the product "Dark-Eyes" was manufactured. However, respondent has never at any time actually owned or operated, or directly and absolutely controlled, a laboratory in which the product was manufactured. In fact, the product is manufactured for the respondent by the W. W. Baldwin Company of 412 Orleans Street, Chicago, Ill., owners of the formula for the product. Respondent has never owned any interest in, or exercised any control over, the said W. W. Baldwin Company. Respondent's said product does not give permanent beauty, nor are the eyelashes and eyebrows permanently darkened by use of the product. When new lashes appear, or as the hair grows new applications of the product are necessary to darken the new growth. Said product is not a new discovery. Its active ingredients, silver nitrate and pyrogallol, have been used in stains or eyebrow darkeners for many years.

The respondent's product is not harmless or absolutely safe, but is injurious to the eyes of some users. Women users of the product testified at the hearings. Mrs. Ethyl Weinberg Astrachan of Chi-

cago, Ill., purchased a package of respondent's product at Field's store in Chicago and used the product in accordance with the directions supplied with it. Immediately after the application, her eyes began to pain her considerably and a severe headache set in. She suffered with her eyes for a period of three months. Dr. John William Wall, an eye specialist of Chicago, Ill., who attended Mrs. Astrachan during her said illness, concluded that Mrs. Astrachan's trouble with her eyes was caused by the application of the respondent's product to her eyelashes and eyebrows.

Mrs. Mary W. Buettner of Cleveland, Ohio, purchased a package of respondent's products from a department store in Cleveland, Ohio, and applied the product in accordance with the instructions enclosed in the package. When she awoke the following morning, her eyes were inflamed, swollen and discolored. About four weeks elapsed before her eyes become normal. Mrs. Buettner had applied other eyelash stains and dyes to her eyelashes on previous occasions with no ill effect. Dr. Norman McGay of Cleveland, Ohio, who attended Mrs. Buettner during her aforesaid illness, found Mrs. Buettner suffering from a very badly swollen eczematous condition around the left eye, over the bridge of the nose and a little over the right eye. The left eye was almost swollen shut. The forehead over the eyebrows and across the bridge of the nose was badly discolored with some chemical. He found Mrs. Buettner to be suffering from a localized condition caused by some local application, which he concluded to be the product she applied on that occasion.

Mrs. Margaret S. Werntz of Shaker Heights, Ohio, went to a beauty shop in Cleveland, Ohio, about eleven o'clock on the morning of December 14, 1935, and had her eyelashes stained with the respondent's said product. About six o'clock that night her eyes began watering and smarting, followed by pains in and near the eyeballs. The following morning her eyes were swollen and completely closed, and she remained totally blind for one week. Mrs. Werntz could not read for three months. Dr. James Roder Bell of Cleveland, Ohio, Mrs. Werntz' attending physician during her said illness, concluded, after having treated Mrs. Werntz' eyes for three weeks, that her injury resulted from the application of respondent's product to her eyelashes and eyebrows.

One percent silver nitrate solutions are used by the medical profession as an antiseptic. It is applied to the eyes of new born babes to prevent gonorrhoeal infection. When something stronger than a one percent silver nitrate solution is required, in treating certain conditions of the eyes, some drug other than silver nitrate is used. Silver

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nitrate solutions containing as much as 2.5% silver nitrate are used as a disinfectant when applied to parts of the body other than the eyes.

The solution in bottle number one of the respondent's said black product contains 4.75% of silver nitrate U. S. P. The solution in bottle number one of respondent's said brown product contains 3.25% of silver nitrate U. S. P. The silver nitrate solution is applied to the eyelashes or eyebrows and permitted to remain there a few moments before the solution contained in bottle number two is applied.

It is established by the testimony of medical authorities and chemical experts that respondent's product is a caustic, and will destroy tissue. Silver nitrate and pyrogallol, if not mixed in the exact molecular proportions, will give off an excess of the silver nitrate or free pyrogallol, and the uncombined silver nitrate has the same effect that it would have if used separately, and the uncombined silver nitrate can produce injury. The possibility of danger through use of the respondent's product is enhanced of course, if applied by an unskilled person or in an unskillful manner.

PAR. 3. Many of respondent's competitors who sell and distribute, or manufacture, sell and distribute, eyebrow and eyelash darkeners or dyes, in interstate commerce, do not in any way misrepresent the effects of their products when applied to the eyebrows and eyelashes.

PAR. 4. The use by respondent of the representations set forth above, in his advertising literature, has had and now has the capacity and tendency to mislead and deceive and has misled a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a consequence of the mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to, the purchasing public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from his competitors likewise engaged in the business of selling and distributing eyebrow and eyelash darkeners or stains, or in the manufacture, sale, and distribution of eyelash darkeners or stains, who truthfully represent the effects of their products when applied to the eyebrows and eyelashes of persons. 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 the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Hec Barth, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the

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intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, the testimony 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 briefs filed herein, no request for oral argument having been made, 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, Hec Barth, individually and trading as Hec Barth Laboratories and Dark-Eyes Laboratories, or under any other trade name, his agents, representatives and employees, in connection with the sale and distribution of an eyelash darkener now known as "Dark Eyes," or any other product containing the same or substantially the same ingredients, sold under that name or under any other trade name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That said product is safe and harmless.
2. That said product is a new discovery.
3. That the use of said product gives permanent beauty to or is a permanent darkener of the eyebrows and eyelashes.
4. That respondent owns, operates or controls a laboratory or laboratories until and unless he does in fact actually own and operate, or directly and absolutely control a laboratory or laboratories wherein said product is compounded.

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.

Syllabus

IN THE MATTER OF
PERFECT 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 2899. Complaint, Aug. 14, 1936—Decision, Apr. 30, 1937

Where a corporation engaged in manufacture, and sale to purchasing and consuming public in various parts of the United States, through use of trade name "Sav-An-Upper Company," of preparation, among others, known and designated as "Sav-An-Upper," and thus branded, labeled, and packed for sale and distribution by it, trading under name "Sav-An-Upper Company," and by its agent-salesmen to purchasing and consuming public; in advertising its said product, in the course and conduct of its said business and as a means of obtaining services of such agent-salesmen to handle and sell the same, in sales magazines and periodicals of general circulation and in circulars and other mail matter distributed to prospective agents and containing sales talks and instructions, and through representations in said advertisements, distributed as aforesaid, and which were eventually communicated to customers and consumers, actual and prospective—

- (a) Represented that its said product had unusual sales appeal, or that selling qualities or possibilities thereof were most exceptional, and that large sums of money might commonly or easily be made by agents in handling and selling the same, through such statements as that men and women everywhere were making tremendous profits, up to 202%, in the sale thereof, that an investment of \$1.50 could build itself into tens, hundreds, and thousands of dollars in just a short while, and that earnings up to \$5,000 a year should be reached by quite a few, and others of like import and effect;
- (b) Represented that its said product, when applied to objects, possessed and imparted the quality, condition, and effect of permanency and would renew articles to which it was applied, such as trunks, luggage, school and shopping bags, or make scuffed shoe tops look as neat and good as the day they left the factory, and similar statements; and
- (c) Represented that it owned or operated the million dollar company which was, or would be, back of salesmen selling its said product, and that such company had a world-wide business and prospering agents everywhere;

Facts being such statements and representations were false, deceptive, misleading and exaggerated in various particulars, its said product did not possess the sales appeal or possibilities claimed for it, agents and salesmen could not and did not realize, through sale thereof, large earnings and profits held out to them, product did not produce or impart a coating which was permanent in character or which would renew or restore objects, no matter how old, worn or scuffed they might be, to a new or like new condition, and it did not own, control, or operate any million dollar company or business with world-wide trade or connections, or any company or business even approximating such financial size, status, or importance;

With tendency and capacity to cause agents and salesmen to form mistaken and erroneous beliefs that such a company, and with world-wide business and prosperous agents everywhere, was back of them, and that product in question had a selling power or appeal which it did not possess, and that large and

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substantial profits could be earned from sale thereof, and with effect of causing members of purchasing public to form mistaken and erroneous beliefs concerning character and qualities of said product and usage to which it properly and successfully might be put, and with further result that salesmen and agents were thereby induced to handle and sell the same, and members of the public to purchase said product under erroneous belief that misleading and extravagant claims made for it were true, to the detriment and injury of manufacturers and sellers of similar products, and with capacity and tendency unfairly to divert to it trade of competitors engaged in selling such products and who fairly and accurately advertise and represent the same:

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

Mr. Marshall Morgan for the Commission.

Parton & Seasongood, 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 Perfect Manufacturing 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, Perfect Manufacturing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 3325 Madison Road, in the city of Cincinnati, Ohio. Respondent is now and for more than two years last past has been engaged, as hereinafter described, in the business of manufacturing and selling to retail dealers, agents, and salesmen in various parts of the United States, through the use of trade name companies, various appliances, products, and preparations. Among the appliances, products, and preparations so manufactured and sold by respondent, is a liquid shoe polish, enamel, dressing, or finish, for shoes, made in different colors, known and designated as "Sav-An-Upper," and sold to retail dealers, salesmen, and agents in various parts of the United States. The said preparation, Sav-An-Upper, is manufactured, as stated in Cincinnati, Ohio, where it is branded, labelled, and packed by respondent for sale and distribution by itself through the use of a trade name company, known and designated

as "Sav-An-Upper Company," and by its agent-salesmen, or dealer-customers, to the purchasing and consuming public of the United States. In consummating such sales and in distributing such product, respondent causes the said shoe polish, enamel, dressing, or finish to be transported and delivered from its place of business in Cincinnati, State of Ohio, through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of its business the respondent has been and is now engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of shoe polishes, enamels, finishes, or dressings for shoes and offering such products for sale in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. In the course and conduct of its said business respondent has offered its products for sale and has sold and transported or caused the same to be transported in commerce among the several States of the United States to the consuming public through the medium of salesmen, agents, and dealers. Said products are and were shipped in response to orders received from said salesmen, agents, or dealers transported or caused to be transported in commerce among the several States of the United States. As a means of obtaining the services of such salesmen, agents, or dealers, said respondent causes and has caused advertisements to appear in sales magazines and periodicals having general circulation, and, in addition, distributes and has distributed circulars and other mail matter containing sales talks and instructions.

In the course and conduct of its said business, as hereinabove related, respondent has caused various false, deceptive, and misleading statements to be inserted and to appear in said advertisements and in circulars and other mail matter distributed by it. The statements contained in said advertisements, circulars, and mail matter are addressed to and are and have been distributed among salesmen, agents, and dealers throughout the United States and are intended to be and constitute instructions to them in connection with sales talks to be made to retail stores, boot-black stands, customers and consumers, actual and prospective. In this manner the said various false and misleading statements and representations inserted in said trade magazines, circulars, bulletins and other communications by respondent, including claims set forth in describing respondent's products, are and have been passed on to the ultimate consumer by respondent's salesmen, dealers, and agents, and the consuming public have been induced to purchase the products thus offered for sale and sold by

respondent in the erroneous belief that said false and misleading statements and representations concerning such products were and are true.

PAR. 3. In the course and conduct of its business, respondent, in advertisements, circulars, bulletins, and sales communications having a general circulation, as stated, represents in advertising:

Picture appearing in a display advertisement of an old, creased and wrinkled looking shoe coupled with the words:

Before Using Sav-An-Upper.

Picture of same shoe in glistening black surface, and, new in appearance, coupled with the words:

After Using Sav-An-Upper.

Shoes like new as low as 2¢ a pair. It's easy. Shoes like new 6¢ a pair.

Earn up to \$2 in an hour.

Sensational new discovery—completely covers scuffed, discolored and faded uppers of any shade with wear proof highly polished coating. Makes them look new. Quick, easy economical. Takes only a minute. Just brush it on. Gives glossy, good-looking, long wearing, crack proof finish.

Sav-An-Upper has found a hearty welcome in every city, town, village, and on millions of farms.

Free Sample—Men and women representatives making tremendous profits. Unlimited demand. Write today for free sample that proves all claims and territory offer. Send no money.

Not a polish. Not a dye.

Saves buying shoes.

* * * makes the scuffed, discolored and faded uppers glossy, neat and good-looking as the day they left the factory.

Sav-An-Upper completely covers the scuffed, unsightly leather, canvas, suede, reptile skin, satin or linen with a tough, water-proof, long-wearing, flexible coating that *won't rub off*. Sav-An-Upper preserves the uppers and adds months and months of extra wear.

Men and women everywhere making tremendous profits—up to 202%. Desirable territories are being "snapped up" by hustlers. Get your share of the Big Money * * *

* * * Not only makes old shoes like new but it is also excellent for renewing trunks, luggage, school bags, shopping bags, brief cases, leather upholstery, and cushions, auto tops, harness, reins, saddles, bits, wallets. Leather gloves, etc. * * *

* * * Enormous margin of profit on quick easy sales. * * *

Most sensational money maker ever offered to direct sellers.

Waterproof, crack-proof—long wearing—Needs no polishing.

Your \$1.50 investment can build itself into tens, hundreds, and thousands of dollars in just a short while. Act today!

Just got back to my room from a date with a shoe man. He surely gave Sav-An-Upper every test he knew and then some. When he got through he told me it was the best product he had ever seen.

Every demonstration makes you sales and profits galore. * * *

Your profits are guaranteed—you have a fortune to gain and you cannot lose.

Your territory is open but it will not stay that way long.

Your territory is a regular "gold mine" ready for digging.

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Be financially independent.

You can earn as much money as you want because the amount of your income depends entirely on your own efforts.

You simply make the sensational one-second demonstration and the prospect **BUYS**.

A self-polished, good-looking flexible coating that is longer wearing, crack-proof, waterproof and permanent.

If you act quickly you can begin making as much as \$2.00 in an hour at once, beginning the first day.

* * * Its big margin of profit (up to 186%) means that just a few sales will pay you \$30.00, \$50.00, \$80.00 a week or more.

* * * Even beginners are so swamped with orders that they must hire sub-agents to help handle their business. Earnings up to \$5000.00 in a year should be reached by quite a few.

* * * I want to see you own your own home, your own car, and have a bank account. That's what Sav-An-Upper is doing for other men and women everywhere.

* * * Demonstrations of this kind made in a busy section, at fairs, at carnivals or markets, bring as high as \$12.00 worth of sales in an hour, which can mean as much as \$7.95 in profits to you.

* * * Depending on the size of your territory and the number of sub-agents you put to work, you can make as high as \$18.00 in a day, besides what you make on your personal sales to consumers and stores and through demonstrations.

* * * this sensational new discovery affords **YOU AN OPPORTUNITY TO GET IN ON THE GROUND FLOOR** of a gigantic, world-wide business with prospering representatives everywhere.

Our entire plant including manufacturing department, chemical laboratories, raw material storage, offices, occupies 5 acres with three railroad sidings, * * *

A million dollar company is back of you!

PAR. 4. When in truth and in fact said statements and representations made by said respondent with respect to its product and the earnings to be derived from the sale thereof, were and are false, deceptive and misleading in the following among other particulars:

1. Agents, dealers, solicitors and other selling respondent's product cannot and do not earn up to \$2.00 an hour.

2. Men and women everywhere are not making tremendous profits—up to 202%, or getting their share of "the Big Money", or realizing an enormous margin of profit on quick easy sales.

3. Investments of \$1.50 are not building themselves into tens, hundreds and thousands of dollars in just a short time.

4. Every demonstration of respondent's product does not make "sales and profits galore".

5. Territories in which respondent's product has not been sold are not "gold mines, ready for digging".

6. Profits to the sellers of respondent's products are not "guaranteed" nor have they a fortune to gain which they cannot lose.

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7. Salesmen are not being made "independent" in handling respondent's product, nor are they earning as much as they want, nor are the amounts of earnings limited only by their own effort.

8. One-second demonstrations do not cause prospective purchasers to buy.

9. Agents and sellers cannot and do not make as much as \$2.00 in an hour at once by acting quickly or otherwise, beginning the first day; nor \$12.00 an hour nor \$18.00 in a day.

10. The sale of respondent's product is not providing and has not provided homes, cars and bank accounts for men and women selling such product.

11. A few sales an hour of respondent's product will not pay \$30, \$50, \$80 and more a week, and beginners are not so swamped with orders that they must hire sub-agents to help handle their business.

12. Earnings up to \$5,000 in a year are not reached by "quite a few."

13. Respondent's business is not "a gigantic, world-wide business with prospering representatives everywhere"; and no million dollar company, including chemical laboratories, occupying 5 acres and having three railroad sidings, is back of those selling respondent's products.

14. Respondent's product is not crack-proof, nor water-proof, nor permanent, nor does it renew trunks, luggage, school bags, shopping bags, brief cases, leather upholstery and cushions, auto tops, harness, and other articles of leather.

15. Respondent's product cannot and does not make scuffed shoe tops look as neat and good as "the day they left the factory" or make old shoes like new for 2¢ and 6¢ respectively.

16. The "attractive, polished, glowing neatness of brand new shoes" is not restored to old uppers of shoes by use of respondent's product no matter "how soiled, discolored, scuffed, scratched or faded the old uppers may be."

PAR. 5. Among the competitors of respondent referred to in paragraph 1 hereof, there are those who manufacture and sell in commerce products like or similar to those sold by respondent, and who do not make false, misleading, and extravagant claims and representations concerning such products, but advertise and represent the same fairly and accurately.

PAR. 6. Respondent by the use of the hereinbefore described advertising in interstate commerce has thereby falsely represented to prospective agents, salesmen, dealers, or others, that large or substantial sums of money are being or could be easily and quickly made in the sale of its said product, when in truth and in fact the selling

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possibilities and sale qualities thereof are not and never have been of the character represented, and respondent has further, as herein shown, falsely represented in advertising matter the nature, character and qualities of its said product.

By the use of these false and misleading representations appearing in respondent's circulars, bulletins, sales talks, or instructions, advertisements in trade magazines and in other advertising matter employed by respondent, which representations are passed on to the purchasing public by salesmen, agents, and dealers selling respondent's product, the consuming public and those induced to sell such product, are and have been thereby deceived concerning the character and qualities of the said product and the uses to which it, properly and successfully may be put, and are and have been thereby induced to purchase respondent's product under the erroneous belief that the false and extravagant claims made for it are and were true. The aforesaid practices of respondent are further to the detriment and injury of manufacturers and sellers of products similar to those sold by respondent, and have had the capacity and tendency to divert to respondent the trade of competitors engaged in selling in interstate commerce products of the nature of that sold by respondent, and who fairly and accurately advertise and represent such products.

PAR. 7. The above false, misleading, and deceptive acts, practices and methods of respondent under the circumstances and conditions hereinabove alleged are unlawful and constitute unfair methods of competition 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 14th day of August 1936, issued and on the 17th day of August 1936, served its complaint in this proceeding upon respondent, Perfect Manufacturing Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 5, 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 executed by the respondent through its counsel, Messrs. Paxton and Seasongood, and by W. T. Kelley, Chief Counsel, of the Commission, subject to the approval of the Commis-

sion, might 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 might proceed upon said statement of facts to make its report, stating its findings as to the facts (including inferences which it might draw from said 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, Perfect Manufacturing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 3325 Madison Road, in the city of Cincinnati, Ohio. Respondent is now and for more than two years last past has been engaged in the business of manufacturing and selling to the purchasing and consuming public in various parts of the United States, through the use of trade name companies, various appliances, products, and preparations. Among such is a liquid finish for shoes, made in different colors, known and designated as "Sav-An-Upper." The said preparation, Sav-An-Upper, is manufactured in Cincinnati, Ohio, where it is branded, labeled, and packed for sale and distribution by respondent trading under the name "Sav-An-Upper Company," and by its agent-salesmen, to the purchasing and consuming public in the United States. In consummating such sales and in distributing such product, respondent causes the said shoe finish to be transported and delivered from its place of business in Cincinnati, State of Ohio, through and into various other States of the United States to the respective purchasers thereof at their respective points of location.

PAR. 2. 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, sale and distribution of liquid finishes for shoes in commerce between and among the various States of the United States.

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PAR. 3. Respondent, in the course and conduct of its said business, and as a means of obtaining the services of agent-salesmen to handle and sell its product "Sav-An-Upper" causes and has caused advertisements to appear in sales magazines and periodicals having a general circulation throughout the United States and in addition distributes and has distributed to prospective agents, circulars and other mail matter containing sales talks and instructions. The representations contained in said advertisements distributed as aforesaid among agent-salesmen throughout the United States are and have been eventually communicated to customers and consumers, actual and prospective.

PAR. 4. Respondent, in the course and conduct of its business, in circulars, bulletins, sales communications and through other advertising media having general circulation, has made various claims, statements and representations concerning its product "Sav-An-Upper." In certain of its advertisements respondent represents that its product "Sav-An-Upper" has unusual sales appeal, or that selling qualities or possibilities of "Sav-An-Upper" are most exceptional and that large sums of money may commonly or easily be made by agents in handling and selling such product. In certain other statements and advertisements, respondent makes various representations concerning the permanent, wearing, lasting, and restorative qualities of the said product and concerning the size, scope, and character of respondent's business. Typical of the representations contained in said advertising matter of respondent, are statements that men and women everywhere are making tremendous profits, up to 202%, in the sale of "Sav-An-Upper," that an investment of \$1.50 can build itself into tens, hundreds, and thousands of dollars in just a short while, that earnings up to \$5,000 a year should be reached by quite a few, and other statements of like import and effect. In other statements it is represented that "Sav-An-Upper," when applied, has the characteristic of permanency and will renew articles to which it is applied, such as trunks, luggage, school and shopping bags, or will make scuffed shoe tops look as neat and good as the day they left the factory, or that when applied to old shoes they can be made to look new for as little as 2¢ to 6¢ respectively, and that old shoe uppers to which "Save-An-Upper" is applied, no matter how soiled or discolored, scuffed, scratched, or faded, will be restored to the glowing neatness of brand-new shoes. Further typical of respondent's representations are representations to the effect that respondent is, owns or operates a million dollar company which is, or will be, back of the salesmen selling its product "Sav-An-Upper," and that

such company has a world-wide business and prospering agents everywhere.

PAR. 5. The statements and representations made by respondent in selling and offering for sale its product "Sav-An-Upper" were, and are, false, deceptive, misleading, and exaggerated in various particulars. Respondent's product does not possess the sales appeal or possibilities that are being and have been claimed for it. Agents and salesmen can not and do not realize, as a result of the sale of said product, the large earnings and profits that have been held out to them by respondent as an inducement to have them handle and undertake the sale of said product. The respondent does not own, control or operate any million dollar company or business with world-wide trade or connections or any company or business even approximating such financial size, status or importance, and respondent's product "Sav-An-Upper," when applied to objects, does not produce or impart a coating which is permanent in character or which can or will renew or restore objects, no matter how old, worn or scuffed they may be, to a new or like-new condition.

PAR. 6. Among the competitors of the respondent referred to in paragraph 1 hereof, there are those who manufacture and sell in commerce, products like or similar to those sold by respondent, and who do not make false, misleading and extravagant claims and representations concerning such products, but advertise and represent the same fairly and accurately.

PAR. 7. The use of the hereinbefore mentioned false and misleading representations on the part of respondent and its agents, which are typical of the methods employed by respondent in the sale and offering for sale of its product, the said liquid finish for shoes known and designated as "Sav-An-Upper" has had, and now has, the tendency and capacity to cause agents and salesmen to form the mistaken and erroneous beliefs that a million dollar company, with a world-wide business and prosperous agents everywhere, is back of them, that the product has a selling power or appeal which it does not possess, and that large and substantial profits can be earned from the sale thereof. The use of respondent's representations has further caused members of the purchasing public to form mistaken and erroneous beliefs concerning the character and qualities of the said product and the uses to which it properly and successfully may be put. Salesmen and agents have thereby been induced to handle and sell respondent's product and members of the purchasing public have thereby been induced to purchase said product under the erroneous belief that the misleading and extravagant claims made for it are and were true.

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The aforesaid representations and practices of respondent are further to the detriment and injury of manufacturers and sellers of products similar to that sold by respondent and have the capacity and tendency unfairly to divert to respondent the trade of competitors engaged in selling in commerce among and between the various States of the United States and within the District of Columbia products of the nature of that sold by respondent, and who fairly and accurately advertise and represent such products.

CONCLUSION

The aforesaid acts and practices of the respondent, Perfect Manufacturing 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, the answer of respondent, and the agreed stipulation as to the facts entered into between the respondent herein, Perfect Manufacturing Company, 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 respondent herein findings as to the facts (including inferences which it may draw from the said stipulated facts) and the 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, Perfect Manufacturing Company, its officers, representatives, agents, individual or corporate, and its employees, in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia of a liquid finish or product for shoes known as "Sav-An-Upper," or designated or described under any other name, do forthwith cease and desist from:

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1. Representing that agents or salesmen can or do earn or have ever earned certain specified sums daily, weekly, monthly, or for or during any stated period of time through the sale of respondent's said product unless and until said agents or salesmen actually have so made the earnings stated;

2. Representing that respondent's product when applied to objects possesses and imparts the quality, effect or condition of permanency, or has the renewing and restoring qualities or characteristics, which have been ascribed to it by the respondent, and which it does not possess.

3. Representing that respondent is a million dollar company, and that it has assets or a volume of business or business connections or operations substantially in excess of those which it actually possesses.

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

FOOD DISPLAY MACHINE CORPORATION

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

Docket 2726. Complaint, Feb. 19, 1936—Decision, May 1, 1937

Where a corporation engaged in the sale and distribution of potato chip machines; in advertising same in various periodicals, pamphlets, form letters, and other advertising media of interstate circulation—

- (a) Represented and held out, as possible or maximum earnings for any fixed period, amounts in excess of those actually earned during such period by operators of its machines under normal conditions in due course of business, through use of such statements or expressions as "up to" or "as much as," or others of similar import and effect, such as "Make as much as \$23.00 a day on the capacity of one machine selling wholesale only," "Work at home. Make up to \$117.00 a week";
- (b) Represented or held out, as usual or customary earnings or profits to be derived from the operation of its machines, sums or amounts in excess of the average, usual and customary sums or amounts actually thus earned under normal conditions in due course of business, through such statements as "Every time you invest \$11.48 in raw materials, you get back \$35.00 in cash on the spot * * *," with \$23.50 thereof "net profit for you," and, theretofore, such statements as "There is no way to tell whether you'll make \$5,000 or \$15,000 the first year"; and
- (c) Represented that its said machines had a retail value or sales price greater than that for which they were usually and customarily sold in due course of business;

With effect of misleading a substantial portion of purchasing public into erroneous belief that said representations were true, and with result that such public, as a consequence of the mistaken and erroneous beliefs induced by such false and misleading statements and representations, bought a substantial volume of its products, and trade was unfairly diverted to it from competitors engaged in sale and distribution of such machines, or in manufacture, sale, and distribution thereof, and who truthfully represent possible and actual earnings of operators of their said 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. Robert S. Hall*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Bussian & DeBolt, 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 Food Display Machine Corporation, 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 said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized, 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 500 North Dearborn Street, Chicago, Ill. It is now, and for more than one year last past has been, engaged in advertising and selling potato chip machines 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 potato chip machines, when sold by it, to be shipped from its place of business in Chicago, Ill., to the purchasers thereof, some located, in the State of Illinois 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 in commerce in potato chip machines sold by the 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 persons, firms, and partnerships engaged in the sale of potato chip machines 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, in soliciting the sale of and selling its potato chip machines, respondent now represents, and for more than one year last past has represented, in and by its advertisements, published in various periodicals of interstate circulation, form letters, pamphlets, and other forms of advertising media, as follows:

Make as much as \$23.00 a day on capacity of one machine selling wholesale only;

Work at home. Make up to \$117.00 a week;

\$23.50 a day actually possible;

Profits of \$100.00, \$200.00, \$300.00 and more weekly possible with this marvelous new automatic potato chip machine;

A new kitchen industry which husbands and wives (or either) can develop in their spare time * * * profits up to \$30.40 a day;

There is no way to tell whether you'll make \$5,000 or \$15,000 the first year;

It is possible for a live wire to make a net profit of \$1,000 to \$1,500 a month;

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CHICAGO COMPANY MAKES 50,000 LBS. PER WEEK!

OF THE three big companies supplying part of the Chicago market with Potato Chips, consider the business that is being done by only one. They have 40 men and girls working. They make and sell 50,000 pounds of Potato Chips a week—50,000 pounds. Think what that means. Profits on Potato Chips run up as high as 20¢ per pound. If you sold only 500 lbs. a week, you would make \$100.00 on this small business. Yet here is one company that sells 50,000 pounds. Ask yourself whether this is a chance to make big money and make it quick;

Every time you invest \$11.48 in raw materials, you get back \$35.00 in cash on the spot. \$23.50 of it is net profit for you;

There are at least 38 outlets in your community that, with this low priced machine I have just perfected, you can furnish with genuine Vita-Seald, mineralized potato chips wholesale;

A complete mineral food content of 9 vital health-giving minerals;

The old-fashioned, greasy, devitalized potato chips—difficult to digest and worthless as a mineral food;

All of the valuable minerals found in a raw potato have been retained in these chips by the Vita-Seald process of cooking;

Vita-Seald potato chips retain these nine previous minerals. This mineral invention of mine seized the public's imagination and gives my Vita-Seald operators a tremendously important selling point.

People may buy their first bag just as they would any other. One taste and they know they have bitten into something unusual. The taste is so different, such a temptation to eat more. They then read the story. They discover that the reason for the spicy, tangy, crunchy, crispness is the mineral richness of the Vita-Seald chip;

You receive \$222.40 worth of actual value yet you pay only \$186.53.

Said statements, together with other statements not herein set out, are intended as, and serve as representations as to the income and profit that may reasonably be expected to accrue to the purchaser of the equipment upon the purchase and use thereof.

In truth and in fact the actual or probable earnings or profits of operators of respondent's potato chip machines are, on the average, much less than the amounts set forth above. The statements set forth above relative to the mineral content, taste, and food value of potato chips manufactured by respondent's machines and in accordance with its process, are grossly exaggerated and unwarranted by the facts. The representation that "there are at least 38 outlets in your community that, with this low priced machine I have just perfected, you can furnish with genuine Vita-Seald, mineralized potato chips wholesale", is untrue.

PAR. 3. The use by respondent of the representations set out in paragraph 2 hereof have had and do have the capacity and tendency to mislead and deceive and do mislead and deceive a substantial portion of the purchasing public into the belief that such representations are true and to purchase a substantial quantity of such potato

chip machines from respondent in such erroneous belief. There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of potato chip machines who do not misrepresent the probable or average earnings of the operators of such machines, or the number of wholesale outlets for their product, who likewise advertise, sell and distribute potato chip machines, among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors; thereby substantial injury is being, and has been, done by respondent to substantial competition in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 4. The above alleged acts and practices of respondent are all to the prejudice of the public and the 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 February 19, 1936, issued and served its complaint in this proceeding upon respondent, Food Display Machine 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 Robert S. Hall, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by John A. Bussian, 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 briefs in support of the complaint and in opposition thereto, request for oral argument not having been made, 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, Food Display Machine Corporation, is an Illinois Corporation. Its principal office and place of business is at 325 West Huron Street, Chicago, Ill.

It is now, and since 1924, has been, engaged in the sale and distribution of potato chip machines. Said machine is a complete unit consisting of a slicer, cooking vat, and centrifuge for drying or rid-ding the chips of the cooking oil. When orders are received for respondent's said machines, it causes them to be shipped and trans-ported from Chicago, Ill., to the purchasers thereof located at vari-ous points in States of the United States other than the State of Illinois, and in foreign countries. The respondent has, during the past several years, maintained a constant current of trade in said machines, in commerce, among and between the various States of the United States. Respondent's dollar volume of business, for the first half of the year 1936, was approximately \$20,000.

At all times during the last several years, the respondent has been in substantial competition with other corporations, and with individ-uals and partnerships, engaged in the sale and distribution, or in the manufacture, sale and distribution, of potato chip machines or potato chip machine equipment, in commerce, among and between the several States of the United States and in the District of Columbia.

PAR. 2. In connection with the sale of its potato chip machines, respondent advertises its products in various periodicals, pamphlets, form letters, and other advertising media of interstate circulation. Representations of its said advertising claims are the following:

Make as much as \$23.00 a day on the capacity of one machine selling whole-sale only.

Work at home. Make up to \$117.00 a week.

Every time you invest \$11.48 in raw materials, you get back \$35.00 in cash on the spot. \$23.50 of it is net profit for you.

Respondent formerly made the following statements in its adver-tising literature:

Profits of \$100.00, \$200.00, \$300.00 and more weekly possible with this mar-velous new automatic potato chip machine.

A new kitchen industry which husbands and wives (or either) can develop in their spare time * * * profits up to \$30.40 a day.

There is no way to tell whether you'll make \$5,000 or \$15,000 the first year.

It is possible for a live wire to make a net profit of \$1,000 to \$1,500 a month.

You receive \$222.40 worth of actual value yet you pay only \$186.53.

No operator of the respondent's said potato chip machines ever earned any of the amounts specified in the advertising claims set forth above, and there is no evidence that any operator has ever made any

net profit by operation of said machines. In fact, respondent furnished no evidence to substantiate its advertising claims. Nicholas Macron, of Cleveland, Ohio, purchased one of respondent's machines, after having read its advertising claims, and operated said machine according to instructions furnished by respondent, at intervals, over a period of several weeks, but he never made any net profit whatever by said operations.

PAR. 3. Many of respondents' competitors who sell and distribute, or manufacture, sell and distribute, potato chip machines or potato chip machine equipment, in interstate commerce, do not in any way misrepresent the actual or possible earnings of the operators of their machines.

PAR. 4. The use by respondent of the representations set forth herein, in its advertising literature, has had and now has the capacity and tendency to mislead and deceive and has misled a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a consequence of the mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to, the purchasing public has purchased a substantial volume of respondent's products with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the business of selling and distributing potato chip machines, or in the manufacture, sale, and distribution of potato chip machines or equipment, who truthfully represent the possible and actual earnings of the operators of their machines. 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 the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Food Display Machine 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 Robert S. Hall,

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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, no request for oral argument having been made, 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, Food Display Machine Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of potato chip machines in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, or holding out, as possible or maximum earnings for any fixed period through the use of such statements or expressions as "up to" or "as much as," or any other statements or expressions of similar import and effect, or through any other means or device or in any manner, any amount in excess of amounts actually earned during said fixed period by operators of respondent's machines under normal conditions in due course of business;

2. Representing, or holding out, as usual or customary earnings or profits to be derived from the operation of its machines, any sum or amount in excess of the average usual and customary sums or amounts actually so earned under normal conditions in due course of business.

3. Representing that respondent's machines have a retail value or sales price greater than the price for which they are usually and customarily sold in due course of business.

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 the order.

IN THE MATTER OF
C. C. MILLER ET AL., TRADING AS SUNLIFE CHLORO-
PHYLLIAN LABORATORIES, LTD.

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

Docket 2753. Complaint, Mar. 31, 1936—Decision, May 1, 1937

Where partners engaged in advertising, selling, and distributing a preparation for external application, known and designated as "Sunlife Chlorophyllian Oil"; in advertising same in circulars, published and distributed throughout the United States, and in radio broadcasts and other forms of advertising media—

- (a) Represented that said preparation would cure and was a competent and effective treatment for the relief of nervous irritation, muscular rheumatism, lumbago, gouty conditions, swollen and painful joints, cramped limbs, swollen and aching feet, coughs and colds, sleeplessness, "growing" pains, sprains, cuts, bruises, burns, and arthritis; and
 - (b) Represented, as aforesaid and through use of word "Sunlife" in their said trade name, that said product contained beneficial elements of the natural rays of the sun, and that use thereof would bring beneficial effects of sunshine to the users, through statements or representations that active element in preparation in question was chlorophyll, and that said substance was literally stored-up sunshine captured by science and brought to the user, and that users of said preparation would receive same beneficial effects as would be received from exposure to the natural rays of the sun;
- Facts being function of pigment chlorophyll, found in plant life, is limited to such life and has no true effect on or therapeutic value to the human body and, applied to the skin, is not absorbed, preparation in question is not a competent or adequate treatment for various ailments and conditions above set forth, and does not relieve so-called "growing" pains in children or other conditions in question, and use thereof does not bring sunshine to affected parts of the body nor give the user the beneficial effects of sunshine;

With tendency and capacity to confuse, mislead, and deceive members of the purchasing public into the erroneous and mistaken belief that aforesaid preparation or oil contained natural sunshine, and that users thereof would receive benefits flowing from the use of natural sunshine, and that it was a competent and adequate treatment for muscular rheumatism, lumbago, gouty conditions, and the other afflictions and ailments set forth, and that users thereof would receive same beneficial effects as those received from exposure to natural sunshine, and of thereby, and through use of word "Sunlife" in trade name featured as above set forth, inducing members of buying public to purchase said preparation for use because of the erroneous beliefs thus engendered, and of unfairly diverting trade to them from competitors engaged in the sale and distribution of similar preparations in commerce among and between the various States, without in any wise misrepresenting the therapeutic value of their said respective products; to the substantial injury of competition in commerce:

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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. Charles P. Vicini* and *Mr. Robert S. Hall*, trial examiners.

Mr. P. C. Kolinski and *Mr. Astor Hogg* for the Commission.

Mr. Sanford W. Hornwood, of Los Angeles, 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 C. C. Miller, W. B. Mather, W. M. Louisson, D. A. Lester, L. D. Marr, H. M. Young, partners, trading as Sunlife Chlorophyllian Laboratories, Ltd., 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. Respondents, C. C. Miller, W. B. Mather, W. M. Louisson, D. A. Lester, L. D. Marr, H. M. Young, are partners trading and doing business in the name of Sunlife Chlorophyllian Laboratories, Ltd., with their principal office and place of business located at 2702 South Hill Street, Los Angeles, Calif. They are now, and for more than one year last past have been, engaged in advertising, selling, and distributing a preparation recommended for various ailments of the human body and designated "Sunlife Chlorophyllian Oil," and now cause, and for more than one year last past have caused, their said preparation, when sold by them, to be shipped from their place of business in Los Angeles, Calif., to the purchasers thereof, some located in the State of California 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 in commerce in said preparation sold by the 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, in substantial competition with other partnerships and with persons, firms, and corporations engaged in the sale of like oils and other similar preparations 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 their business, as described in paragraph 1 hereof, respondents adopted as and for their trade name for their preparation the words "Sunlife Chlorophyllian Laboratories, Ltd." and caused said trade name to appear prominently displayed in their advertisements and advertising matter, including circulars, folders, and letterheads, and to be distributed throughout the various States of the United States.

PAR. 3. In the course and conduct of their business, as described in paragraph 1 hereof, in soliciting the sale of and selling said preparation "Sunlife Chlorophyllian Oil," respondents now represent, and for more than one year last past have represented, in and by radio broadcasts, advertisements having an interstate circulation, letters, pamphlets, and other forms of advertising media, as follows:

(a) Rub away the pain—Scientists say: "Muscular pains, aching discomforts are caused by congestion. When this congestion is broken up by surging blood, the pain disappears". Rub SUNLIFE CHLOROPHYLLIAN OIL into those muscles and joints. Feel the tingling surge of blood. SUNLIFE CHLOROPHYLLIAN OIL'S active element is chlorophyll which is a scientific name for the "green substance of living plants". It can be called "captured sunlight". The value of chlorophyll is recognized and recommended.

(b) SUNLIFE CHLOROPHYLLIAN OIL is recommended for nervous irritation, muscular rheumatism, lumbago, gouty conditions, swollen and painful joints, cramped limbs, swollen and aching feet, simple coughs and colds, insomnia or sleeplessness.

(c) Every mother will appreciate it for the children, as it relieves the so-called "growing pains" and many minor injuries, such as SPRAINS, CUTS, BRUISES AND BURNS.

(d) Particularly soothing to the nerve tissues, producing a blood stimulation

(e) CHLOROPHYLL is literally stored-up sunshine, captured by science and brought to you.

(f) * * * to any of you who are suffering from muscular rheumatism, sciatica, lumbago, gouty conditions, cramped or swollen limbs, or stiff, aching joints * * * I want to tell You about SUNLIFE CHLOROPHYLLIAN PENETRATING OIL * * * It has brought relief to many people who suffered with those ailments.

(g) You have all seen a dog or cat, when they are hurt or ill, seek out a sunny spot and curl up there and just seem to soak up the sunshine. * * * You may have tried it yourself, letting the healing rays of the sun shine on you when you have a stiff neck, aching shoulder, etc. Something like this same result may be expected from the use of SUNLIFE CHLOROPHYLLIAN OIL.

(h) It is soothing to the nerves and stimulating to the blood flow, and seems to relieve nervous tension.

(i) A man * * * had suffered from arthritis in his feet for a long time so badly that he could hardly walk. He had spent several months in one of the highest priced hospitals in this country but without gaining relief for his feet. He took two bottles of SUNLIFE with him when he went back to Iowa, and we had a letter from him in which he told us that he had used one bottle and was started on the second bottle and there was very little soreness left in his feet and he was greatly relieved.

(j) The scientific new discovery—SUNLIFE CHLOROPHYLLIAN PENETRATING OIL.

All of said representations and statements, together with other statements not herein detailed, purport to be descriptive of respondents' preparation and of the beneficial results that may reasonably be expected to be obtained by the user of said preparation.

PAR. 4. For a good many years a substantial portion of the purchasing public has been led to believe, and does believe, that exposure of the human body to the natural sunshine produces beneficial results in the treatment of diseases, conditions and ailments of the skin, muscles, bones, and joints, and other parts of the human body.

Chlorophyll is produced by the aid of sunlight, but it is not absorbed through the skin, and its application to the skin has no effect upon rheumatic conditions, gouty conditions, sciatica, lumbago, cramped or swollen limbs, joints, or other parts of the human anatomy. Chlorophyll does not possess the same beneficial ingredients as sunlight and its use does not produce the same beneficial effects as sunlight.

PAR. 5. The use of the word "Sunlife" in respondents' trade name is false and misleading and deceptive to the purchasing public, in that purchasers are led to believe that respondents sell and distribute a preparation into which has been incorporated certain beneficial elements contained in the natural rays of the sun, and that the use of said preparation in the treatment of certain diseases and ailments will have the same beneficial effects in the treatment thereof as actual exposure of the human body to the natural rays of the sun, and causes them to purchase respondents' preparation in said mistaken and erroneous belief.

PAR. 6. In truth and in fact the representations made by the respondents, in aid of the sale of their preparation, are grossly exaggerated, false, misleading, and incorrect. Said preparation is not a competent or adequate remedy or treatment for nervous irritation, muscular rheumatism, lumbago, gouty conditions, swollen or painful joints, cramped limbs, swollen or aching feet, insomnia or sleeplessness. The preparation does not relieve in children the so-called "growing pains" and any injuries of children, such as cuts or sprains or bruises or burns. The chlorophyll contained in the preparation does not penetrate the skin and reach bones or muscles or joints. The preparation is not soothing to the nerve tissues, and does not produce a blood stimulation. Chlorophyll is not literally stored-up sunshine, and the use of the preparation does not bring to affected parts of the human body natural sunshine. The preparation does not bring relief to the users. The use of the preparation

does not bring about remotely or otherwise, the results obtained from natural sunshine. The use of the preparation will not and does not act as a cure for or a remedy for arthritis, or any other ailment of the human body.

PAR. 7. The use of the word "Sunlife" in respondents' trade name has the capacity and tendency to deceive and mislead the purchasing public into the belief that the product sold by respondents is one that brings natural sunshine to the purchasers who use the preparation sold by the respondents. The representations of respondents, as hereinabove set forth, and other similar representations made by the respondents, have had and do have the tendency to confuse, mislead and deceive members of the public into the belief that respondents' preparation, designated "Sunlife Chlorophyllian Oil," contains natural sunshine, and that the users of the preparation will get the benefit inuring from the use of natural sunshine; that the preparation is a competent and adequate remedy and treatment for muscular rheumatism, sciatica, lumbago, gouty conditions, cramped, swollen limbs, and stiff, aching joints; that it is a competent and adequate treatment and remedy for nervous irritation; that its use will relieve the growing pains of children and many minor injuries of children, such as cuts, sprains, bruises, and burns; that the use of the preparation will bring sunshine to afflicted parts of the human body, such as aching joints, muscular rheumatism, lumbago, and various other ailments; that chlorophyll is literally stored-up sunshine; that it will penetrate the skin and reach afflicted parts of the human system; that users of said preparation will receive beneficial results and results similar to those received from natural sunshine. The said representations of respondents have had and do have the tendency and capacity to induce members of the public to buy and use said preparation because of the erroneous belief engendered as above set forth, and to unfairly divert trade to respondents from competitors engaged in the sale, in interstate commerce, of similar competing preparations.

There are among the competitors of respondents, as mentioned in paragraph 1 hereof, many who sell and distribute in commerce similar oils and preparations, who do not misrepresent the properties or qualities or therapeutic virtues, functions, uses or effects of their said competing products.

PAR. 8. The above alleged acts and practices of respondents are all to the prejudice of the public and the 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."

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 31, 1936, issued and served its complaint in this proceeding upon respondents, C. C. Miller, W. B. Mather, W. M. Louisson, H. M. Young, D. A. Lester, and L. D. Marr, partners, trading as Sunlife Chlorophyllian Laboratories, Ltd., 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 P. C. Kolinski and Astor Hogg, attorneys for the Commission before Charles P. Vicini and Robert S. Hall, examiners of the Commission theretofore duly designated by it and in opposition to the allegations of the complaint by Sanford W. Hornwood, 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 (the respondents having filed no 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, C. C. Miller, W. B. Mather, W. M. Louisson, H. M. Young, D. A. Lester, and L. D. Marr are partners trading and doing business under the name of Sunlife Chlorophyllian Laboratories, Ltd., with their principal office and place of business located at 2702 South Hill Street, Los Angeles, Calif. For several years last past they have been and they are now, engaged in advertising, selling and distributing a preparation for external application known and designated as "Sunlife Chlorophyllian Oil." They sell and distribute said preparation in commerce between and among the various States of the United States in substantial quantities. They cause said preparation, when sold, to be shipped from their place of business in the State of California to the purchasers thereof located in the various States of the United States other than the State of California. In the course and conduct of their business as aforesaid, respondents, during all the time herein mentioned, have been and

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are now in substantial competition with other partnerships and with corporations, firms and individuals engaged in the business of selling and distributing like oils and other preparations designed for the treatment of similar conditions and ailments of the human body in commerce between and among the various States of the United States.

PAR. 2. Respondents' product is in liquid form and contains the following ingredients:

Camphor gum U. S. P.,
Oil Wintergreen (Methyl Salicylate) U. S. P.,
Oil Peppermint, U. S. P.,
Chlorophyll concentrate paste in oil,
Solvent mineral oil (odorless),
Crystal oil.

PAR. 3. Respondents have represented by advertisements that their preparation "Sunlife Chlorophyllian Oil" will cure and is a competent and effective treatment for the relief of nervous irritation, muscular rheumatism, lumbago, gouty conditions, swollen and painful joints, cramped limbs, swollen and aching feet, simple coughs and colds, insomnia, "growing" pains, sprains, cuts, bruises, burns, and arthritis; that said preparation is soothing to the nerves and relieves nervous tension; that the active element in the preparation is Chlorophyll; that Chlorophyll is literally stored-up sunshine captured by science and brought to the user; and that the users of said preparation will receive the same beneficial effects as will be received from exposure to the natural rays of the sun. These representations have appeared in circulars, published and distributed by respondents throughout the United States, in radio broadcasts recommending respondents' preparation and in other forms of advertising media. Among the representations, statements and claims made by respondent are:

(a) Rub away the pain—Scientists say:

"Muscular pains, aching discomforts are caused by congestion. When this congestion is broken up by surging blood, the pain disappears." Rub **SUNLIFE CHLOROPHYLLIAN OIL** into those muscles and joints. Feel the tingling surge of blood. **SUNLIFE CHLOROPHYLLIAN OIL'S** active element is chlorophyll which is a scientific name for the "green substance of living plants". It can be called "captured sunlight". The value of Chlorophyll is recognized and recommended.

(b) **SUNLIFE CHLOROPHYLLIAN OIL** is recommended for nervous irritation, muscular rheumatism, lumbago, gouty conditions, swollen and painful joints, cramped limbs, swollen and aching feet, simple coughs and colds, insomnia or sleeplessness.

(c) Every mother will appreciate it for the children, as it relieves the so-called "growing pains" and many minor injuries, such as **SPRAINS, CUTS, BRUISES, AND BURNS**.

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(d) Particularly soothing to the nerve tissues, producing a blood stimulation.

(e) CHLOROPHYLL is literally stored-up sunshine, captured by science and brought to you.

(f) . . . to any of you who are suffering from muscular rheumatism, sciatica, lumbago, gouty conditions, cramped or swollen limbs, or stiff, aching joints * * * I want to tell you about SUNLIFE CHLOROPHYLLIAN PENETRATING OIL * * * It has brought relief to many people who suffered with those ailments.

(g) You have all seen a dog or cat, when they are hurt or ill, seek out a sunny spot and curl up there and just seem to soak up the sunshine. * * * You may have tried it yourself, letting the healing rays of the sun shine on you when you have a stiff neck, aching shoulder, etc. Something like this same result may be expected from the use of SUNLIFE CHLOROPHYLLIAN OIL.

(h) It is soothing to the nerves and stimulating to the blood flow, and seems to relieve nervous tension.

(i) A man * * * had suffered from arthritis in his feet for a long time so badly that he could hardly walk. He had spent several months in one of the highest priced hospitals in this country but without gaining relief for his feet. He took two bottles of SUNLIFE with him when he went back to Iowa, and we had a letter from him in which he told us that he had used one bottle and was started on the second bottle and there was very little soreness left in his feet and he was greatly relieved.

PAR. 4. For many years a substantial portion of the purchasing public has believed that exposure of the human body to natural sunshine produces beneficial results in the treatment of diseases, conditions and ailments of the skin, muscles, bones, joints, and other parts of the human body.

Chlorophyll is a pigment produced by the aid of sunshine and found in plants, the function of which is to act as a catalyst in storing up strength for plant life. Its function is limited to plant life. This pigment is not found in animal life and has no true function or effect on the human body. Chlorophyll has no therapeutic value to or effect on the human body, and if it is applied to the skin it is not absorbed. The only therapeutic value that might be ascribed to any of the ingredients of the preparation involved is that camphor and oil of wintergreen sometimes act as counter-irritants in such conditions as acute arthritis, but even then such ingredients have no curative effects. The preparation is not a competent or adequate treatment for, nor does it when applied, relieve nervous irritation, muscular rheumatism, lumbago, gouty conditions, swollen or painful joints, coughs and colds, cramped limbs, swollen or aching feet, insomnia and sleeplessness. The preparation does not relieve the so-called "growing pains" in children, or cuts, sprains, bruises, burns or arthritis. It is not soothing to the nerves and does not relieve nervous tension. Chlorophyll is not literally stored-up sunshine and the use of the preparation does not bring sunshine to affected parts of the

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human body, and neither does the user thereof receive the beneficial effects of sunshine. The chlorophyll alleged to be contained in said preparation does not and cannot penetrate the skin and said preparation will not bring relief to the users for any of the conditions that respondents represent it to be beneficial.

PAR. 5. Respondents have adopted and now use the trade name "Sunlife Chlorophyllian Laboratories, Ltd." They cause their aforesaid trade name to be prominently featured and set forth in all of their advertisements, leaflets, booklets, circulars, etc., which they send to customers and prospective customers, and in and by radio broadcasts.

The use of the word "Sunlife" in respondents' trade name is misleading in that purchasers are led to mistakenly believe that respondents offer and sell a preparation into which certain beneficial elements containing the natural rays of the sun have been incorporated, and that the use of said preparation will give the same benefits as will be received from actual exposure of the body to the natural rays of the sun.

PAR. 6. The representations of respondents as hereinbefore set forth have had and do have the tendency and capacity to confuse, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the preparation "Sunlife Chlorophyll Oil" contains natural sunshine and that the users of the preparation will receive the benefits flowing from the use of natural sunshine; that the preparation is a competent and adequate treatment for muscular rheumatism, lumbago, gouty conditions, cramped and swollen limbs, painful joints, coughs and colds, sleeplessness "growing pains," cuts, sprains, bruises, burns, and arthritis; that the preparation is soothing to the nerves and relieves nervous tension; that the use of the preparation will carry sunshine to afflicted parts of the human body and that the users of said preparation will receive the same beneficial effects as those received from exposure to natural sunshine.

The representations of respondents, as aforesaid, and the use of the word "Sunlife" in respondents' trade name have the capacity and tendency to induce members of the buying public to purchase said preparation for use because of the erroneous beliefs engendered as above set forth, and to unfairly divert trade to respondents from competitors engaged in the sale and distribution of similar preparations in commerce among and between the various States of the United States, and which said competitors do not in any wise misrepresent the therapeutic value of their respective preparations.

In this manner respondents do substantial injury to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid facts and practices of the respondents, C. C. Miller, W. B. Mather, W. M. Louisson, H. M. Young, D. A. Lester, and L. D. Marr, partners, trading as Sunlife Chlorophyllian Laboratories, Ltd., 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 Charles P. Vicini and Robert S. Hall, examiners of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief of the Commission herein filed (the respondents having filed no brief) 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, C. C. Miller, W. B. Mather, W. M. Louisson, H. M. Young, D. A. Lester, and L. D. Marr, individually and as partners, trading under the name "Sunlife Chlorophyllian Laboratories, Ltd." or under any other trade name, their representatives, agents, servants, and employees in connection with the offering for sale, sale, and distribution of a preparation now designated as "Sunlife Chlorophyllian Oil" or any other preparation of the same or substantially the same ingredients, composition or therapeutic effect, sold under that name or under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing in any manner that said preparation will cure or is a competent and effective treatment or remedy for, or will relieve nervous irritation, nervous tension, muscular rheumatism, lumbago, gouty conditions, swollen and aching feet, coughs and colds, sleeplessness "growing" pains, sprains, cuts, bruises, burns, and arthritis.

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2. Representing through the use of the word "Sunlife" alone or in conjunction with any other word or words, or through the use of any other word or words of similar import and effect in their trade name or in any other manner, or through any other means or device, that said product contains any beneficial elements of the natural rays of the sun or that the use of said preparation will bring the beneficial effects of sunshine to the users thereof.

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

BUREAU OF HYGIENE, INC., GYNEX CORPORATION,
PREFERRED INDUSTRIES CORPORATION, AND BEN-
JAMIN LINDNERCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3042. Complaint, Jan. 29, 1937—Decision, May 7, 1937*

Where a corporation engaged in the sale and distribution, among the several States and in the District of Columbia, of certain medicinal preparations and appliances for use by women in feminine hygiene, variously described, known as and sold under names "Gynettes," "Gyn-o-sol," "Gynex Tablets," "Viornetts," "Gynex Fountain Bag," and "Gynex Spray with Gynex Bulb," in substantial competition with others, of whom some were engaged in sale and distribution of similar preparations and appliances and of whom others were engaged in sale and distribution of preparations, remedies, and treatments used and useful for purposes for which it represented and implied that its said preparations and appliances were useful, and among which various competitors were included many who do not in any manner misrepresent their products and efficacy thereof; in describing its said preparations and appliances and efficacy thereof when used for purposes recommended, in booklets, pamphlets, and circulars distributed among prospective purchasers and in window display placards—

- (a) Represented that said "Gynettes," "Gynex Tablets," and "Gyn-o-sol" preparation constituted competent and effective contraceptive and could be depended upon for such purpose without limitation, and that they were competent and reliable remedies, treatments, and cures for ills and diseases peculiar to women, as in said various advertisements specified;
- (b) Represented that preparation "Viornetts" was a competent and effective treatment and cure for period pains and irregularities in the menstruation period of women, and a sedative for uterine and ovarian troubles of women, and that it strengthened said organs;
- (c) Represented that said preparations and appliances had been tested and approved by an independent organization devoted to scientific research on questions involving methods of preventing conception and preventing, treating, and curing diseases, maladies and conditions peculiar to women; and
- (d) Represented that said preparations and appliances might be used with safety and without deleterious effects by all women;

Facts being preparations and products named did not constitute competent and effective contraceptives as aforesaid claimed, and could not be depended upon for such purpose without limitation, nor constitute competent and reliable remedies, treatments and cures for ills, diseases, and conditions as above set forth, but had no beneficial therapeutic value in treatment thereof or of any of them, said preparations and appliances had not been submitted, tested, and approved as above set forth, by an independent organization as claimed or represented, and could not be used with safety and without deleterious effects as contraceptives, but use thereof in many

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cases was capable of causing and did cause injuries and had a deleterious effect on users thereof;

With effect of confusing, misleading and deceiving members of the public as to the properties and efficacy of the said preparations and appliances as hereinabove set forth, and of causing them, because of the erroneous beliefs thus engendered and their implications, to buy and use said preparations and appliances, and thereby substantially divert trade in said commerce to it from its competitors who truthfully represent their products; to their injury and that of the public:

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

Mr. William L. Taggart for the Commission.

Mr. John W. Hilldrop, 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 Bureau of Hygiene, Inc. (formerly the Bureau of Feminine Hygiene), the Gynex Corporation, Preferred Industries Corporation, corporations and Benjamin Lindner, 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. Respondents Bureau of Hygiene (formerly Bureau of Feminine Hygiene) and Gynex Corporation are now, and have been for several years last past, corporations organized, existing, and doing business under the laws of the State of New York. Respondent Bureau of Hygiene was organized to do research and laboratory work relative to the products marketed by the respondent Gynex Corporation.

Respondent Preferred Industries Corporation is now, and has been for several years last past, a corporation organized and doing business under the laws of the State of New York. Benjamin Lindner is its President and directs and controls the policies and business operations of the corporation. Respondent Preferred Industries Corporation, acting directly and through Benjamin Lindner, its president, supervises, operates, and directs the sales policies and general business affairs of respondents Gynex Corporation and Bureau of Hygiene. It, together with its president, Benjamin Lindner, acting in his indi-

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vidual capacity, also factor the products marketed by Gynex Corporation.

The principal offices and places of business of all of the respondents are located at 301 Madison Ave., and 211 East 19th Street in the city of New York. Respondent Benjamin Lindner also has an office at 285 Madison Avenue in the city of New York. The respondents have been, and are now engaged in the business of manufacturing, distributing and selling certain medical preparations and appliances for so-called feminine hygiene use to purchasers in commerce among and between various States of the United States and in the District of Columbia. The respondents cause these products, when sold, to be transported from their aforesaid places of business to the purchasers thereof located in the various States other than the State of New York and in the District of Columbia, and maintain a constant course of trade and commerce in said products so distributed and sold by them.

In the course and conduct of said business respondents have been, and are, in substantial competition with other corporations and with firms, individuals, and partnerships engaged in the distribution and sale of similar products, and other products intended and designed for similar use by women in commerce among and between the various States of the United States.

PAR. 2. The products marketed by the respondents are variously known and described as Gynettes (the ideal suppository for feminine hygiene), Gyn-o-sol (the ideal vaginal jelly for feminine hygiene), Gynex Tablets (normal oxyguinoline sulphate), Viornetts (viburnum compound), Gynex Spray, Gynex Fountain Bag and Gynex Spray with Gynex Bulb. In the operation of their business and for the purpose of inducing the purchase of said products on the part of members of the purchasing public, the respondents have made use of certain advertising literature such as booklets, pamphlets, circulars, and show-window displays represented to be descriptive of the various products herein named and the various applicators used in connection therewith, and the effectiveness of said products and appliances when used. The advertising literature herein referred to is distributed to members of the purchasing public through advertising literature contained in the boxes in which said products are marketed, and in advertising literature distributed through the medium of drug stores, through the United States mails direct to the prospective purchasers and in other ways.

With reference to the products designated as Gynettes and Gyn-o-sol such statements as the following are made.

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GYNETTES

One Gynette is used upon retiring, or when desired. In a few minutes its cocoa butter base melts, spreading an antiseptic film over the interior of the vagina, affording protection, and security of mind. Since the antiseptic qualities of Gynettes remain effective throughout the night—douching may be postponed until morning. Gynettes are also beneficial in soothing minor irritation and are excellent deodorants. Gynettes may be used with utmost confidence—are non-injurious—dependable, and are compounded from a formula that has the professional endorsements of Gynecologists as well as the Bureau of Feminine Hygiene.

GYN-O-SOL

Gyn-o-sol is a soft jelly which performs the same function and is compounded from the same formula as Gynettes. Use of one or the other is a matter of personal preference, the difference being entirely in the manner of application. Gyn-o-sol is applied quickly and easily and its action is immediate and effective. A similar formula is used today by thousands of women. It is non-injurious and offers the married woman the protection she wants. Its consistency is such that it spreads evenly over all internal parts and deposits a film that remains effective throughout the night, making douching unnecessary until morning.

In said statements, together with other similar statements not herein set out, and in their general advertising respondents represent directly or through implication that said products designated as Gynettes and Gyn-o-sol form competent and effective preventatives against conception, and form competent and reliable remedies, cures, or treatments for certain maladies, ills, or diseases peculiar to women such as:

- Leucorrhoea (Whites)
- Inflamed Membrane (Endometritis)
- Vaginal Inflammation (Vaginitis)
- Pelvic Inflammation
- Nervous Conditions (Neurosis)

PAR. 3. In truth and in fact the products designated as Gynettes and Gyn-o-sol do not form or constitute competent treatments, remedies, or cures for the various maladies and diseases peculiar to women hereinabove set out and are of no beneficial therapeutic value in the treatment of said diseases. Neither of said products will accomplish the results claimed by the respondents with respect to preventing conception. Neither of said products, when used in connection with the applicators furnished by the respondents will in all cases serve as competent preventatives of conception but are in some cases capable of causing injuries and deleterious effects to those making use of them.

PAR. 4. With reference to the product designated as Viornetts such statements as the following are made:

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Viornetts contain Viburnum and other beneficial ingredients, and are recommended to all women who suffer periodic pain or irregularities. A uterine and ovarian sedative, its use tends to tone and strengthen these organs. Non-narcotic, chocolate coated—convenient—and fully as effective as liquid preparations. Viornetts are harmless, reliable, and efficient.

In said statements, together with other similar statements not herein set out, and in their general advertising respondents represent directly or through implication that said product designated as Viornetts form effective treatments for periodic pain or irregularities, sedative for uterine and ovarian troubles of women and to strengthen these organs and are as fully effective as liquid preparations.

In truth and in fact the products designated as Viornetts do not form or constitute competent treatments for periodic pain or irregularities, sedative for uterine and ovarian troubles as hereinabove set out and have no beneficial therapeutic value in the treatment of said diseases or conditions.

PAR. 5. With reference to the products designated as Gynex Tablets such statements as the following are made:

Of the many preparations which are used for the purpose of douching, a few equal and none has been found superior to Gynex Tablets. They are excellent deodorants, instantly destroying offensive odors. Gynex Tablets are specially manufactured for use with the Gynex Dilating Spray—together they form the ideal combination for the correct practice of feminine hygiene. Healing—soothing—refreshing.

In said statements, together with other similar statements not herein set out, and in their general advertising respondents represent directly or through implication on their part that said products designated as Gynex Tablets form competent and effective preventatives against conception, and form competent and reliable remedies, cures, or treatments for certain maladies, ills, or diseases peculiar to women such as:

- Leucorrhœa (Whites)
- Inflamed Membrane (Endometritis)
- Vaginal Inflammation (Vaginitis)
- Pelvic Inflammation
- Nervous Conditions (Neurosis)

In truth and in fact the products designated as Gynex Tablets do not form or constitute competent treatments, remedies or cures for the various maladies and diseases peculiar to women hereinabove set out and have no beneficial therapeutic value in the treatment of said diseases. The said product will not accomplish the results claimed by the respondents with respect to preventing conception. Neither will said product, when used in connection with the applicator furnished by the respondents in all cases serve as a competent prevent-

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ative of conception but in some cases it is capable of causing injuries and deleterious effects to those making use of them.

PAR. 6. In the course of the operation of their business, as aforesaid, respondents employ and use agents for the promotion of the distribution and sale of the various products hereinabove named and also make use of window displays and other advertising matter purporting to be issued by a "Bureau of Hygiene" (Bureau of Feminine Hygiene). The advertising literature herein referred to purports to describe the functions of said Bureau in statements such as:

An especially important function of the Bureau of Feminine Hygiene is to select and test apparatus and medicaments suitable for the correct practice of Feminine Hygiene. The Bureau of Feminine Hygiene is pledged to sponsor only those products which have passed the most rigid tests. If the best available is not considered good enough, the product becomes the subject of further research and improvement.

The Bureau's Seal of Approval on any product for Feminine Hygiene is your assurance and guarantee of its purity, its quality, and its reliability.

FIRST, to answer a prevalent need for authentic, accurate, honest information on women's eternal and most troublesome problems. This information service is actually maintained, seriously, tactfully, and within the limits of all existing legislation. There is no attempt at evasion of regulation, nor is there any invasion of the functions belonging exclusively to the medical profession. There is a need that exists beyond these limits . . . and the Bureau meets it faithfully to the extent of its powers.

SECOND, to sponsor a line of appliances and preparations for the proper attainment of real feminine hygiene, that is of the very highest grade and efficacy in every respect. Every item now in the line has been subjected to the most exacting tests and has proven its value. Every article that may be added to the group in the future, will also be required to satisfy completely the most stringent requirements. . . .

In said statements, together with other statements not herein set out, and in their advertising literature generally, respondents represent, directly or through implication, that the Bureau of Hygiene (Bureau of Feminine Hygiene) is an organization devoted to scientific research on questions involving methods of prevention of conception and methods of preventing, treating, and curing diseases, maladies and conditions peculiar to women, and that the Bureau of Hygiene is in no way connected with, or financially interested in, the distribution and sale of the various products purported to be recommended by it in the various types of advertising literature distributed by the respondents herein.

In truth and in fact the Bureau of Hygiene is not an organization or institution organized and conducted for the carrying on of scientific research on questions involving methods of prevention of conception, or methods of preventing, treating, or curing diseases and maladies peculiar to women, or on any other questions. The Bureau

of Hygiene does not make any particular study of so-called feminine hygiene and in fact does not operate any laboratory wherein various hygienic products are tested. While the respondent Bureau of Hygiene is a corporation, it does not function as a business enterprise separate and distinct from the business operations conducted by the other respondent corporations.

There are among the respondents' competitors in commerce, as herein set out, those who do not in any way misrepresent the character, nature, and size of their respective businesses and who do not misrepresent in any way the nature, character and therapeutic effect of their respective products when used, and do not make use of any of the misleading representations herein set out or others similar thereto.

PAR. 7. The aforesaid false and misleading statements and representations as used by the respondents in offering for sale and selling their various products as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true and into the purchase of substantial quantities of respondents' various products on account of said erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade is unfairly diverted from competitors of respondents who do not, in the sale and distribution of their respective products, make use of the same or similar misrepresentations. In consequence 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.

PAR. 8. The methods, acts, and practices of respondents herein set forth are all to the prejudice of the public and 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 January 29, 1937, issued and served its complaint in this proceeding upon respondents, Bureau of Hygiene, Inc., Gynex Corporation, Preferred Industries Corporation, and Benjamin Lindner, charging them with the use of unfair methods of competition in commerce in violation of the provisions

of said act. Subsequently, the complaint was dismissed without prejudice as to the respondents, Bureau of Hygiene, Inc., Preferred Industries Corporation and Benjamin Lindner, and the respondent, Gynex Corporation filed its answer in which it admitted the material allegations of the complaint to be true, and waived the taking of further evidence and all other intervening procedure which 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 answer of respondent, Gynex Corporation, 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, Gynex Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and has its offices and places of business at 211 East 19th Street and 301 Madison Avenue in the city of New York, N. Y.

The respondent is now, and has been for the several years last past, engaged in the sale and distribution in commerce between and among the several States of the United States and in the District of Columbia of certain medicinal preparations and appliances for use by women in feminine hygiene.

Respondent's said preparations and appliances are variously described and known as, and sold under the names, Gynettes, Gyn-ol, Gynex Tablets, Viornettes, Gynex Fountain Bag, and Gynex Spray with Gynex Bulb.

Respondent causes said preparations and appliances, when sold, to be transported from its said places of business in the city of New York, New York, to the purchasers thereof located in the various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains a constant current of trade in said commerce in the sale and distribution of said preparations and appliances.

PAR. 2. During all of the times mentioned herein the respondent has been in substantial competition in said commerce with other corporations and with firms and individuals, some of whom are engaged in the sale and distribution of preparations and appliances similar in kind to those sold and distributed by the respondent and others of whom are engaged in the sale and distribution of preparations, remedies and treatments used and useful for the purposes for which the

respondent represents and implies that its said preparations and appliances are useful.

Among the competitors of the respondent in said commerce are many who do not in any manner misrepresent their products and the efficacy thereof.

PAR. 3. In the conduct of its business in said commerce, and for the purpose of inducing the purchase of its said preparations and appliances, the respondent caused to be prepared and distributed among prospective purchasers, booklets, pamphlets, circulars, and window display placards which contain statements descriptive of said preparations and appliances and the efficacy thereof when used for the purposes recommended.

PAR. 4. Among and typical of the statements so made in connection with the sale and distribution of said preparations and appliances are the following:

One Gynette is used upon retiring, or when desired. In a few minutes its cocoa butter base melts, spreading an antiseptic film over the interior of the vagina, affording protection, and security of mind. Since the antiseptic qualities of Gynettes remain effective throughout the night—douching may be postponed until morning. Gynettes are also beneficial in soothing minor irritation and are excellent deodorants. Gynettes may be used with utmost confidence—are non-injurious—dependable, and are compounded from a formula that has the professional endorsements of Gynecologists as well as the Bureau of Feminine Hygiene.

Gyn-o-sol is a soft jelly which performs the same function and is compounded from the same formula as Gynettes. Use of one or the other is a matter of personal preference, the difference being entirely in the manner of application. Gyn-o-sol is applied quickly and easily and its action is immediate and effective. A similar formula is used today by thousands of women. It is non-injurious and offers the married woman the protection she wants. Its consistency is such that it spreads evenly over all internal parts and deposits a film that remains effective throughout the night, making douching unnecessary until morning.

Of the many preparations which are used for the purpose of douching, few equal and none has been found superior to Gynex Tablets. They are excellent deodorants, instantly destroying offensive odors. Gynex Tablets are especially manufactured for use with the Gynex Dilating Spray—together they form the ideal combination for the correct practice of feminine hygiene. Healing—soothing—refreshing.

Vionetts contain Viburnum and other beneficial ingredients, and are recommended to all women who suffer periodic pain or irregularities. A uterine and ovarian sedative, its use tends to tone and strengthen these organs. Non-narcotic chocolate coated—convenient—and fully as effective as liquid preparations. Vionetts are harmless, reliable and efficient.

Many other statements of similar import and meaning are used by the respondent in connection with the sale and distribution of said preparations and appliances.

PAR. 5. By the means and in the manner set out in paragraph 4 hereof the respondent represents and implies that the preparations "Gynettes," "Gynex Tablets," and "Gyn-o-sol" are competent and effective preventatives of conception and that they are an absolute protection against pregnancy, and can be depended upon for which purpose without limitation; that said preparations are competent and reliable remedies, treatments and cures for ills and diseases peculiar to women, including leucorrhea, inflamed membranes, vaginal inflammation, pelvic inflammation, and nervous conditions.

By the means and in the manner set out in paragraph 4, the respondent represents and implies that the preparation of "Viornetts" is a competent and effective treatment or cure for periodic pains or irregularities in the menstruation period of women, a sedative for uterine and ovarian troubles of women, and that its use will strengthen those organs.

The preparations "Gynettes," "Gynex Tablets," and "Gyn-o-sol" and the appliances used in connection therewith are not competent and effective preventatives of conception, and are not an absolute protection against pregnancy, and cannot be depended upon for such purposes without limitation; said preparations are not competent and reliable remedies, treatments, and cures for ills and diseases peculiar to women, including leucorrhea, inflamed membranes, vaginal inflammation, pelvic inflammation, and nervous conditions.

The preparation "Viornetts" is not a competent and effective treatment or cure for periodic pains or irregularities in the menstruation period of women, a sedative for uterine or ovarian troubles of women, and its use will not strengthen these organs.

Said preparations have no beneficial therapeutic value in the treatment of any of the ailments, ills and diseases mentioned herein.

PAR. 6. Respondent in said booklets, pamphlets, circulars and window display placards represents that its said preparations and appliances have been submitted to, tested and approved by an independent organization devoted to scientific research on questions involving the methods of preventing conception and preventing, treating, and curing the diseases, maladies and conditions peculiar to women, and that such organization so testing and approving the preparations and appliances of the respondent is in no way connected with or financially interested in the sale and distribution of said preparations and appliances.

Respondent's said preparations and appliances have not been submitted to, tested, and approved by an independent organization devoted to scientific research on questions involving the methods of preventing conception and preventing, treating and curing the dis-

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eases, maladies, and conditions peculiar to women, which was in no way connected with or financially interested in the sale and distribution of said preparations and appliances.

PAR. 7. Respondent in said booklets, pamphlets, circulars, and window display placards represents that said preparations and the appliances used in connection therewith may be used with safety and without deleterious effects by women to prevent conception.

In many cases the use of such preparations and appliances used in connection therewith are capable of causing, and do cause, injuries and have a deleterious effect on those using them.

PAR. 8. The representations and implications of the respondent in connection with the sale and distribution of said preparations and appliances in said commerce, as stated, have the tendency and capacity to and do confuse, mislead, and deceive members of the public as to the properties and efficacy of said preparations and appliances in the particulars herein set forth, and to cause them, because of the erroneous beliefs engendered by said representations and implications to buy and use said preparations and appliances, thereby substantially diverting trade in said commerce to the respondent from its competitors who truthfully represent their products, to their injury and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Gynex 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, ETC.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein by the respondent, Gynex Corporation, admitting all 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 conclusion that said respondent, Gynex 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."

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It is ordered, That the respondent, Gynex Corporation, its officer, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of the medicinal or pharmaceutical preparations and appliances which are designed, intended and used in the treatment of various female ailments and conditions and for female hygiene purposes now designated as Gynettes, Gyn-o-sol, Gynex Tablets, Viornetts, Gynex Fountain Bag, and Gynex Spray with Gynex Bulb, or of any other preparations or appliances of substantially the same ingredients and therapeutic effect or of substantially the same design, whether designated by the aforementioned names or by any other names, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

1. That the preparations "Gynettes", "Gynex Tablets," and "Gyn-o-sol" are competent and effective preventatives of conception, an absolute protection against pregnancy, and can be depended upon for such purposes without limitation.

2. That the preparations "Gynettes", "Gynex Tablets" and "Gyn-o-sol" are competent and reliable remedies, treatments, and cures for ills and diseases peculiar to women, including leucorrhoea, inflamed membranes, vaginal and pelvic inflammation, and nervous conditions.

3. That the preparation "Viornetts" is a competent and effective treatment or cure for period pains and irregularities in the menstruation period of women, a sedative for uterine and ovarian troubles of women and that it strengthens the ovaries and uterus.

4. That said preparations and appliances have been tested and approved by an independent organization devoted to scientific research on questions involving the methods of preventing conception and preventing, treating, and curing the diseases, maladies, and conditions peculiar to women, until and unless such an organization has tested and approved said preparations and appliances, and

5. That said preparations and appliances may be used with safety and without deleterious effects by all women.

It is further ordered, That the complaint herein be and the same hereby is, dismissed as to the respondents, Bureau of Hygiene, Inc., Preferred Industries Corporation, and Benjamin Lindner, without prejudice.

It is further ordered, That the respondent, Gynex Corporation, 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

STANDARD DISTRIBUTORS, INC., AND LOUIS H. GELLAR

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

Docket 3065. Complaint, Feb. 19, 1937—Decision, May 13, 1937

Where a corporation and an individual, president and manager thereof and director of its policies and practices, engaged in the distribution and sale of radios, food beaters, and food mixers, and of lottery schemes in connection with sale of aforesaid products to retail merchants in the various States—

(a) Sold and distributed to retail merchants located at various points throughout the United States, in connection with sale and distribution of aforesaid products, a lottery scheme and sales plan and paraphernalia and devices necessary to the carrying out of said scheme and distribution of aforesaid products among the customers of such merchants, under a scheme or plan by which the chance holders of the two right keys, out of a large number which it supplied to its respective merchant customers, to unlock padlock supplied with said key assortments, received, as case might be, radio, food beater or food mixer, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale or distribution of said products in accordance with such plan, contrary to the established public policy of the United States and to the laws of many States, and in competition with many unwilling, by reason of said facts, to offer or sell their merchandise so as to involve game of chance, and who refrain therefrom;

With result that many retail merchants and prospective purchasers of merchandising and sales promotion plans, attracted by element of chance involved in sales method above described, were induced to purchase their said merchandise and participate in said plan, in preference to purchase of same or similar merchandise and in preference to purchase or use of other merchandising or sales promotion plans from competitors who do not use same or equivalent methods in sale or distribution of their goods, and with tendency and capacity unfairly to divert to themselves, because of use of said lottery or game of chance, trade and commerce from competitors who do not use same or equivalent methods, to exclude from said trade all competitors who are unwilling to and do not use such practices, lessen competition therein and tend to create a monopoly thereof in them and such other competitors as do use same or equivalent practices or methods, and to deprive purchasing public of benefits of free competition therein, and with tendency and capacity, further, unfairly to eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use such or any method involving game of chance or sale of chance thus to win such articles, as contrary to public policy or laws of many States, as above set forth, or as, in their opinion, detrimental to public morals and those of persons among whom chances are distributed;

(b) Represented, through their agents and field representatives, to retailers that said merchandising and sales promotion plan or lottery scheme, sup-

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plied and sold by them together with devices or paraphernalia as hereinabove set forth, constituted a sales promotion plan devised by them to get their said radios, food beaters and food mixers before the public, and that retailers participating in such plan might do so without cost, through return of keys by retailers and payment therefor of one cent each, and held out numerous undertakings by them and advantages to retailers in such connection, including subsequent agency on said products by retailers and commission for sale thereof, and undertaking to furnish envelopes for retailers' customers as means of securing latter's names and addresses as list of prospective purchasers of articles in question, and undertaking to supply retailer with a large number of descriptive circulars and corps of girls to distribute same; and

- (c) Represented, through use of contract forms, circulars, or other printed matter, and through their said agents and field representatives, that the radios to be distributed were "Majestic";

Facts being said lottery plan or scheme, thus distributed by it, was not a sales promotion plan to get their products before purchasing public, but scheme to dispose thereof to retailers, they did not redeem keys returned by participating retailers as above set forth, or return to such retailers all or substantial part of the money paid by them, nor furnish envelopes, nor supply circulars or girls to distribute same as above set forth, but demanded and received substantial deposit upon a retailer's agreement to participate, shipped prize merchandise, paraphernalia, and devices C. O. D. without inspection by retailer before full payment, radios were inferior to the genuine "Majestic," as well and favorably known to the purchasing public, and were "gyp" products, and return of their money to demanding retailers upon discovery of aforesaid misrepresentations was refused and not forthcoming;

With effect of causing many retailers erroneously to believe that aforesaid representations were true, and of causing a substantial portion thereof to participate in such plan and purchase merchandise from them because of such erroneous belief, and of thereby diverting substantial trade in such commerce to them from their competitors who truthfully represent their merchandise and sales plans; to their injury and that of the public:

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 Standard Distributors, Inc., a corporation, and Louis H. Gellar, an individual, 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 inter-

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est, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Standard Distributors, Inc., is a corporation organized and operating under the laws of the State of New York. The respondent, Louis H. Gellar, an individual, is president of the respondent corporation, and manages and directs its policies and practices. Both respondents have their principal place of business located at 114 E. 32 St., in the city of New York, in the State of New York.

The respondents are now and for more than one year last past have been engaged in the business of distributing and selling radios and food beaters and mixers and have also been engaged in selling lottery schemes to retail merchants located at points in the various States of the United States. They cause and have caused their said products and merchandising plan, when so sold, to be transported from their principal place of business in the city of New York, State of New York, and distributed to purchasers thereof located in other States of the United States at their respective places of business. There is now, and has been for more than one year last past, a constant current of trade and commerce by said respondents, in such products and merchandising plan, between and among the States of the United States, and in the District of Columbia. In the course and conduct of their said business, respondents are in competition with other corporations, firms, partnerships, and individuals engaged in the manufacture, sale, and distribution of radios, food beaters and mixers, cards, trade cards, discount cards, premium cards, coupons, trading stamps, and merchandising plans, 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 sell and distribute to retail merchants located at various points throughout the United States, radios and food beaters and mixers, and, in connection therewith, sell and distribute to such merchants a lottery scheme and sales plan, whereby said radios and food beaters and mixers are distributed among the customers of such merchants by chance. Respondents sell and distribute to such merchants the paraphernalia and devices necessary to the carrying out of said lottery scheme and the distribution of said merchandise by chance, a part of which is a large number of keys, usually 4,500, and a padlock. One of said keys is distributed by the merchants to customers with each purchase of a given amount of merchandise, usually 25¢ worth. When a fixed number of said keys, usually the entire number furnished by the respondents, have been distributed

among the customers of the merchants, the keys so distributed are collected by the merchant and fitted into the said padlock. Two of the keys so distributed will fit the padlock, and to the holders of each of these two keys the merchant delivers a radio or food beater and mixer, as the case may be, furnished by the said respondents. Said radios and food beaters and mixers are thus distributed to the customers of said retail merchants by lottery, gift enterprise, or game of chance.

Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its said radios and food beaters and mixers in accordance with the plan hereinabove set forth. The use by the respondents of said method in the distribution of its said radios and food beaters and mixers, and the sale of said radios and food beaters and mixers by and through the use thereof, is a practice contrary to the established public policy of the United States, and contrary to the laws of many of the States of the United States, and because of said facts many competitors of said respondents are unwilling to offer for sale or sell their merchandise so as to involve a game of chance, and such competitors refrain therefrom.

Many retail merchants who are prospective purchasers of radios and food beaters and mixers are attracted by the element of chance involved in respondents' sales method as above described, and are thereby induced to purchase respondents' merchandise, and participate in said plan, in preference to the same or similar merchandise from respondents' competitors, who do not use the same or equivalent methods in selling or distributing their merchandise.

PAR. 3. The use of the method above set forth by the respondents has a tendency and capacity unfairly to divert to the respondents, because of the use of said lottery or game of chance, trade and commerce from their competitors who do not use the same or equivalent methods; to exclude from said trade all competitors who are unwilling to and who do not use the same or equivalent methods; to lessen competition in said trade, and to tend to create a monopoly of said trade in respondents and such other competitors who use the same or equivalent methods; and to deprive the purchasing public of the benefits of free competition in said trade. The use of said methods by the respondents has the tendency and capacity unfairly to eliminate from said trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method, or any method involving a game of chance or the sale of a chance to win radios or food beaters and mixers by chance, because such method is contrary to the public policy of the United States or to the laws of many 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 persons among whom said chances are distributed, or because of any or all of said reasons.

PAR. 4. In the course and conduct of their business, as aforesaid, respondents represent to retailers that the lottery plan or scheme as above set out is a sales promotion plan, devised by the respondents to get their radios and food beaters and mixers before the public, and that the retailer participating in the plan may do so without cost, in that the respondents "sell" such retailer the plan, including the merchandise given as a prize, at a price which is equivalent to one cent per key for the keys furnished, and represent that they, when the prize merchandise has been distributed, will pay to the retailer the sum of one cent for each key returned to the respondents for refund, thereby returning to the retailer all of the money paid to the respondents, if all of the keys are returned, and that the retailer thereafter will have the agency for, and receive a commission on the sales of, respondents' radios and food beaters and mixers distributed in the particular territory where the retailer is located. Respondents further represent that they will furnish envelopes within which the customers of the retailer are to place their keys, and upon which they are to place their names and addresses, to be returned to the retailer so that the keys may be fitted into the padlock, thus securing for the retailer and respondents a list of prospective purchasers of radios and food beaters and mixers. Respondents further represent that they will supply to the retailer five thousand circulars descriptive of the plan, and will furnish a corps of girls to distribute such circulars. Respondents represent and imply that the radios to be distributed are "Majestic" radios, a trade name for radios manufactured by Grigsby-Grunow Company, and well and favorably known to the purchasing public, and a radio that is preferred by a substantial portion of the purchasing public to radios not of an established brand or sold under a recognized trade name.

PAR. 5. In truth and in fact, the lottery plan or scheme so distributed by the respondents is not a sales promotion plan to get their products before the purchasing public, but is a scheme to dispose of their said products to retailers, for the respondents fail and refuse to redeem the keys returned to them by retailers participating in the plan at the rate of one cent each, and to return to such retailers all, or a substantial part, of the money paid the respondents. In truth and in fact, the respondents do not furnish envelopes in which the keys are to be placed and returned to the retailers by customers, nor do they supply to retailers five thousand circulars and a corps of girls to distribute such circulars. The radios distributed by the respond-

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ents are not the brand of radios known to the purchasing public as "Majestic" radios, but are inferior to "Majestic" radios and of the type that is commonly known and referred to as a "gyp" radio, which means a radio not manufactured and distributed by a reputable and responsible concern.

Retailers have no opportunity to learn, prior to the time of full payment of the money to the respondents for their participation in the plan, that the representations made by the respondents in regard to the envelopes, circulars, and brand of radios furnished are not true, for respondents demand and receive a substantial deposit at the time the retailer agrees to participate in the plan, and the prize merchandise, paraphernalia, and devices used in the plan are shipped to the retailer cash on delivery, and full payment is made by the retailer before inspection. Respondents fail and refuse to return to retailers the moneys paid when discovery of the misrepresentations of the respondents is made, and a demand is made upon the respondents for such refund.

PAR. 6. The aforesaid representations and implications of the respondents are false and misleading, and have the tendency and capacity to, and do, cause many retailers erroneously to believe that said representations are true, and cause a substantial portion of such retailers to participate in said plan and to purchase merchandise from the said respondents, because of such erroneous belief, thereby unfairly diverting substantial trade in said commerce to the respondents from their competitors, who truthfully represent their merchandise and sales plans, to the injury of said competitors in said commerce, and to the injury of the public.

PAR. 7. The acts, practices, and methods of the respondents, as hereinabove alleged, are all to the prejudice of the public and the respondents' said 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 19th day of February 1937, issued and served its complaint in this proceeding upon respondents, Standard Distributors, Inc., a corporation, and Louis H. Gellar, an indi-

vidual, 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 never having filed answer thereto), a stipulation as to the facts was entered into by and between the respondents and W. T. Kelley, Chief Counsel for the Commission, 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; and by which stipulation it was further agreed that the Commission might proceed upon said statement of facts to issue its report stating its findings as to the facts (including inferences which it might draw from the said stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of arguments 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, 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:

PARAGRAPII 1. The respondent, Standard Distributors, Inc., is a corporation organized and operating under the laws of the State of New York. The respondent, Louis H. Gellar, an individual, is president of the respondent corporation, and manages and directs its policies and practices. Both respondents have their principal place of business located at 114 E. 32nd Street, in the city of New York, in the State of New York.

The respondents are now, and for more than one year last past have been, engaged in the business of distributing and selling radios, food beaters and food mixers and have also been engaged in selling lottery schemes in connection with the sale of said products to retail merchants located at points in various States of the United States. They cause and have caused their said products and merchandising plan, when so sold, to be transported from their principal place of business in the city of New York, State of New York, and distributed to purchasers thereof located in other States of the United States at their respective places of business. There is now, and has been for more than one year last past, a constant current of trade and commerce by said respondents, in such products and merchandising plan, between and among the States of the United States, and

in the District of Columbia. In the course and conduct of their said business, respondents are in competition with other corporations, firms, partnerships, and individuals engaged in the manufacture, sale, and distribution of radios, food beaters and food mixers, and also engaged in the manufacture of cards, trade cards, discount cards, premium cards, coupons, trading stamps, and merchandising plans, 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 sell and distribute to retail merchants located at various points throughout the United States, radios, food beaters and food mixers, and, in connection therewith, sell and distribute to such merchants a lottery scheme and sales plan, whereby said radios, food beaters and food mixers are distributed among the customers of such merchants by chance. Respondents sell and distribute to such merchants the paraphernalia and devices necessary to the carrying out of said lottery scheme and the distribution of said merchandise by chance, a part of which is a large number of keys, usually 4,500, and a padlock. One of said keys is distributed by the merchants to customers with each purchase of a given amount of merchandise, usually 25¢ worth. Since on or about May 1, 1936, the said sales promotion plan and the form of contract incident thereto was changed so as to provide that the retail merchant purchasing said sales promotion plan would distribute said keys to customers without additional charge. When a fixed number of said keys, usually the entire number furnished by the respondents, have been distributed among the customers of the merchants, the keys so distributed are collected by the merchant and fitted into the said padlock. Two of the keys so distributed will fit the padlock, and to the holders of each of these two keys the merchant delivers a radio, food beater, or food mixer, as the case may be, furnished by the said respondents. Said radios, food beaters, and food mixers are thus distributed to the customers of said retail merchants by lottery, gift enterprise, or game of chance.

Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale or distribution of its said radios, food beaters and food mixers in accordance with the plan hereinabove set forth. The use by the respondents of said method in the sale and distribution of its said radios, food beaters and food mixers is a practice of the sort that is contrary to the established public policy of the United States, and contrary to the laws of many of the States of the United States, and because of said facts many competitors of said respondents are unwilling to offer for sale or

sell their merchandise so as to involve a game of chance, and such competitors refrain therefrom.

Many retail merchants who are prospective purchasers of merchandising plans and sales promotion plans are attracted by the element of chance involved in respondents' sales method as above described, and are thereby induced to purchase respondents' merchandise, and participate in said plan, in preference to purchasing the same or similar merchandise and in preference to purchasing or using other merchandising or sales promotion plans from respondents' competitors, who do not use the same or equivalent methods in selling or distributing their merchandise.

PAR. 3. The use of the method above set forth by the respondents has a tendency and capacity unfairly to divert to the respondents, because of the use of said lottery or game of chance, trade and commerce from their competitors who do not use the same or equivalent methods, to exclude from said trade all competitors who are unwilling to and who do not use the same or equivalent methods, to lessen competition in said trade, and to tend to create a monopoly of said trade in respondents and such other competitors who use the same or equivalent methods, and to deprive the purchasing public of the benefits of free competition in said trade. The use of said methods by the respondents has the tendency and capacity unfairly to eliminate from said trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method, or any method involving a game of chance or the sale of a chance to win radios, food beaters or food mixers by chance, because such method is contrary to the public policy of the United States or to the laws of many 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 persons among whom said chances are distributed, or because of any or all of said reasons.

PAR. 4. In the course and conduct of respondents' business, as aforesaid, the agents and field representatives of the said respondents, in the course of their employment have from time to time represented to retailers that the lottery plan or scheme as above set out is a sales promotion plan, devised by the respondents to get their radios, food beaters and food mixers before the public, and that the retailer participating in the plan may do so without cost, in that the respondents "sell" such retailer the plan, including the merchandise given as a prize, at a price which is equivalent to one cent per key for the keys furnished, and represent that respondents, when the prize merchandise has been distributed, will pay to the retailer the sum of one cent for each key returned to the respondents for refund, thereby return-

ing to the retailer all of the money paid to the respondents, if all of the keys are returned, and that the retailer thereafter will have the agency for, and receive a commission on the sales of, respondents' radios, food beaters and food mixers distributed in the particular territory where the retailer is located. Respondents' said agents and field representatives, in the course of their employment further represent that respondents will furnish envelopes within which the customers of the retailers are to place their keys, and upon which they are to place their names and addresses, to be returned to the retailer so that the keys may be fitted into the padlock, thus securing for the retailer and respondents a list of prospective purchasers of radios, food beaters, and food mixers. Respondents' said agents and field representatives, in the course of their employment, further represent that respondents will supply to the retailer five thousand circulars descriptive of the plan, and will furnish a corps of girls to distribute such circulars.

Respondents further represent through the use of contract forms, circulars, and other printed matter, and through their agents and field representatives that the radios to be distributed are "Majestic" radios. Said word "Majestic" is a trade name for radios manufactured by Grigsby-Grunow Company, which are well and favorably known to the purchasing public, and preferred by a substantial portion of the purchasing public to radios not of an established brand or sold under a recognized trade name.

PAR. 5. In truth and in fact, the lottery plan or scheme so distributed by the respondents is not a sales promotion plan to get their products before the purchasing public, but is a scheme to dispose of their said products to retailers. The respondents do not redeem the keys returned to them by retailers participating in the plan at the rate of one cent each, and do not return to such retailers all, or a substantial part, of the money paid the respondents. In truth and in fact, the respondents do not furnish envelopes in which the keys are to be placed and returned to the retailers by customers, nor do they supply to retailers 5,000 circulars and a corps of girls to distribute such circulars. The representations made by the respondents in regard to the envelopes, circulars and brand of radios furnished are not true, for respondents demand and receive a substantial deposit at the time the retailer agrees to participate in the plan, and the prize merchandise, paraphernalia, and devices used in the plan are shipped to the retailer cash on delivery, and full payment is made by the retailer before inspection.

The radios distributed by the respondents are not the brand of radios known to the purchasing public as "Majestic," manufactured

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by Grigsby-Grunow Company. Said so-called "Majestic" radios are inferior to the real MAJESTIC radios manufactured by the Grigsby-Grunow Company and are of the type that is commonly known as a "gyp" radio, which means a radio not manufactured and distributed by a reputable and responsible firm.

Respondents fail and refuse to return to retailers the moneys paid when discovery of the misrepresentations of the said respondents' agents and field representatives is made, and a demand is made upon the respondents for such refund.

PAR. 6. The aforesaid misrepresentations of respondents' said agents and field representatives are false and misleading, and have the tendency and capacity to, and do, cause many retailers erroneously to believe that said representations are true, and cause a substantial portion of such retailers to participate in said plan, and to purchase merchandise from the said respondents, because of such erroneous belief, thereby unfairly diverting substantial trade in said commerce to the respondents from their competitors, who truthfully represent their merchandise and sales plans, to the injury of said competitors in said commerce, and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondents, Standard Distributors, Inc., a corporation, and Louis H. Gellar, an individual, 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 respondents never having filed answer thereto), and the agreed Stipulation of Facts entered into between the respondents herein, Standard Distributors, Inc., a corporation, and Louis H. Gellar, an individual, 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 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

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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, Standard Distributors, Inc., a corporation, its officers, representatives, agents, and employees, and the respondent, Louis H. Gellar, individually, and as president of the aforesaid Standard Distributors, Inc., in connection with the sale, offering for sale, or distribution of radios, food beaters, food mixers, or other articles of merchandise in interstate commerce, cease and desist from:

1. Furnishing, supplying, or selling any device or paraphernalia which is to be used, or which may be used, in the distribution of said articles of merchandise to the public by means of lottery scheme, lottery sales plan, game of chance, or gift enterprise;

2. Furnishing, supplying to, or selling retail merchants paraphernalia and devices, a part of which is a large number of keys and a padlock, one of which said keys is to be distributed by said merchants to each of their customers with the purchase of a given amount of merchandise, and when a fixed number of such keys has been so distributed, said keys are to be collected by the said merchant and fitted, or tried to be fitted, into the said padlock, a small number of which keys only will fit or unlock said padlock, the holders of such keys being entitled to receive and to be given without additional charge one of said radios, food mixers, food beaters, or other articles of merchandise.

It is further ordered, That the respondent, Standard Distributors, Inc., a corporation, its officers, representatives, agents, and employees, and the respondent, Louis H. Gellar, individually, and as president of the aforesaid Standard Distributors, Inc., in connection with the sale, offering for sale, or distribution of merchandising and sales promotion plans or lottery schemes, cease and desist from:

1. Supplying to, or placing in the hands of, retail merchants, devices or paraphernalia which are to be used, or which may be used, to promote or increase the local sales of such retail merchandise by means of a lottery, gift enterprise, or game of chance;

2. Supplying to, or placing in the hands of retail merchants, a padlock and a number of keys, a small number of which keys only will unlock said padlock for use, or which are to be used, for increasing the sales of said retail merchants by means of a lottery scheme, gift enterprise, or game of chance.

And it is further ordered, That the said respondents, Standard Distributors, Inc., a corporation, its officers, agents, and employees, and Louis H. Gellar, individually and as president of the aforesaid Standard Distributors, Inc., in connection with the sale and offering for

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sale by them of radios in interstate commerce, do forthwith cease and desist from :

Representing, through use of the word "Majestic" as a brand name for radios, or through any other means of device, or in any other manner, that the radios offered for sale and sold by them are "Majestic" radios, or are made by Grigsby Grunow Company, until and unless they are actually offer for sale and sell "Majestic" radios made by Grigsby Grunow Company.

And it is hereby 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 the manner and form in which they shall have complied with this order.

IN THE MATTER OF
HOGAN ADVERTISING COMPANY, TRADING AS THE
SENDOL COMPANY

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

Docket 2381. Complaint, July 24, 1936—Decision, May 14, 1937¹

Where a corporation engaged in the sale and distribution of a proprietary medicine designated and known as "Sendol" and as alleged remedy for colds, headaches, and pains; in advertising the same in newspapers, magazines, pamphlets, by radio, and through testimonials and otherwise—

- (a) Falsely represented that said product was a safe medicine to administer in all cases and was a safe remedy to give to children; and
- (b) Falsely represented that it was effective and reliable in all cases of muscular, rheumatic or neuralgic aches and pains, and afforded quick relief in all cases of headaches, colds, aches or pains, and was an efficacious remedy in cases of nervousness or nervous exhaustion;

With effect of misleading and deceiving substantial portion of purchasing public into the erroneous belief that said representations were true, and with result that consuming public, as a direct consequence of mistaken and erroneous beliefs induced by such false and misleading statements and representations, purchased substantial volume of its said product, and trade was unfairly diverted to it from those of its competitors engaged in sale and distribution of products prepared for and sold as remedies for colds, headaches, and muscular aches and pains, and who truthfully advertise and represent the therapeutic value, and the effects to be derived from the use of, their 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. Robert S. Hall*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. Terence M. O'Brien, of Kansas City, Mo., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that the Hogan Advertising Company, a corporation, doing business under the firm name and style of the Sendol 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 the said Commission that a proceeding by it in respect thereof would

¹ Order published, as modified, as of May 29, 1937.

be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Hogan Advertising Company is a corporation, organized and existing under the laws of the State of Missouri, and trading and doing business under the firm name of the Sendol Company, with its office and principal place of business located at Room 129 Coates Building, 1008-1010 Walnut Street, in the city of Kansas City and State of Missouri. Respondent is now and for more than one year last past has been engaged in the sale and distribution, in constant course of trade and commerce between and among the various States of the United States and the District of Columbia, of a proprietary medicine, designated "Sendol," an alleged remedy for colds, headaches, and pains. In the course and conduct of its business respondent causes said medicine, when sold, to be transported from its place of business in the State of Missouri, into and through various other States of the United States to the purchasers thereof located in other States of the United States and the District of Columbia.

PAR. 2. 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, individuals, partnerships, and firms engaged in the business of manufacturing and selling remedies and proprietary medicines in 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, by means of statements and testimonials, published in magazine and newspaper advertisements, pamphlets, folders, labels, radio broadcasting, and otherwise, respondent falsely makes to the general public the following and many other similar and equivalent statements and representations with reference to the efficacy and therapeutic value of its said product and its effect upon the users thereof:

You will like the quick, pleasant action of Sendol and the effective way in which it starts to work to give quick relief from a simple cold, ache or pain . . . Sendol soothes tired, overworked, frayed nerves, and one or two tablets give relief in just a few minutes.

It dissolves almost instantly in the stomach and starts to work immediately to give relief from simple colds, as well as simple headaches, muscular rheumatic and neuralgic aches and pains.

Sendol dissolves almost instantly in the stomach—and the relief is immediate.

They are perfectly safe to take or to give—even to children.

They are safe—pleasant—effective—reliable.

In truth and in fact said statements and representations were and are false and misleading, in that said "Sendol" is not a safe medicine to give or to take in all cases, and is not a safe medicine to give to

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children; it is not effective and reliable in cases of muscular rheumatic or neuralgic aches and pains; it does not afford quick relief in all cases of headaches, colds, aches or pains and it is not an efficacious remedy in cases of nervousness or nervous exhaustion. Said preparation contains aspirin and digitalis and is therefore not safe to administer to all persons or to children.

There are among the competitors of respondent, as mentioned in paragraph 1 hereof, dealers and distributors of products similar in kind and purpose, who do not in any way misrepresent the efficacy or therapeutic value of their products.

PAR. 4. The above and foregoing representations as to the therapeutic value and effects of its product as set forth in paragraph 3 hereof in the course of its advertising, offering for sale and selling its product in commerce as aforesaid, have the capacity and tendency to and do mislead and deceive the purchasing public into the erroneous belief that said product is an effective remedy for the treatment or relief of headaches, colds, aches and pains and have the capacity and tendency to and do induce the said purchasing public, acting in such erroneous belief, to purchase respondent's product, thereby diverting trade to the respondent from those of its competitors who do not misrepresent the efficacy and therapeutic value of their products, and in this way respondent does substantial injury to competition in interstate commerce.

PAR. 5. The above acts and things done or caused to be done by the respondent corporation 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 of Section 5 of "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 24, 1936, issued, and on July 27, 1936, served, its complaint in this proceeding upon respondent, Hogan Advertising Company, a corporation, trading as The Sendol 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 per-

mission 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, filing of briefs having been waived and no request having been made 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. The respondent, Hogan Advertising Company, is a Missouri corporation, doing business under the firm name of The Sendol Company. Its place of business is at Room 129 Coates Building, 1008-1010 Walnut Street, Kansas City, Mo.

It is now and for more than one year last past has been, engaged in the sale and distribution of a proprietary medicine designated and known as "Sendol," an alleged remedy for colds, headaches, and pains. When orders are received for Sendol, respondent causes said product to be shipped and transported from its place of business in Kansas City, Mo., to the purchasers thereof located in various States of the United States other than the State of Missouri and in the District of Columbia.

At all times since respondent has been in said business there have been other corporations, and firms and individuals, likewise engaged in the sale and distribution of products prepared for and sold as remedies or treatments for colds, headaches, and pains, in commerce among and between the various States of the United States and in the District of Columbia. Respondent, in the sale and distribution of its product, is in competition with such other corporations, firms and individuals in such commerce.

PAR. 2. The respondent advertises its said product in newspapers, magazines, pamphlets, by radio, through testimonials, and otherwise.

Representative of its advertising claims are the following:

You will like the quick, pleasant action of Sendol and the effective way which it starts to work to give quick relief from a simple cold, ache or pain . . . Sendol soothes tired, overworked, frayed nerves, and one or two tablets give relief in just a few minutes.

It dissolves almost instantly in the stomach and starts to work immediately to give relief from simple colds, as well as simple headaches, muscular rheumatic and neuralgic aches and pains.

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Sendol dissolves almost instantly in the stomach—and the relief is immediate. They are perfectly safe to take or to give—even to children.

They are perfectly safe to take or to give—even to children.

The representations set forth above are untrue in that Sendol is not a safe medicine to administer in all cases and is not a safe remedy to give to children; it is not effective and reliable in cases of muscular rheumatic or neuralgic aches and pains; it does not afford quick relief in all cases of headaches, colds, aches or pains and it is not an efficacious remedy in cases of nervousness or nervous exhaustion.

PAR. 3. The false and misleading statements and misrepresentations made by respondent, in its said advertising, as to the therapeutic value and effects of its said product, have the capacity and tendency to mislead and deceive and have misled and deceived a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a direct consequence of the mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to, the consuming public has purchased a substantial volume of respondent's product and as a result thereof, trade has been unfairly diverted to the respondent from those of its competitors, likewise engaged in the business of selling and distributing products prepared for and sold as remedies for colds, headaches, and muscular aches and pains, who truthfully advertise and represent the therapeutic value of and the effects to be derived from the use of their said 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 Hogan Advertising Company, trading as The Sendol 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 ¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed

¹ Published, as modified, as of May 29, 1937.

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herein on May 11, 1937, 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, Hogan Advertising Company, a corporation, doing business under the firm name and style of The Sendol Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of a product now known as "Sendol," or any product containing the same, or substantially the same, ingredients, sold under that name, or any other trade name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that said product:

1. Is a safe medicine to give or to take in all cases;
2. Is a safe medicine to give to children;
3. Is an effective and reliable remedy in cases of muscular, rheumatic or neuralgic aches and pains;
4. Affords quick relief in all cases of headaches, colds, aches or pains;
5. Is an effective remedy for nervousness or nervous exhaustion.

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
**MAURICE WILLENS, DOING BUSINESS UNDER THE FIRM
 NAME AND STYLE OF MUSHROOM GROWERS OF
 AMERICA**

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

Docket 2952. Complaint, Oct. 20, 1936—Decision, May 15, 1937.

Where an individual engaged in promoting sale of mushroom spawn, in competition with others selling such products in interstate commerce, or with legitimate trade associations of growers, or with those who do not represent that such products may be grown in any idle space about the home or raised there in small quantities with tremendous financial returns, or make other representations as hereinafter set forth—

- (a) Represented, through trade name "Mushroom Growers of America," and featuring thereof in his correspondence, advertisements, and trade literature, and as signature to correspondence and circulars, together with signature by "Managing Director," and through use of such name on cards issued to persons making their initial purchase from him, certifying such person was entitled to the benefits of "our Growers Service Bureau at all times," and requesting such person, whenever a problem presented itself, "to communicate with us and we will give you the best possible advice," without charge, and through statement in correspondence, advertisements and trade literature to the effect that "Your M. G. A. membership card entitles you to the prompt and efficient advisory service of the M. G. A. Service Bureau entirely without cost to you," that business operated by him was a large and substantial organization or trade association of many persons, mutually cooperating with each other in the industry in growing and marketing mushrooms, and that it maintained a staff of expert personnel who might be consulted for advice as to technical questions arising in connection with said industry, facts being it was not such an organization, was not incorporated, had no board of directors or managing director, and was simply a firm name or style adopted by individual in question to induce members of public to patronize such individual under false impression that they were dealing with a bona fide trade organization or association, and neither said individual nor any of his employees were expert in growing mushrooms or competent to give technical advice concerning the same; and
- (b) Represented that mushrooms might easily be grown in any idle space in or about the home and without unpleasant odors, and that such growing was a simple and highly remunerative industry in which anyone might successfully engage for profit without previous experience or technical skill, and that there was a shortage on the market of mushrooms and amateurs might make a fortune or a substantial profit, through such statements, among others, as "Almost any vacant, idle space about your home can be quickly and inexpensively converted into an ideal Mushroom bed. * * *," "Just a few dollars will get you well on your way to success," "Almost any vacant space yields big money in mushroom growing," "* * * one of the SIMPLEST and most REMUNERATIVE of industries * * *," "* * *

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so simple and easy that almost any person * * * can become a successful Mushroom Grower," "A DIGNIFIED BUSINESS FOR WOMEN ALSO * * *," "M. G. A. Mushroom beds emit no unpleasant odor," facts being there is no unusual demand for mushrooms, production thereof by amateur growers at home is not highly remunerative and has not been so financially to professional growers for a number of years, mushrooms cannot be successfully raised in any idle space, etc., or simply and readily grown without experience, but growing thereof is a matter involving considerable care and experience, and cannot be carried on without odor and is not such an undertaking as many women would care to engage in, and statements and representations above set forth and indicated were otherwise false and misleading;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and into purchase of said individual's mushroom spawn in reliance thereon, and with result that said individual increased his own sales of said product, thus dishonestly promoted, advertised or represented, and thereby lessened market for similar products sold by other growers, merchants or dealers who truthfully represented nature, advantage or expectant financial returns from planting such spawn or desirability of becoming mushroom growers, and also their true size and character as commercial concerns through their trade or corporate name or style, and trade was unfairly diverted to said individual from competitors engaged in sale of similar product and who truthfully represented nature of their firm or corporate structure or that of the mushroom business or desirability of becoming such growers or demand for such products and financial returns obtainable by growing same; to the substantial injury of the purchasing public and 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. William C. Reeves* and *Mr. John L. Hornor*, 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 Maurice Willens, an individual, doing business under the firm name and style of Mushroom Growers of America, 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 complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Maurice Willens, is an individual doing business under the firm name and style of Mushroom Growers of

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America, with his office and principal place of business at 431 North Clark St., Chicago, Ill. He is now, and has been, for more than one year last past, engaged in the business of promoting the sale of mushroom spawn through the medium of the trade name Mushroom Growers of America, and in shipping said mushroom spawn, when sold, to the purchasers thereof, some located in the State of Illinois, 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 mushroom spawn between and among the various States of the United States. In the course and conduct of his business the respondent is now, and has been, in substantial competition with other persons, and with corporations, firms, and partnerships, likewise engaged in the sale of mushroom spawn 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, and for more than one year last past, the respondent herein, in soliciting the sale of and selling his mushroom spawn in commerce, as herein set out, represents in his correspondence, advertisements, and trade literature that his business is the:

MUSHROOM GROWERS OF AMERICA

Respondent also causes his letters, correspondence, and circulars to be executed in this manner:

Very truly yours,

MUSHROOM GROWERS OF AMERICA,

By _____,
Managing Director.

Respondent also causes cards to be issued to each person on making his initial purchase from him, reading as follows:

No. ----

Non-Transferable

THE MUSHROOM GROWERS OF AMERICA

This is to certify that:

M.-----
Is entitled to the benefits of our Growers Service Bureau at all times. Whenever a problem presents itself you are requested to communicate with us and we will give you the best possible advice. No charge is made for this Service.

Dated _____ 193--
(Signed) _____,

Managing Director.

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Respondent also states in his correspondence, advertisements, and trade literature, among other things, that:

Your M. G. A. membership card entitles you to the prompt and efficient advisory service of the M. G. A. Service Bureau entirely without cost to you.

Said statements serve as representations on the part of the respondent, Maurice Willens, to a substantial portion of the purchasing public that his said firm, Mushroom Growers of America, is a large and substantial organization or trade association of many persons mutually cooperating with each other in the industry of growing and marketing mushrooms, and that said association maintains a staff of expert personnel who may be consulted for advice as to technical questions arising in connection with this industry.

In truth and in fact, respondent's firm name and style, "Mushroom Growers of America," is not an association or trade organization of many individual growers or producers of mushrooms, is not incorporated, has no board of directors or managing director; but is simply a firm name or style adopted by the said respondent, Maurice Willens, an individual, for the purpose of inducing members of the public to patronize him under the false impression that they are dealing with a bona fide trade organization or association, and neither respondent nor any employee is an expert in growing mushrooms or competent to give technical advice concerning the same.

PAR. 3. In the course and conduct of his 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 his mushroom spawn in commerce as herein set out, states in his correspondence, advertisements, or trade literature, among other things, that:

Almost any vacant, idle space about your home can be quickly and inexpensively converted into an ideal Mushroom bed. Any cellar, garage or shed is suitable. Consequently just a few dollars will get you well on your way to success.

YOUR CELLAR, SHED, GARAGE, ATTIC—OR ANY OTHER VACANT, IDLE SPACE—WILL MAKE AN IDEAL PLACE FOR YOUR MUSHROOM BEDS.

Almost any vacant space yields big money in mushroom growing.

Mushroom growing, one of the **SIMPLEST** and most **REMUNERATIVE** of industries, is almost unknown in the United States.

Earn big money at home! Raise Mushrooms in your basement, cellar, garage, idle places. Large Companies require tons of mushrooms daily for Mushroom Soup.

The growing of Mushrooms is so simple and easy that almost any person in any walk of life can become a successful Mushroom Grower.

You will find that it does not take very long to become a big, successful operator in this business, if you apply yourself to it, for the rudiments of

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Mushroom Growing under M. G. A.'s competent guidance can be mastered very quickly.

It's easy to grow and market Mushrooms for profit the M. G. A. way. Any man or woman can conduct this paying business right at home.

THE MUSHROOM GROWERS OF AMERICA INVITES YOU TO SHARE IN THE PROFITS OF AN UNUSUALLY WELL-PAYING INDUSTRY.

No other method of establishing a steady, worthwhile income can be so readily undertaken as Mushroom Growing. * * * No other business offers a more unlimited opportunity for quick expansion.

There is a fortune in Mushrooms.

Thus you see, lack of personal experience is no handicap in this amazing business if you put yourself under the guidance of competent, sympathetic advisors.

A DIGNIFIED BUSINESS FOR WOMEN ALSO. Many women also are searching for remunerative and pleasant employment and what can be more dignified than Mushroom Growing? It is clean work and there is nothing menial about it.

M. G. A. Mushroom beds emit no unpleasant odor.

Said statements serve as representations on the part of respondent to a substantial portion of the purchasing public that there is a tremendous demand for mushrooms and that the respondent's mushroom spawn will produce extraordinary financial remuneration to growers thereof, and that said spawn may be planted in any idle space about the home; that said mushroom growing may be accomplished without odors; that it is an easy and pleasant occupation and may be successfully accomplished by persons of no experience whatsoever.

In truth and in fact, there is no unusual demand for mushrooms, and the production of mushrooms by amateur growers at home in small beds is not highly remunerative financially. Mushrooms cannot be successfully raised in any idle space about the home, but can only be grown in properly constructed places kept at a definite temperature, ventilated in a precise manner, accompanied by the exclusion of light. The raising of mushrooms cannot be accomplished without disagreeable odors, as the preparation of the beds involves the use of a compost made from manure. Mushrooms cannot be successfully grown without experience, as production requires a high degree of technical skill. It is not an easy and pleasant occupation, due to the hard work and disagreeable odor incident to preparing the compost, erecting the beds, and the constant care and attention required in regulating the temperature, humidity, and ventilation.

PAR. 4. There are among the competitors of respondent, as set forth in paragraph 1 hereof, other individuals, firms, corporations, or partnerships who do sell mushroom spawn in interstate commerce

or who are legitimate trade associations of mushroom growers, or who do not represent that mushrooms may be grown in any idle space about the home, or that mushrooms can be raised in small quantities at home with tremendous financial returns, and in the other ways set forth in paragraphs 2 and 3 hereof.

PAR. 5. The acts and practices of respondent in using a firm name or style calculated to falsely induce the public to believe that respondent's business, conducted under the name of Mushroom Growers of America is, in fact, a trade organization or association of bona fide mushroom growers, and in falsely representing and advertising that there is a tremendous demand for mushrooms, and that they may be grown in any idle space about the home, to the great financial advantage of the person so doing; that the raising of mushrooms may be accomplished without odors in the home; that the same are easy to plant and grow without any experience or technical skill; that respondent is personally an expert in the growing of mushrooms, and maintains personnel skilled in advising customers how to raise mushrooms, are all 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 mushroom spawn, in reliance on said representations.

By means of these false and misleading representations, made to the purchasing public as above described, respondent has increased his own sales of said mushroom spawn, so dishonestly promoted, advertised, or represented, thereby lessening the market for similar spawn sold by other growers, merchants, or dealers, who truthfully represent the nature, advantage, or expectant financial return from planting or the desirability of becoming mushroom growers, and their true size and character as commercial concerns, by their trade or corporate name or style.

As a result thereof, trade is unfairly diverted to the respondent from competitors engaged in the sale in interstate commerce of similar mushroom spawn, who truthfully represent the true nature of their firm or corporate structure, or the true nature of the mushroom business, or the desirability of becoming mushroom growers, or the demand for mushrooms, and the financial returns obtainable thereby. 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. 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 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 October 20, 1936, issued and served its complaint in this proceeding upon respondent, Maurice Willens, an individual doing business under the firm name and style of Mushroom Growers of America, 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 James M. Hammond and Eugene Carmichael, Jr., attorneys for the Commission, before William C. Reeves and John L. Hornor, examiners for the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the respondent filed a motion to withdraw his answer to the complaint theretofore filed with the Commission under date of November 24, 1936, and submitted a substitute answer admitting all the material allegations of the complaint to be true. The Commission, by order entered herein, has granted respondent's request for permission to withdraw his original answer and to substitute therefor his 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 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 substitute answer thereto, the testimony and other evidence, briefs 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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Maurice Willens, is an individual doing business under the firm name and style of Mushroom Growers of America, with his office and principal place of business at 431 North Clark Street, Chicago, Ill. He is now, and has been for more than one year last past, engaged in the business of promoting the sale of mushroom spawn through the medium of the trade name, Mushroom Growers of America, and in shipping said mushroom spawn, when sold from his aforesaid place of business, to the purchasers thereof, some located in the State of Illinois, 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 mushroom spawn between and among the various States of the United States. In the course and conduct of his business, the respondent is now and has been in substantial competition with other persons, and with corporations, firms, and partnerships likewise engaged in the sale of mushroom spawn 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, and for more than one year last past, the respondent herein, in soliciting the sale of and selling his mushroom spawn in commerce, as herein set out, causes his correspondence, advertisements, and trade literature to conspicuously display his said trade name as follows, to wit:

MUSHROOM GROWERS OF AMERICA

Respondent also causes his letters, correspondence, and circulars to be executed in this manner:

Very truly yours,

MUSHROOM GROWERS OF AMERICA,
By _____,
Managing Director.

Respondent also causes cards to be issued to each person on making his initial purchase from him, reading as follows:

No. _____

Non-Transferable

THE MUSHROOM GROWERS OF AMERICA

This is to certify that:

M. _____
Is entitled to the benefits of our Growers Service Bureau at all times. When-

Findings

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ever a problem presents itself you are requested to communicate with us and we will give you the best possible advice. No charge is made for this service.

Dated -----193--

(Signed) -----

Managing Director.

431-435 No. Clark St., Chicago, Ill.

Respondent also states in his correspondence, advertisements, and trade literature, among other things, that:

Your M. G. A. membership card entitles you to the prompt and efficient advisory service of the M. G. A. Service Bureau entirely without cost to you.

Said statements serve as representations on the part of the respondent, Maurice Willens, to a substantial portion of the purchasing public that his said firm, Mushroom Growers of America, is a large and substantial organization or trade association of many persons mutually cooperating with each other in the industry of growing and marketing mushrooms, and that said association maintains a staff of expert personnel who may be consulted for advice as to technical questions arising in connection with this industry.

"Mushroom Growers of America" is not an association or trade organization of many individual growers or producers of mushrooms, is not incorporated, has no board of directors or managing director; but is simply a firm name or style adopted by the said respondent, Maurice Willens, an individual, for the purpose of inducing members of the public to patronize him under the false impression that they are dealing with a bona fide trade organization or association. Neither respondent nor any of his employees are expert in growing mushrooms or competent to give technical advice concerning the same.

PAR. 3. In the conduct of his business as described in paragraph 1 hereof, and for more than one year last past, the respondent herein, in selling his mushroom spawn as herein set out, states in his correspondence, advertisements, or trade literature, among other things, that:

Almost any vacant, idle space about your home can be quickly and inexpensively converted into an ideal Mushroom bed. Any cellar, garage or shed is suitable. Consequently, just a few dollars will get you well on your way to success.

YOUR CELLAR, SHED, GARAGE, ATTIC—OR ANY OTHER VACANT, IDLE SPACE—WILL MAKE AN IDEAL PLACE FOR YOUR MUSHROOM BEDS.

Almost any vacant space yields big money in mushroom growing.

Mushroom growing, one of the SIMPLEST and most REMUNERATIVE of industries, is almost unknown in the United States.

Findings

Earn big money at home! Raise Mushrooms in your basement, cellar, garage, idle places. Large Companies require tons of mushrooms dally for Mushroom Soup.

The growing of Mushrooms is so simple and easy that almost any person in any walk of life can become a successful Mushroom Grower.

You will find that it does not take very long to become a big, successful operator in this business, if you apply yourself to it, for the rudiments of Mushroom Growing under M. G. A.'s competent guidance can be mastered very quickly.

It's easy to grow and market Mushrooms for profit the M. G. A. way. Any man or woman can conduct this paying business right at home.

THE MUSHROOM GROWERS OF AMERICA INVITES YOU TO SHARE IN THE PROFITS OF AN UNUSUALLY WELL-PAYING INDUSTRY.

No other method of establishing a steady, worthwhile income can be so readily undertaken as Mushroom Growing. * * * No other business offers a more unlimited opportunity for quick expansion.

There is a fortune in Mushrooms.

Thus you see, lack of personal experience is no handicap in this amazing business if you put yourself under the guidance of competent, sympathetic advisors.

A DIGNIFIED BUSINESS FOR WOMEN ALSO. Many women also are searching for remunerative and pleasant employment and what can be more dignified than Mushroom Growing? It is clean work and there is nothing menial about it.

M. G. A. Mushroom beds emit no unpleasant odor.

These statements serve as representations on the part of the respondent to the purchasing public that there is a tremendous demand for mushrooms and that the respondent's mushroom spawn will produce extraordinary financial remuneration to growers thereof, and that said spawn may be planted in any idle space about the home; that said mushroom growing may be accomplished without ordors; that it is an easy and pleasant occupation and may be successfully accomplished by persons of no experience whatsoever.

Investigation discloses that there is no unusual demand for mushrooms, and the production of mushrooms by amateur growers at home in small beds is not highly remunerative financially. In fact, it has not been financially remunerative to professional mushroom growers for a number of years as the price of mushrooms has been steadily declining and many mushroom growers have become bankrupt. In the opinion of one expert, who testified in this case, no amateur could possible pay \$5.00 per one-quart unit for spawn, the price charged by the respondent for sufficient to plant fifty square feet as against fifty cents per quart unit paid by professional growers for the same spawn and hope to make money on his product even if a successful crop were grown. Although the bulk of respondent's business was in the \$5.00 unit class he also made other offers for the sale of his spawn such as \$10.25 for sufficient to plant 200 square feet,

but the price was in every instance entirely exorbitant as compared with the price paid therefor by commercial growers with whom the amateur would be obliged to compete in the sale of his product. Mushrooms cannot be successfully raised in any idle space about the home, but can only be grown in properly constructed places kept at a definite temperature, ventilated in a precise manner, accompanied by the exclusion of light. The great majority of people would not care to have a bed of manure in their attics or other places in their homes, and the conversion of a garage or basement into a satisfactory location for mushroom growing would usually entail considerable expense due to the cost incident to remodeling to secure maintenance of the correct temperature and ventilation. Mushroom growing cannot be considered a year-round occupation due to the necessity of maintaining a constant temperature of from 48 to 65 degrees Fahrenheit during the four months' period from the time the bed is planted to completion of the growing period. This could not readily be accomplished during the summer months while during the winter months, in most sections, heat would be required. The raising of mushrooms cannot be accomplished without disagreeable odors, as the preparation of the beds involves the use of a compost made from manure which is highly odoriferous and which requires thirty days to decompose and prepare. Many women would not care to undertake the preparation of this compost. Mushrooms cannot be successfully grown without experience, as production requires a high degree of horticultural skill and is one of the most difficult of all crops to raise. It is not an easy and pleasant occupation, due to the hard work and disagreeable odor incident to preparing the compost, erecting the beds, and the constant care and attention required in regulating the temperature, humidity, and ventilation.

PAR. 4. There are among the competitors of respondent, as set forth in paragraph 1 hereof, other individuals, firms, corporations, or partnerships who do sell mushroom spawn in interstate commerce or who are legitimate trade associations of mushroom growers, or who do not represent that mushrooms may be grown in any idle space about the home, or that mushrooms can be raised in small quantities at home with tremendous financial returns, and who do not make the other representations set forth in paragraphs 2 and 3 hereof.

PAR. 5. The acts and practices of the respondent in using a firm name or style calculated to falsely induce the public to believe that his business, conducted under the name of Mushroom Growers of America is a trade organization or association of bona fide mushroom growers, and in falsely representing and advertising that there is a tremendous demand for mushrooms, and that they may be grown

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Conclusion

in any idle space about the home, to the great financial advantage of the person so doing; that the raising of mushrooms may be accomplished without odors in the home; that the same are easy to plant and grow without any experience or technical skill; that respondent is personally an expert in the growing of mushrooms; and that respondent maintains personnel skilled in advising customers how to raise mushrooms, are all 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 mushroom spawn, in reliance of said representations.

By means of these false and misleading representations, made to the purchasing public as above described, respondent has increased his own sales of said mushroom spawn, so dishonestly promoted, advertised, or represented, thereby lessening the market for similar spawn sold by other growers, merchants, or dealers, who truthfully represent the nature, advantage, or expectant financial return from planting mushroom spawn or the desirability of becoming mushroom growers, and their true size and character as commercial concerns, by their trade or corporate name or style.

As a result thereof, trade is unfairly diverted to the respondent from competitors engaged in the sale in interstate commerce of similar mushroom spawn, who truthfully represent the true nature of their firm or corporate structure, or the true nature of the mushroom business, or the desirability of becoming mushroom growers, or the demand for mushrooms, and the financial returns obtainable by growing mushrooms. 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 in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Maurice Willens, an individual doing business under the firm name and style of Mushroom Growers of America, 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 testimony and other evidence taken before William C. Reeves and John L. Hornor, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and upon a substitute answer filed herein on May 13, 1937, 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, Maurice Willens, as an individual and doing business under the firm name and style of Mushroom Growers of America, or under any other trade name, his representatives, agents, and employees in connection with the offering for sale, sale and distribution of mushroom spawn in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of any trade name, or through the use of any purported membership cards issued to his customers, or through any other means or device, or in any manner, that the business operated by him is a cooperative, or other, trade association or is other than a private business;

2. Representing, in any manner, that said business is larger in size and scope than it actually is or that he maintains a staff of mushroom experts when such is not the case;

3. Representing in any manner that mushrooms may be easily grown in any idle space in or about the home; that mushroom growing is a simple and highly remunerative industry; that any person can successfully grow mushrooms for profit without previous knowledge, experience or technical skill; that there is a shortage of mushrooms on the market; that amateurs may make a fortune, or substantial profits, in growing mushrooms; that the business of mushroom growing may be accomplished without unpleasant odors.

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.

Complaint

IN THE MATTER OF
 JOSEPH H. SELD, TRADING AS SELD LEATHER
 COMPANY

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

Docket 2636. Complaint, Nov. 20, 1935—Decision, May 17, 1937

Where an individual engaged in the manufacture and sale of certain leather products made from cheap and inferior leathers having the general appearance of "chamois," in competition with manufacturers of similar products who do not in any wise designate same as "chamois" or associate said word with some other descriptive word, and with manufacturers who make and sell the skin of the chamois antelope or oil-tanned skin of the sheep, and truthfully do represent their said products as "chamois"—

Represented, through designations "Pigskin Chamois," "Pigskin Chamols Se-leco," "Chamois, Rose Brand," and "Genuine Pigskin Chamois," in advertisements, price lists, letterheads, invoices, and in other ways, that said products were "chamois," notwithstanding the fact they were not made from the skin of the practically extinct chamois antelope nor from the oil-dressed and suede-finished flesh of undersplit of sheepskin, and were not, as commercially now known, chamois, and would not serve as a satisfactory substitute for such sheepskin as thus known;

With effect of misleading and deceiving purchasers of aforesaid products into belief that they were chamois, as hereinabove set forth, and to purchase same in such erroneous belief, and of placing in the hands of dealers and retailers means of misleading and deceiving aforesaid public, and of unfairly diverting trade to him from competitors who do not misrepresent 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. Charles F. Diggs*, trial examiner.

Mr. James M. Hammond for the Commission.

Mr. H. Andrew Schlusberg, of Gloversville, 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 Joseph H. Seld, an individual, doing business under the firm name and style of Seld Leather 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. The respondent herein, Joseph H. Seld, is an individual, doing business under the firm name and style of Seld Leather Company, with his office and principal place of business in the city of Gloversville, N. Y. He is now, and has for more than one year last past been engaged in the business of manufacturing certain leather products, designated by him as "Pigskin Chamois," "Pigskin Chamois Seleco," "Chamois, Rose Brand," "Genuine Pigskin Chamois," "Carpincho Splits," "Peccary Splits," "Deerskin Splits," "Buckskin Splits," and other cheap and inferior leather products having the general appearance of "chamois," some of which are marked "chamois" or have the word "chamois" used as a descriptive word or part of a trade name or designation in connection with their selling and marking, and in the sale thereof between and among the various States of the United States and in the District of Columbia, shipping such products, or causing same to be shipped when sold, from respondent's place of business in the State of New York to the purchasers thereof, some located in the State of New York and others located in the 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 respondent in the aforesaid leather products. In the course and conduct of his business 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 and distribution of leather products between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in selling and offering for sale his aforesaid leather products between and among the various States of the United States and in the District of Columbia, now represents, and for more than one year last past has represented, through the designation of his leather products hereinbefore mentioned, by advertisements, price lists, letterheads, invoices, and in other ways, that the aforesaid leather products are chamois. Chamois has its origin in the name of an European antelope, the skin of which is made into a soft, pliable leather which is used in the manufacture of gloves and for the polishing of silver and metals. The chamois antelope is now practically extinct, and its skin is no longer an article of commerce. At the present and for a long time last past, the word "chamois" as con-

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Complaint

mercially known is used to designate the inner part of a sheepskin, which when oil dressed is a very soft and pliable product sold commercially under the name of "chamois." Said product is likewise valuable for polishing and cleaning purposes, possessing particularly the power of quickly absorbing moisture and returning thereafter, when dried, to its original softness and pliable quality. The only trade name and designation given to the skin of a chamois antelope and to oil dressed sheepskin is the word "chamois," and the word "chamois" means to the retail trade and to the public either the skin of a chamois antelope or the oil-tanned skin of a sheep.

PAR. 3. In truth and in fact, the leather products dealt in by the respondent, as described in paragraph 1 herein, and represented by him as set out in paragraphs 1 and 2 to be chamois, are not in fact the skin of the chamois antelope or the oil-tanned skin of the sheep, but are articles manufactured from pigskin, peccary, carpincho, and skins other than oil-tanned sheepskin or the chamois antelope, and have the same general appearance but not the peculiar qualities or properties of articles known to the public and trade, and properly designated as "chamois."

PAR. 4. The use by the respondent of the aforesaid designations of its leather products, and of other similar designations, and of the advertisements, letterheads, invoices, and price lists described in paragraph 2 hereof, has the capacity and tendency to mislead and deceive, and has misled and deceived purchasers of the aforesaid products of respondent into the belief that such products are chamois, to wit: the skin of the chamois antelope or the oil-tanned skin of the sheep, and to purchase such products of respondent in such erroneous belief, and has placed, and places in the hands of dealers and retailers the means of misleading and deceiving the purchasing public.

Among the competitors of respondent mentioned in paragraph 1 hereof, are manufacturers of leather products similar to those made and sold by respondent, but who do not in any wise designate such products as "chamois." There are also, among such competitors, manufacturers who manufacture and sell the skin of the chamois antelope or the oil-tanned skin of the sheep, and who truthfully represent their said products as "chamois." By the aforesaid acts and practices of respondent, trade is unfairly diverted by respondent from its competitors, who do not misrepresent their products, whereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

PAR. 5. That the above methods, actions, and practices of the respondent are all to the prejudice 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 November 20, 1935, issued and served its complaint in this proceeding upon respondent Joseph H. Seld, an individual trading under the firm name and style of Seld Leather Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After issuance of the said complaint and filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by James M. Hammond, attorney for the Commission before Millard F. Hudson and Charles F. Diggs, examiners for the Commission, theretofore duly designated by it; and in opposition to the allegations of the complaint by H. Andrew Schlusberg, 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 and answer thereto, the testimony and other 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 respondent herein, Joseph H. Seld, is an individual doing business under the firm name and style of Seld Leather Company, with his office and principal place of business in the city of Gloversville, N. Y. He has been engaged for several years in the manufacture and sale of certain leather products made from leathers variously designated by him as "Pigskin Chamois," "Pigskin Chamois Seleo," "Chamois, Rose Brand," "Genuine Pigskin

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Findings

Chamois," and from other cheap and inferior leathers having the general appearance of "chamois." He ships said products, or causes the same to be shipped, when sold, from his place of business in the State of New York to the purchasers thereof, some located in the State of New York and others located in 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 leather products among and between the various States of the United States. In the course and conduct of his business, 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 likewise engaged in the sale and distribution of leather products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in selling and offering for sale his aforesaid leather products between and among the various States of the United States and in the District of Columbia, now represents, and for more than one year last past has represented, through the designation of his leather products hereinbefore mentioned, by advertisements, price lists, letterheads, invoices, and in other ways, that the aforesaid leather products are chamois. Chamois has its origin in the name of an European antelope, the skin of which was made into a soft, pliable leather which was used in the manufacture of gloves and for the polishing of silver and metals. The chamois antelope, however, has become practically extinct, and its skin is no longer an article of commerce. At the present and for a long time last past, the word "chamois" as commercially known is used to designate the inner part of a sheepskin, which when oil-dressed is a very soft and pliable product sold commercially under the name of "chamois." It is defined in the *Dictionary of Leather Terminology*, published by a Joint Committee appointed by the Tanners Council of America functioning in conjunction with Committee members representing other branches of the leather goods industry, as follows:

Chamois Leather. A soft leather originally made from the skins of the Alpine antelope, or chamois, now practically extinct, but at the present time from the fleshers or under-split of sheepskin, oil-dressed, suede-finished, principally used for cleaning and polishing purposes and for gloves. "White Chamois" is a flesher tanned by a formaldehyde and alum process.

The same work describes the term "Flesher" used in the above definition, as follows:

Flesher. Term used to describe a suede-finished flesh side or undercut of a sheepskin, split before tanning.

Chamois, so manufactured and tanned from sheepskin as described above, is valuable for polishing and cleaning purposes. It possesses the peculiar power of quickly absorbing moisture and returning thereafter when dried to its original soft and pliable quality. The skin of the Chamois or Alpine antelope became exhausted for commercial purposes over forty years ago. Tanners, in their search for a substitute, discovered that the inner splits of sheepskin tanned by the oil process produced a skin possessing approximately the same qualities. Sheepskin so tanned has been in use for many years and is the article now known commercially as "chamois." During the course of the hearings held in connection with this case, a number of old and experienced tanners were summoned for the purpose of defining the present meaning of the term "chamois." None of them had ever seen a real Chamois antelope skin. All defined the term "chamois" in the same manner, as set out in the Dictionary of Leather Terminology quoted above.

PAR. 3. Tests were made of the respondent's products at the United States Bureau of Standards and it was found that they would not serve as a satisfactory substitute for oil-tanned sheepskin, as chamois, because they will not absorb water with facility and will not return when dry to their original soft and pliable quality. A number of practical automobile and window washers of many years' experience appeared and testified that these scientific conclusions were true; that the article known to and used by them as "chamois" was sheepskin manufactured as described in the Dictionary of Leather Terminology quoted above; that they had tried to use leather similar to respondent's product but that it would not give satisfactory results. The testimony taken shows that the general public does not know what a chamois skin as now known is made from, so that the use of a descriptive word such as "Pigskin" or "Carpincho" in connection with the word "Chamois" is entirely uninformative.

PAR. 4. The use by the respondent of the aforesaid designations for his leather products, and of other similar designations and of the advertisements, letterheads, invoices and price lists described in paragraph 1 hereof, has the capacity and tendency to mislead and deceive, and has misled and deceived purchasers of the aforesaid products of respondent into the belief that such products are chamois, to wit: the skin of the chamois antelope or the oil-tanned flesher or under-split of sheepskin and to purchase such products of respondent in such erroneous belief, and has placed and places in the hands of dealers and retailers the means of misleading and deceiving the purchasing public.

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Order

Among the competitors of respondent mentioned in paragraph 1 hereof, are manufacturers of leather products similar to those made and sold by respondent, who do not in any wise designate such products as "chamois" or associate the word "chamois" with some other descriptive word. There are also, among such competitors, manufacturers who manufacture and sell the skin of the chamois antelope or the oil-tanned skin of the sheep and who truthfully represent their said products as "chamois." By the aforesaid acts and practices of respondent, trade is unfairly diverted to respondent from his competitors, who do not misrepresent their products, whereby substantial injury is being done and has been done by respondent to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondent Joseph H. Seld, an individual trading under the firm name and style of Seld Leather 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 and the answer of respondent, testimony and other evidence taken before Millard F. Hudson and Charles F. Diggs, examiners for the Commission, and theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of 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, Joseph H. Seld, an individual doing business under the firm name and style of Seld Leather Company, his representatives, agents, and employees in connection with the offering for sale, sale and distribution of leather products, do forthwith cease and desist from:

Using the word "chamois," alone, or in conjunction with any other word or words, in any manner whatever, to describe, designate,

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or refer to leather products not made (1) from the skin of the Alpine Antelope or Chamois, or (2) from the fleshers or under-split of sheepskin, oil-dressed and suede-finished, provided, however, leather products made from the fleshers or under-split of sheepskin tanned by a formaldehyde and alum process may be designated as "white chamois."

It is hereby further ordered, That the respondent shall within 30 days from the date of the service upon him of this order file with this Commission his report in writing stating the manner and form in which he shall have complied with this order.

Complaint

IN THE MATTER OF

UDGA, INCORPORATED, AND WILLIAM FRASER AND
MARY FRASER

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

Docket 2830. Complaint, June 2, 1936—Decision, May 17, 1937

Where a corporation and an individual, principal, if not sole, stockholder thereof and director and in control of its business practices and sales policies, engaged in the offer and sale of a stomach tablet designated "Udga Treatment," for use in treating stomach ulcers and other stomach ailments and diseases caused, or reputedly caused, by hyperacidity, in advertising their said product in various newspapers, trade magazines and other periodicals of interstate circulation, and in letters and copies of purported testimonials, and other matter forwarded to prospective customers throughout the various States and in the District of Columbia—

Represented, as aforesaid, that their said treatment would cure such ulcers, gastritis, indigestion, dyspepsia, and various other stomach ailments and diseases, including those caused, or reputedly caused, as above set forth, through such statements as "*Stomach Ulcers—Thousands of sufferers, many cases of years' standing, after using the Udga Treatment report amazing recovery. * * * highly recommended for ulcers, severe, chronic gastritis, acidosis, dyspepsia, indigestion * * **," etc., and through numerous other statements of like tenor and effect, facts being that said tablets could not cure the various ailments and diseases represented by them, and majority of persons who gave testimonials were not capable of diagnosis and were not registered physicians and could not affirmatively state that aforesaid treatment effected cures of diseases from which they suffered;

With result of misleading and deceiving members of the purchasing public into the false belief that such representations were true, and of inducing such members to buy substantial quantities of its product, and, as a result thereof, of unfairly diverting trade to them from competitors who do not falsely advertise or represent the capacity of the pills or other medicines vended by them to cure ailments and diseases hereinbefore indicated; to the 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. William C. Reeves*, trial examiner.

Mr. Alden S. Bradley for the Commission.

Sanborn, Graves, Appel, Andre & Morton, and *Mr. John C. DeCoursey*, of St. Paul, Minn., for respondents.

COMPLAINT

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

Trade Commission, having reason to believe that Udga Incorporated, and William Fraser and Mary Fraser, individuals, 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, Udga Incorporated, is a corporation, existing under and by virtue of the laws of the State of Minnesota, having its principal office and place of business in St. Paul, Minn. Respondents, William Fraser and Mary Fraser, respectively, are individuals having their offices and principal places of business in St. Paul, Minn.

PAR. 2. Respondent, Udga Incorporated, is the direct successor to William Fraser and Mary Fraser, formerly copartners doing business under the firm name and styled Udga Medicine Company, Udga Laboratories, and other names similar thereto. Said respondents, William Fraser and Mary Fraser, owned and now own virtually all, if not all, of the capital stock of respondent corporation, and have so owned such stock since the procurement of the charter thereof, and have at all times herein related directed and dominated the practices and policies of the respondent corporation.

PAR. 3. Respondents, as individuals and as a corporate entity, as aforesaid, for a period in excess of six years have been engaged in selling and in offering for sale, a stomach tablet designated "Udga Treatment," intended by the respondents and directed by them to be used in the treatment of stomach ulcers, gastritis, indigestion, dyspepsia, and various other stomach disturbances, including those caused or reputed to be caused by hyperacidity, and in the course and conduct of the business of respondents as aforesaid, they have sold and transported, and caused to be sold and transported, such stomach tablet into and through the various States of the United States and the District of Columbia, and have in the manner aforesaid maintained a constant current of trade and commerce in interstate commerce of such commodity.

PAR. 4. In the course and conduct of their said business, respondents are now and have been in competition with other corporations, firms and individuals likewise engaged in the business of selling, distributing and transporting throughout the various States of the United States, and the District of Columbia, pills and medicines for the treatment of the ailments above set forth.

PAR. 5. The respondents in the course and conduct of their business advertise and cause to be advertised in various daily newspapers, trade

magazines and other periodicals having interstate circulation, and have forwarded to prospective or potential customers of respondents throughout the various States of the United States and the District of Columbia, circulars, letters, and copies of purported testimonials seemingly illustrative of the efficacy of the "Udga Treatment," which said statements were and are in part as follows:

Stomach Ulcers

Thousands of sufferers, many cases of years' standing, after using the Udga Treatment report amazing recovery. Rids you of pain, vomiting and other discomforts at once. *No diet.* Improvement steady and rapid. The Udga Treatment is highly recommended for ulcers, severe, chronic gastritis, acidosis, dyspepsia, indigestion. Guaranteed satisfaction on no pay trial. *\$1,000 Reward Offers.* Write for *Free Book on Stomach Sicknesses* and letters of praise from former sufferers. Udga Laboratories, 1947 Dakota Building, St. Paul, Minn.

Read our Affidavit of Truth and \$1,000 Reward Offer. You know the old saying "The proof of the pudding is in the eating." Here is proof from men and women who have sent us these testimonial letters giving you their own true experiences.

Stomach Ulcer, gas pains, indigestion victims, why suffer? For quick relief. get a free sample of Udga, a doctor's prescription, at your local druggists.

Respondents have issued numerous other statements of like tenor and effect, each and all of which have the tendency and capacity to and do, and are by respondents intended to, create in the minds of the purchasing public, and in the minds of potential customers, the belief that the treatment referred to has a curative value for each and all of the afflictions and ailments above set forth.

PAR. 6. The testimonials used by the respondents above referred to consist of purported copies of numerous letters, claimed by respondents to have been received from persons who had taken the "Udga Treatment" for various and sundry ailments, and who represent in such testimonials that such treatment effected cure of the ailments complained of.

The majority of the persons purporting to have attested the efficacy of this remedy are not capable of diagnosis, are not registered physicians, and cannot affirmatively state the therapeutic or curative value of such treatment.

PAR. 7. In truth and in fact the stomach tablet known and designated as "Udga Treatment" has no therapeutic or curative value and cannot remedy or cure the various ailments or diseases claimed, as herein stated.

PAR. 8. There are among competitors of the respondents, persons, individuals, firms, copartnerships, and corporations, who sell, offer for sale and transport in interstate commerce, pills and other medicines for the treatment of the ailments hereinabove set forth, who do

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not falsely represent or exaggerate the therapeutic or curative value of the same.

PAR. 9. Each and all of the above acts and practices of the respondents have a capacity to and do in fact mislead a substantial number of the members of the purchasing public into the false belief that the use of this treatment will effect a cure of the various diseases herein enumerated and referred to, and who, relying upon such belief have purchased substantial quantities of such stomach pill. Such acts and practices likewise cause a substantial diversion of trade to the respondents from competitors of respondents as herein described who do not falsely represent the therapeutic or curative value of the pill or other medicines vended by them, thereby causing injury to competition in interstate commerce.

PAR. 10. The above acts and practices of the respondents are all to the injury and prejudice of the public, and to competitors of the 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 June 2, 1936, issued and served its complaint in this proceeding upon the respondent Udga, Incorporated, a corporation, and William Fraser and Mary Fraser, 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 a stipulation as to the facts was entered into by Alden S. Bradley, attorney for the Commission, and John C. DeCoursey, attorney for the respondents, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and said stipulation was duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly coming on for consideration before the Commission on said complaint, the answer thereto, said stipulation as to the facts 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:

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FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Udga, Incorporated, is a corporation existing and doing business under the laws of the state of Minnesota having its principal office and place of business in St. Paul, Minn. Respondent, William Fraser, is an individual having his principal office and place of business in St. Paul, Minn. Respondent, Mary Fraser, died on November 22, 1936.

PAR. 2. Udga, Incorporated, is the direct successor of the copartnership of William Fraser and Mary Fraser doing business under the firm name and style of Udga Medicine Company, Udga Laboratories, and similar names.

Virtually all, if not all, of the capital stock of the respondent corporation is owned by William Fraser and the estate of Mary Fraser. William Fraser directs and dominates the business practices and sales policies of the respondent corporation.

PAR. 3. For a period of more than six years the respondents have been engaged in selling and offering for sale a stomach tablet designated "Udga Treatment" intended and directed by them to be used in the treatment of stomach ulcers, gastritis, indigestion, dyspepsia and various other stomach ailments and diseases, including those caused or reputed to be caused by hyperacidity. They have, in the conduct of their business, sold and transported and caused to be sold and transported such stomach tablets from their place of business in the State of Minnesota into and through various other States of the United States and the District of Columbia to purchasers thereof and have maintained a constant current of trade and commerce in such commodity in such commerce.

PAR. 4. In the course and conduct of their said business respondents are now and have been in competition with other corporations, firms and individuals likewise engaged in the business of selling, distributing and transporting throughout the various States of the United States and the District of Columbia pills and medicines for the treatment of ailments and diseases similar to those for the treatment of which respondents' product is sold and distributed.

PAR. 5. The respondents in the course and conduct of their business advertise and cause to be advertised in various daily newspapers, trade magazines and other periodicals having interstate circulation and have forwarded to prospective customers throughout the various States of the United States and the District of Columbia circulars, letters and copies of purported testimonials and other matter in which said advertising matter such statements as the following were and are made:

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Stomach Ulcers

Thousands of sufferers, many cases of years' standing, after using the Udga Treatment report amazing recovery. Rids you of pain, vomiting and other discomforts at once. *No diet.* Improvement steady and rapid. The Udga Treatment is highly recommended for ulcers, severe, chronic gastritis, acidosis, dyspepsia, indigestion. Guaranteed satisfaction on no pay trial. *\$1,000 Reward Offers.* Write for *Free Book* on Stomach Sicknesses and letters of praise from former sufferers. Udga Laboratories, 1947 Dakota Building, St. Paul, Minn.

Read our affidavit of Truth and \$1000 Reward Offer. You know the old saying "The proof of the pudding is in the eating." Here is proof from men and women who have sent us these testimonial letters giving you their own true experiences.

Stomach Ulcer, gas pains, indigestion victims, why suffer? For quick relief, get a free sample of Udga, a doctor's prescription, at your local Druggists.

Respondents have issued numerous other statements of like tenor and effect, each and all of which have the tendency and capacity to, and do, and are by respondents intended to, create in the minds of the purchasing public, and in the minds of potential customers, the belief that said product referred to will cure each and all of the ailments and diseases above set forth in paragraph 3.

PAR. 6. The testimonials used by the respondents above referred to consist of purported copies of numerous letters, claimed by respondents to have been received from persons who had taken the "Udga Treatment" for various and sundry ailments and diseases and who represent in such testimonials that such treatment effected cures of the ailments and diseases from which they suffered.

The majority of persons who gave such testimonials are not capable of diagnosis, are not registered physicians and cannot affirmatively state that such treatment effected cures of the ailments and diseases from which they suffered.

PAR. 7. The stomach tablet known and designated as "Udga Treatment" cannot cure the various ailments and diseases as represented by the respondents.

PAR. 8. Among the competitors of respondents are individuals, firms and corporations who sell and transport in interstate commerce pills and other medicines for the treatment of the ailments and diseases described in paragraph 3 hereof and do not misrepresent or exaggerate the capacity of such pills and other medicines to cure such ailments and diseases.

PAR. 9. The use by the respondents of the statements and representations described in paragraphs 5 and 6 hereof and other statements similar thereto in offering for sale and selling such products in commerce as herein set out has had and now has the tendency and

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capacity to and do mislead and deceive members of the purchasing public into the false belief that the representations so made are true and has induced such members to purchase substantial quantities of respondent's products. As a result thereof trade has been unfairly diverted to the respondents from competitors referred to in paragraph 8 hereof who do not falsely advertise or represent the capacity of the pills or other medicines vended by them to cure the ailments and diseases described in paragraph 3 hereof. In consequence thereof injury has been done by the respondents to competition in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, Udga, Incorporated, a corporation, and William Fraser, an individual, 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 record herein including a stipulation as to the facts entered into before William C. Reeves, an examiner of the Commission theretofore duly designated by it, brief on behalf of 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 ordered, That the respondents, Udga, Incorporated, a corporation, its officers, and William Fraser and their respective representatives, agents, and employees in connection with the sale and distribution in interstate commerce and in the District of Columbia of any medicinal tablets now known as "Udga Treatment" or of any other medicinal product having substantially the same ingredients or the same effect sold under that name or under any other name forthwith cease and desist from:

Representing, directly or indirectly, through advertisements, circulars or testimonials or through any other means or device or in

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any manner that said medicinal product will cure stomach ulcers, gastritis, indigestion, dyspepsia and various other stomach ailments and diseases, including those caused or reputed to be caused by hyperacidity.

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

THE WATER WORKS VALVE AND HYDRANT GROUP OF
THE VALVE AND FITTINGS INSTITUTE 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 2958. Complaint, Nov. 16, 1936¹—Decision, May 18, 1937

Where a trade organization or group, the members of which were engaged at their respective places of business in the manufacture of water-gate valves, hydrants, fittings and similar products, and in the sale thereof chiefly to towns, cities, and other municipalities, to State Governments and divisions thereof, to the Federal Government and divisions thereof, and to State and Federal institutions, and which members constituted substantially all manufacturers in the United States of such products for water supply systems and were originally and still would have been, but for the matters and things hereinafter set forth, in price competition with one another; certain individuals constituting the governing committee of said organization or group; an individual, as president commissioner of the institute of group in question and as administrative officer of the Code Authority of the Code of Fair Competition for Industry in question; second individual, as assistant secretary of said institute and also as administrative officer of said authority; and the aforesaid members—

- (a) Entered into and carried out an agreement, combination, understanding and conspiracy to fix and maintain, and did fix and maintain thereby, enhanced uniform delivered prices to be exacted by said members from their purchasers of water-gate valves, hydrants, fittings, and similar products, in commerce between and among the various States and in the District of Columbia; and in pursuance of their said understanding and conspiracy—
 - (1) Agreed to and did fix and maintain enhanced uniform delivered prices for products in question sold by said members;
 - (2) Agreed to and did divide the United States into zones and fixed and maintained therein enhanced delivered prices to be exacted by the members, as above set forth, from the purchasers of their said products;
 - (3) Agreed to and did fix uniform discounts allowed by the members in the sale of their said products to jobbers and distributors; and
 - (4) Agreed to and did fix and establish uniform delivered prices at which jobbers and distributors purchasing their said products from them should resell same, and refused to continue selling to such jobbers and distributors as refused to or did not resell at enhanced uniform delivered prices as fixed; and

Where the aforesaid officer individuals, to wit, said Institute's president commissioner and code authority's administrative officers, acting for and in behalf of the others hereinbefore referred to, and for the purpose of accomplishing the aforesaid combination, agreement, etc.—

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(b) Induced certain of such others, by intimidation and persuasion, to raise their quoted prices to the uniform enhanced delivered prices fixed, as above set forth, by said combination, conspiracy, etc.; and

Where a corporation engaged as jobber and distributor of water gate valves, hydrants, fittings, and similar products, and the officers thereof—

(c) Assisted the others hereinbefore set forth in carrying out their said agreement, combination, understanding, and conspiracy, with full knowledge thereof, and thereby became parties thereto;

With a dangerous tendency to, and with effect of, actually hindering and preventing price competition in sale and resale, between and among the various States and in the District of Columbia, of said various products, of increasing the prices therefor paid by jobbers and distributors thereof, and by towns, cities, and other municipalities, and by State and Federal governments and divisions thereof, and by State and Federal institutions, as consequence thereof, and of creating in such various members a monopoly in the sale and resale in interstate commerce of aforesaid products and of unreasonably restraining interstate commerce therein:

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

Mr. Edward L. Smith for the Commission.

Donovan, Leisure, Newton & Lombard, of New York City, and *Donovan, Bond & Leisure*, of Washington, D. C., for The Water Works Valve and Hydrant Group, etc., and its governing committee, and other respondents, and their officers, and, along with *Guggenheimer & Untermeyer* and *Mildred E. Reeves*, of Washington, D. C., for The Ludlow Valve Manufacturing Co. and its officers, *Mr. E. Lowry Humes*, of Pittsburgh, Pa., for J. Roy Tanner, receiver for Pittsburgh Valve Foundry & Construction Co., and *Breed, Abbott & Morgan*, of New York City, for Walworth Co. and its officers.

Adams, Childs, McKaig & Lukens, of Philadelphia, Pa., for The Pittsburgh Valve & Fittings Co. and its officers.

AMENDED COMPLAINT ¹

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the parties described in paragraphs 1 and 2 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 said Commission that a proceeding by

¹ Extended list of respondents, the State of incorporation, place of business and officers in paragraph 1 of the complaint, and which appears infra at page 1260, in the findings, is omitted in the interest of brevity.

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it in respect thereof would be to the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Charles H. Becker, Dennis O'Brien, Frank A. Miller, Earnest Cochran, and Marshall L. Hough are now and have been for more than three years last past the governing committee of the Water Works Valve and Hydrant Group of the Valve and Fittings Institute, a New York corporation, with its principal office and place of business in the city of New York in said State. Respondent George V. Denny is and has been for more than three years last past president commissioner of said Valve and Fittings Institute and was from December 15, 1933, or thereabouts until June 3, 1935, or thereabouts, an administrative officer of the Code Authority of the Code of Fair Competition for the Valve and Fittings Manufacturing Industry approved by the President of the United States December 15, 1933, under and by virtue of the National Industrial Recovery Act, approved June 16, 1933. Respondent Sam G. Moyers is now and has been for more than three years last past assistant secretary of the aforesaid Valve and Fittings Institute and was from on or about December 15, 1933, until on or about June 3, 1935, an administrative officer of the Code Authority for the aforesaid Code.

The Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute, now is and for more than three years last past has been constituted of the following respondent corporations, whose respective officers are now and have been for more than three years last past the following, such officers being also respondents herein: [Extended list which follows and which is set forth verbatim in the findings, infra, at page 1260 and again in the order is here omitted in the interest of brevity.]

PAR. 2. Respondent Rundle Spence Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin with its principal place of business at Milwaukee, in said State. Its officers, respondents herein, are now and for more than three years last past have been B. R. Spence, president, and Tom M. Spence, secretary-treasurer. It is a subsidiary of respondent The Crane Company, and now and for more than three years last past has been engaged as a jobber and distributor of water gate valves, hydrants, fittings, and similar products, causing the same when sold by it to be transported from its place of business in Milwaukee, aforesaid, to the purchasers thereof, some located in the State of Wisconsin and others located in various other States of the United States and in the District of Columbia.

PAR. 3. The aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute named in paragraph 1 hereof are now and for more than three years last past have been engaged at their respective places of business in the manufacture of water gate valves, hydrants, fittings, and similar products and in the sale thereof, chiefly to towns, cities, and other municipalities, to State Governments and divisions thereof, to the Federal Government and divisions thereof, and to State and Federal institutions.

In the course and conduct of their business, all of the said respondents for more than three years last past have caused and still cause such water gate valves, hydrants, fittings, and similar products, when sold by them to be transported in interstate commerce from their respective places of business to, into and through the District of Columbia and the various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers thereof in such other States and in the District of Columbia.

The said respondents now constitute and for more than three years last past have constituted substantially all of the manufacturers in the United States of water gate valves, hydrants, and fittings and other articles used for water supply systems. The said respondents were prior to December 1933, or thereabouts, in competition among themselves, as to price, in the sale of water gate valves, hydrants, fittings, and other similar products between and among various States of the United States and in the District of Columbia and but for the combination, agreement, understanding, and conspiracy hereinafter described would have been at all times since December 1933 or thereabouts and would now be in such price competition with one another.

PAR. 4. In December 1933 or thereabouts, the respondents named in paragraph 1 hereof for the purpose of eliminating price competition among the aforesaid members of the Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute in the sale of water gate valves, hydrants, fittings, and other similar articles between and among the various States of the United States and in the District of Columbia, entered into, and have since carried out and are still carrying out an agreement, combination, understanding, and conspiracy among themselves to fix and maintain and by which they have fixed and maintained enhanced uniform delivered prices to be and which have been and are still being exacted by the aforesaid members of the Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute from their purchasers of

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water gate valves, hydrants, fittings, and similar products in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out aforesaid agreement, combination, understanding, and conspiracy, the said respondents have, among other things, done the following:

(a) Agreed among themselves to fix and maintain, and pursuant to such agreement have fixed and maintained and still fix and maintain enhanced uniform delivered prices for water gate valves, hydrants, fittings, and similar products sold by the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute and each of them.

(b) Agreed to divide and pursuant to such agreement have divided the United States into zones in which zones the said respondents have by agreement fixed and maintained and still fix and maintain enhanced uniform delivered prices exacted by the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute from their purchasers of water gate valves, hydrants, fittings, and similar products.

(c) Agreed to fix and pursuant to such agreement have fixed and still fix uniform discounts allowed by the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute in the sale of water gate valves, hydrants, fittings, and similar products, to their jobbers and distributors.

(d) Agreed to fix and pursuant to such agreement have fixed and established and still fix and establish uniform enhanced delivered prices at which jobbers and distributors buying water gate valves, hydrants, and fittings and similar products from the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute should resell the same and, by agreement have refused to continue selling to jobbers and distributors who would refuse to resell or who have not resold at the enhanced uniform delivered prices so fixed.

(e) For the purpose of accomplishing the aforesaid agreement, combination, understanding and conspiracy, the aforesaid George V. Denny, individually and as president commissioner of the aforesaid Valve and Fittings Institute and as administrative officer of the Code Authority for the Valve and Fittings Manufacturing Industry, and the aforesaid Sam G. Moyers, individually, and as administrative officer of the Code Authority for the Valve and Fittings Manufacturing Industry, acting for and in behalf of the other respondents named in paragraph 1 hereof, by intimidation and persuasion induced certain of the aforesaid other respondents to raise

prices quoted by them to the uniform enhanced delivered prices fixed as aforesaid by the aforesaid combination, conspiracy, understanding and agreement.

PAR. 5. Respondent Rundle Spence Company and its respondent officers having full knowledge of the agreement, combination, understanding, and conspiracy, described in paragraph 4 hereof assisted the other respondents in carrying out such agreement, combination, understanding, and conspiracy. By such assistance they became parties to the said conspiracy and for that reason are made parties respondents herein.

PAR. 6. The acts and practices of the respondents as herein alleged are all to the prejudice of the public and to the prejudice of the competitors of those of the respondents who constitute the aforesaid membership of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute; have a dangerous tendency to and have actually hindered and prevented price competition in the sale and resale between and among the various States of the United States and in the District of Columbia of water gate valves, hydrants, fittings, and similar products; have increased the prices of water gate valves, hydrants, fittings, and similar products paid by jobbers and distributors thereof and by towns, cities, and other municipalities, State Governments and divisions thereof, the Federal Government and divisions thereof, State and Federal institutions, and consequently by the public; have created in the respondent members of said Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute, a monopoly in the sale and resale in interstate commerce of water gate valves, hydrants, fittings and similar products; have unreasonably restrained interstate commerce in water gate valves, hydrants, fittings and similar products; 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 16, 1936, issued and served its amended complaint in this proceeding upon the respondents herein, charging them with the use of unfair methods of competi-

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tion in commerce in violation of the provisions of said act. Subsequent to the issuance and service of said amended complaint, the respondents, excepting the Pittsburgh Valve & Fittings Company and its officers, and H. M. Kessler, Trustee in Bankruptcy for The Vogt Brothers Manufacturing Company, filed their answers thereto in which answers (some of such answers being substituted answers) they stated that they desired to and thereby waived hearing on the charges set forth in the amended complaint insofar as the same refer to alleged unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, commonly called the Federal Trade Commission Act, that they and each of them for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding refrained from contesting the proceeding, that they and each of them consented that all the material facts alleged in said amended complaint might be deemed to be admitted but not within the intent and meaning of any law of the United States other than the Federal Trade Commission Act, such answers not constituting an admission of any conclusions of law and not constituting an admission of fact for any other purpose nor to be used against them in any other proceeding, suit or action, and that they and each of them consented that the Commission might without trial and without further evidence and without any intervening proceeding, make and enter its findings as to the facts and issue and serve upon them and each of them an order to cease and desist from any methods of competition alleged in the amended complaint which constitute violations of Section 5 of the Federal Trade Commission Act.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said amended complaint and the said 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. Respondents Charles H. Becker, Dennis O'Brien, Frank A. Miller, Earnest Cochran, and Marshall L. Hough are now and have been for more than three years last past the governing committee of the Water Works Valve and Hydrant Group of the Valve and Fittings Institute, a New York corporation, with its

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principal office and place of business in the city of New York in said State. Respondent George V. Denny is and has been for more than three years last past president commissioner of said Valve and Fittings Institute and was from December 15, 1933, or thereabouts, until June 3, 1935, or thereabouts, an administrative officer of the Code Authority of the Code of Fair Competition for the Valve and Fittings Manufacturing Industry approved by the President of the United States December 15, 1933, under and by virtue of the National Industrial Recovery Act, approved June 16, 1933. Respondent Sam G. Moyers is now and has been for more than three years last past assistant secretary of the aforesaid Valve and Fittings Institute and was from on or about December 15, 1933, until on or about June 3, 1935, an administrative officer of the Code Authority for the aforesaid Code.

The Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute, now is and for more than three years last past has been constituted of the following respondent corporations, whose respective officers are now and have been for more than three years last past the following respondents:

Name and officers	State of Incorporation	Place of business
American Foundry & Manufacturing Company----- J. C. Sanders, Chairman of the Board. H. C. Sanders, President. A. C. Obrock, V. P. J. J. Welsch, Sec. & Treas.	Massachusetts-----	11th and Hebert Sts., St. Louis, Mo.
The Bourbon Copper & Brass Works----- Thomas Bardo, Pres. S. Bardo, Treas. Stella O'Neill, Sec.	Ohio-----	Cincinnati, Ohio.
Cambridge Machine & Tool Company----- Joseph Pasquina, Pres. H. H. Seron, Treas. & Clk.	Massachusetts-----	Binney and Potter Sts., Cambridge, Mass.
The Chapman Valve Manufacturing Company----- Thomas F. Maher, Pres. E. A. Carter, Vice Pres. John J. Dugan, Treas. & Clk.	Massachusetts-----	203 Hampshire St., Indian Orchard, Mass.
Columbian Iron Works-----	Tennessee-----	2501 Chestnut St., Chattanooga, Tenn.
The Crane Co.----- John R. Berryman, Pres. C. R. Crane II, Vice Pres. W. Evensen, Treasurer. H. P. Bishop, Secretary.	Illinois-----	836 S. Michigan Ave., Chicago, Ill.
The Darling Valve & Manufacturing Company----- Ralph W. Thorne, Pres. Marshall L. Hough, V. Pres. & Treas. A. G. Smith, V. Pres. C. W. Huling, Secretary.	Pennsylvania-----	Williamsport, Pa.
The Eddy Valve Manufacturing Company----- John Knickerbacker, Pres. Howard C. Rogers, V. Pres.	New York-----	Troy, N. Y.
The Fairbanks Company----- Harry T. Peters, Chairman of Board. George M. Naylor, Pres. James A. Cleary, Treas. Betty Valentine, Sec.	New Jersey-----	393 Lafayette St., New York, N. Y.
The Filer & Stowell Company----- J. L. Monaghan, Pres. & Mgr. K. H. Read, Sec. W. R. Read, Treas.	Wisconsin-----	Milwaukee, Wis.

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Name and officers	State of incorporation	Place of business
Iowa Valve Company..... W. W. Corey, Pres. C. S. Howard, V. P. A. W. Read, Sec. H. W. Read, Treas. & Mgr.	Iowa.....	Oskaloosa, Iowa.
Jenkins Bros..... Farnham Yardley, Pres. Bernard J. Lee, V. P. Alfred Engle, Secretary. Edward M. Keating, Treas.	New Jersey.....	Bridgeport, Conn.
The Johnson City Foundry & Machine Company, Inc..... Mrs. Kate R. Setzer, Pres. L. F. Miller, V. P. W. I. Latimer, Sec. & Treas.	Tennessee.....	Johnson City, Tenn.
The Kennedy Valve Manufacturing Company..... Mathew E. Kennedy, Pres., Treas. Clarence H. Kennedy, V. P. in charge of sales. John C. Kennedy, V. P. & Sec. in charge of plant.	New York.....	Elmira, N. Y.
The Ludlow Valve Manufacturing Company..... Livingston W. Houston, Pres. & Treas. Joseph H. Egolf, Asst. Sec. & Treas. Morris Stone, V. P. Fred L. Wheeler, V. P. Randolph S. Lewisohn, Sec.	New Jersey.....	Troy, N. Y.
M. & H. Valve & Fittings Co..... Whitfield Clark, Pres. C. B. Martin, V. P. & Gen. Mgr. J. W. Spradley, Sec. C. N. Evans, Treas.	Alabama.....	Anniston, Ala.
Manistee Iron Works Company..... Tom Ray, Pres. Edward N. Turner, V. P. & Mgr. C. W. O'Donnell, Sec. & Asst. Treas. S. B. Chapman, Treas.	Michigan.....	Manistee, Mich.
The Michigan Valve & Foundry Company..... W. F. Rockwell, Pres. R. J. Goldie, V. P. A. I. Hawkins, Treas. W. C. Wood, Sec.	Michigan.....	3631 Parkinson Ave., Detroit, Mich.
Ohio Injector Co..... Wayne Young, Pres. C. B. Allen, V. P.	Ohio.....	Wadsworth, Ohio.
Pacific States Cast Iron Pipe Company..... William MacWayne, Pres. J. D. Sample, V. P. G. E. Sibbett, V. P. O. H. Harvey King, Treas. A. T. McWane, Sec.	Nevada.....	Provo, Utah.
The Reading-Pratt & Cady Company..... W. B. Leshar, Pres. W. T. Morris, V. P. W. M. Wheeler, Sec. W. F. Wheeler, Treas.	New York.....	Bridgeport, Conn.
The Rensselaer Valve Company..... Ellis L. Rows, Pres. & Treas. Irving A. Rowe, V. P. & Gen. Mgr. Arthur C. Boughton, V. P. & Sec.	New York.....	Troy, N. Y.
The Rich Manufacturing Company..... D. H. Botchford, Pres. E. F. Alt, V. P. A. A. Carlson, Sec. & Treas.	California.....	Los Angeles, Calif.
A. P. Smith Manufacturing Company..... D. F. O'Brien, Pres. M. C. Perkins, V. P. F. A. Smith, Treas. T. F. Halpin, Sec.	New Jersey.....	East Orange, N. J.
South Park Foundry & Machine Company..... W. Wellisch, Pres. J. M. Brawley, Sec. & Treas.	Minnesota.....	St. Paul, Minn.
Traverse City Iron Works..... J. O. Joynt, Pres. H. G. Royce, V. P. & Treas. Arthur Bachant, Sec.	Michigan.....	Traverse City, Mich.
Walworth Company..... Howard Coonley, Pres. Winfred B. Holton, Jr., V. P.	Massachusetts.....	60 E. 42nd St., New York, N. Y.
Waterous Company..... F. F. Waterous, Pres. F. A. Waterous, V. P. W. Holmes, Sec. & Treas.	Minnesota.....	St. Paul, Minn.

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Name and officers	State of incorporation	Place of business
Western Gas Construction Company..... J. Becker, Pres. J. D. Schaner, Sec. S. T. Brown, Treas. R. A. Wickes, V. P. & Gen. Mgr.	Delaware.....	Ft. Wayne, Ind.
R. D. Wood Company..... Spencer P. Hazard, Pres. E. J. Lame, V. P. E. R. Russell, Sec. & Treas. J. J. Troster, Asst. Sec. & Asst. Treas.	Pennsylvania.....	400 Chestnut St., Philadelphia, Pa.

and of respondents W. E. Malpass and Mrs. Frank Bretz, trading as East Jordan Iron Works, of East Jordan, Mich.; and of respondent J. Roy Tanner, receiver for Pittsburgh Valve Foundry & Construction Company of Pittsburgh, Pa.

PAR. 2. Respondent Rundle Spence Manufacturing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin with its principal place of business at Milwaukee, in said State. Its officers, respondents herein, are now and for more than three years last past have been E. R. Spence, president, and T. M. Spence, secretary. It is now and for more than three years last past has been engaged as a jobber and distributor of water gate valves, hydrants, fittings, and similar products, causing the same when sold by it to be transported from its place of business in Milwaukee, aforesaid, to the purchasers thereof, some located in the State of Wisconsin and others located in various other States of the United States and in the District of Columbia.

PAR. 3. The aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute named in paragraph 1 hereof are now and for more than three years last past have been engaged at their respective places of business in the manufacture of water gate valves, hydrants, fittings, and similar products and in the sale thereof, chiefly to towns, cities, and other municipalities, to State Governments and divisions thereof, to the Federal Government and divisions thereof, and to State and Federal institutions.

In the course and conduct of their business, all of the said respondents for more than three years last past have caused and still cause such water gate valves, hydrants, fittings, and similar products, when sold by them to be transported in interstate commerce from their respective places of business to, into and through the District of Columbia and the various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers thereof in such other States and in the District of Columbia.

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The said respondents now constitute and for more than three years last past have constituted substantially all of the manufacturers in the United States of water gate valves, hydrants, and fittings and other articles used for water supply systems. The said respondents were prior to December 1933, or thereabouts, in competition among themselves, as to price, in the sale of water gate valves, hydrants, fittings, and other similar products between and among various States of the United States and in the District of Columbia and but for the combination, agreement, understanding, and conspiracy hereinafter described would have been at all times since December 1933 or thereabouts and would now be in such price competition with one another.

PAR. 4. In December 1933 or thereabouts, the respondents named in paragraph 1 hereof for the purpose of eliminating price competition among the aforesaid members of the Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute in the sale of water gate valves, hydrants, fittings, and other similar articles between and among the various States of the United States and in the District of Columbia, entered into, and have since carried out and are still carrying out an agreement, combination, understanding and conspiracy among themselves to fix and maintain and by which they have fixed and maintained enhanced uniform delivered prices to be and which have been and are still being exacted by the aforesaid members of the Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute from their purchasers of water gate valves, hydrants, fittings and similar products in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out aforesaid agreement, combination, understanding and conspiracy, the said respondents, have, among other things, done the following:

(a) Agreed among themselves to fix and maintain, and pursuant to such agreement have fixed and maintained and still fix and maintain enhanced uniform delivered prices for the water gate valves, hydrants, fittings, and similar products sold by the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute and each of them.

(b) Agreed to divide and pursuant to such agreement have divided the United States into zones in which zones the said respondents have by agreement fixed and maintained and still fix and maintain enhanced uniform delivered prices exacted by the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute from their purchasers of water gate valves, hydrants, fittings and similar products.

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(c) Agreed to fix and pursuant to such agreement have fixed and still fix uniform discounts allowed by the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute in the sale of water gate valves, hydrants, fittings, and similar products, to their jobbers and distributors.

(d) Agreed to fix and pursuant to such agreement have fixed and established and still fix and establish uniform enhanced delivered prices at which jobbers and distributors buying water gate valves, hydrants, and fittings and similar products from the aforesaid members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute should resell the same and by agreement have refused to continue selling to jobbers and distributors who would refuse to resell or who have not resold at the enhanced uniform delivered prices so fixed.

(e) For the purpose of accomplishing the aforesaid agreement, combination, understanding and conspiracy, the aforesaid George V. Denny, individually and as president commissioner of the aforesaid Valve and Fittings Institute and as administrative officer of the Code Authority for the Valve and Fittings Manufacturing Industry, and the aforesaid Sam G. Moyers, individually, and as administrative officer of the Code Authority for the Valve and Fittings Manufacturing Industry, acting for and in behalf of the other respondents named in paragraph 1 hereof, by intimidation and persuasion induced certain of the aforesaid other respondents to raise prices quoted by them to the uniform enhanced delivered prices fixed as aforesaid by the aforesaid combination, conspiracy, understanding and agreement.

PAR. 5. Respondent Rundle Spence Manufacturing Co. and its respondent officers having full knowledge of the agreement, combination, understanding, and conspiracy, described in paragraph 4 hereof assisted the other respondents in carrying out such agreement, combination, understanding, and conspiracy. By such assistance they became parties to the said conspiracy.

PAR. 6. The acts and practices of the respondents as herein and hereby found have a dangerous tendency to and have actually hindered and prevented price competition in the sale and resale between and among the various states of the United States and in the District of Columbia of water gate valves, hydrants, fittings, and similar products; have increased the prices of water gate valves, hydrants, fittings and similar products paid by jobbers and distributors thereof and by towns, cities, and other municipalities, State Governments and divisions thereof, the Federal Government and divisions thereof, State and Federal institutions, and consequently by the public; have created in the respondent members of said Water Works Valve and

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Hydrant Group of the aforesaid Valve and Fittings Institute, a monopoly in the sale and resale in interstate commerce of wate gate valves, hydrants, fittings and similar products; have unreasonably restrained interstate commerce in water gate valves, hydrants, fittings and similar products.

CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice of the public and of competitors of those of the respondents who constitute the aforesaid membership of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute 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 complaint of the Commission and the answers thereto (some of such answers being substituted answers) filed herein by all of the respondents, excepting the Pittsburgh Valve & Fittings Company and its officers and H. M. Kessler, Trustee in Bankruptcy for The Vogt Brothers Manufacturing Company, in which said answers they stated that they desire to and hereby waive hearing on the charges set forth in said amended complaint insofar as the same refer to alleged unfair methods of competition in commerce within the intent and meaning of Section 5 of the Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, commonly called the Federal Trade Commission Act, that they and each of them for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding refrained from contesting the proceeding, that they and each of them consented that all of the material facts alleged in said amended complaint might be deemed to be admitted, but not within the intent and meaning of any law of the United States other than the Federal Trade Commission Act, such answers not constituting an admission of any conclusions of law and not constituting an admission of fact for any other purpose nor to be used against them in any other proceeding, suit or action, and that they and each of them

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consented that the Commission might without trial and without further evidence and without any intervening proceeding, make and enter its findings as to the facts and issue and serve upon them and each of them an order to cease and desist from any methods of competition alleged in the said amended complaint which constitute violations of Section 5 of the Federal Trade Commission Act; and the Commission having made its findings as to the facts and its conclusion that all of the said respondents (excepting the Pittsburgh Valve & Fittings Company and its officers, and H. M. Kessler, Trustee in Bankruptcy for The Vogt Brothers Manufacturing Company), 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 said respondents, The Water Works Valve and Hydrant Group of The Valve and Fittings Institute and its Governing Committee, Charles H. Becker, Chairman, Dennis O'Brien, Frank A. Miller, Earnest Cochran, and Marshall L. Hough, and as individuals; George V. Denny, and Sam G. Moyers, the following corporate respondents, their and each of their agents, servants and employees, and their respondent officers and their successors, to wit:

- | | |
|---|--|
| American Foundry & Manufacturing Company: | The Darling Valve & Manufacturing Company: |
| J. C. Sanders, Chairman of the Board, | Ralph W. Thorne, Pres., |
| H. C. Sanders, President, | Marshall L. Hough, V. Pres. & Treas., |
| A. C. Obrock, V. P., | A. G. Smith, V. Pres., |
| J. J. Welsch, Sec. & Treas. | C. W. Huling, Secretary |
| The Bourbon Copper & Brass Works: | The Eddy Valve Manufacturing Company: |
| Thomas Bardo, Pres., | John Knickerbacker, Pres., |
| S. Bardo, Treas., | Howard C. Rogers, V. Pres. |
| Stella O'Neill, Sec. | |
| Cambridge Machine & Tool Company: | The Fairbanks Company: |
| Josepeth Pasquina, Pres., | Harry T. Peters, Chairman of Board, |
| H. H. Seron, Treas. & Clk. | George M. Naylor, Pres., |
| The Chapman Valve Manufacturing Company: | James A. Cleary, Treas., |
| Thomas F. Maher, Pres., | Betty Valentine, Sec. |
| E. A. Carter, Vice Pres., | The Filer & Stowell Company: |
| John J. Dugan, Treas. & Clk. | J. A. Monaghan, Pres. & Mgr., |
| Columbian Iron Works. | K. H. Read, Sec., |
| | W. R. Read, Treas. |
| The Crane Co.: | Iowa Valve Company: |
| John R. Berryman, Pres., | W. W. Corey, Pres., |
| C. R. Crane II, Vice Pres., | C. S. Howard, V. P., |
| W. Evensen, Treasurer, | A. W. Read, Sec., |
| H. P. Bishop, Secretary | H. W. Read, Treas. & Mgr. |

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- Jenkins Bros.:
- Farnham Yardley, Pres.,
 - Bernard J. Lee, V. P.,
 - Alfred Engle, Secretary,
 - Edward M. Keating, Treas.
- The Johnson City Foundry & Machine Company, Inc.:
- Mrs. Kate R. Setzer, Pres.,
 - L. F. Miller, V. P.,
 - W. I. Latimer, Sec. & Treas.
- The Kennedy Valve Manufacturing Company:
- Mathew E. Kennedy, Pres., Treas.,
 - Clarence H. Kennedy, V. P. in charge of sales,
 - John C. Kennedy, V. P. & Sec. in charge of plant.
- The Ludlow Valve Manufacturing Company:
- Livingston W. Houston, Pres. & Treas.,
 - Joseph H. Egolf, Asst. Sec. & Treas.,
 - Morris Stine, V. P.,
 - Fred L. Wheeler, V. P.,
 - Randolph S. Lewisohn, Sec.
- M. & H. Valve & Fittings Co.:
- Whitfield Clark, Pres.,
 - C. S. Martin, V. P. & Gen. Mgr.,
 - J. W. Spradley, Sec.,
 - C. N. Evans, Treas.
- Manistee Iron Works Company:
- Tom Ray, Pres.,
 - Edward N. Turner, V. P. & Mgr.,
 - C. W. O'Donnell, Sec. & Asst. Treas.,
 - S. B. Chapman, Treas.
- The Michigan Valve & Foundry Company:
- W. F. Rockwell, Pres.,
 - R. J. Goldie, V. P.,
 - A. I. Hawkins, Treas.,
 - W. C. Wood, Sec.
- Ohio Injector Co.:
- Wayne Young, Pres.,
 - C. B. Allen, V. P.
- Pacific States Cast Iron Pipe Company:
- William MacWayne, Pres.,
 - J. D. Sample, V. P.,
- Pacific States Cast Iron Pipe Company—Continued.
- G. E. Sibbett, V. P.,
 - O. H. Harvey King, Treas.,
 - A. T. McWane, Sec.
- The Reading-Pratt & Cady Company:
- W. B. Lashar, Pres.,
 - W. T. Morris, V. P.,
 - W. M. Wheeler, Sec.,
 - W. F. Wheeler, Treas.
- The Rensselaer Valve Company:
- Ellis L. Rowe, Pres. & Treas.,
 - Irving A. Rowe, V. P. & Gen. Mgr.,
 - Arthur C. Baughton, V. P. & Sec.
- The Rich Manufacturing Company:
- D. H. Botchford, Pres.,
 - E. F. Alt, V. P.,
 - A. A. Carlson, Sec. & Treas.
- A. P. Smith Manufacturing Company:
- D. F. O'Brien, Pres.,
 - M. C. Perkins, V. P.,
 - P. A. Smith, Treas.,
 - T. F. Halpin, Sec.
- South Park Foundry & Machine Company:
- W. Wellisch, Pres.,
 - J. M. Brawley, Sec. & Treas.
- Traverse City Iron Works:
- J. O. Joynt, Pres.,
 - H. G. Royce, V. P. & Treas.,
 - Arthur Bachant, Sec.
- Walworth Company:
- Howard Coonley, Pres.,
 - Winfred B. Holton, Jr., V. P.
- Waterous Company:
- F. F. Waterous, Pres.,
 - F. A. Waterous, V. P.,
 - W. Holmes, Sec. & Treas.
- Western Gas Construction Company:
- J. Becker, Pres.,
 - J. D. Schauer, Sec.,
 - S. T. Brown, Treas.,
 - R. A. Wickes, V. P. & Gen. Mgr.
- R. D. Wood Company:
- Spencer P. Hazard, Pres.,
 - E. J. Lane, V. P.,
 - E. R. Russell, Sec. & Treas.,
 - J. J. Troster, Asst. Sec. & Asst. Treas.

and respondents, W. E. Malpass and Mrs. Frank Bretz, trading as East Jordan Iron Works, of East Jordan, Mich., their servants, agents, and employees, and respondent, J. Roy Tanner, receiver for Pittsburgh Valve Foundry & Construction Company, his successors, agents, servants, and employees, cease and desist in connection with the business of selling and of offering for sale in interstate commerce water gate valves, hydrants, and fittings, from carrying out and from entering into any agreement, combination, understanding, and conspiracy in violation of the Federal Trade Commission Act among themselves or among or between any of them or with any other person, firm, partnership, or corporation to fix and maintain uniform delivered prices, whether enhanced or otherwise, to be exacted by them or by any of them from their purchasers of water gate valves, hydrants, fittings, and similar products, and pursuant to and for the purpose of carrying out any such agreement, combination, understanding, and conspiracy, from doing any of the following:

(a) Agreeing among themselves to fix and maintain uniform delivered prices for water gate valves, hydrants, fittings and similar products sold by the members of the aforesaid Water Works Valve and Hydrant Group of The Valve and Fittings Institute, and each of them;

(b) Agreeing to divide and dividing the United States into zones and in which zones fixing and maintaining by agreement, uniform delivered prices to be paid by purchasers of water gate valves, hydrants, fittings, and similar products;

(c) Agreeing to fix uniform discounts allowed by the members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute in the sale of water gate valves, hydrants, fittings and similar products, to their jobbers and distributors;

(d) Agreeing to fix uniform delivered prices at which jobbers and distributors purchasing water gate valves, hydrants, fittings, and similar products from the members of the aforesaid Water Works Valve and Hydrant Group of the aforesaid Valve and Fittings Institute should resell the same, and from refusing by agreement among themselves to continue selling to jobbers and distributors who refuse to resell or who have not resold at the uniform delivered prices so fixed.

And it is further ordered, That the aforesaid George V. Denny, individually, and as president commissioner of the aforesaid Valve and Fittings Institute, and the aforesaid Sam G. Moyers, their respective agents, servants, and employees, forthwith cease and desist by means of intimidation, persuasion, or any other method, from

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inducing any of the respondents offering water gate valves, hydrants, fittings, and similar products for sale in interstate commerce, to raise prices quoted by them to uniform delivered prices fixed in combination, conspiracy, understanding, and agreement among and between the respondents, or any of them.

And it is further ordered, That respondent, Rundle Spence Manufacturing Company, its agents, servants, and employees, and its respondent officers, E. R. Spence, president and T. M. Spence, secretary, and their successors, cease and desist from assisting any of the aforesaid respondents in entering into and carrying out any agreement, combination, understanding, and conspiracy from which the aforesaid respondents are herein and hereby ordered to cease and desist.

And it is further ordered, That all of the respondents hereinabove mentioned 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.

And it is further ordered, Because of the dissolution of respondent, Pittsburgh Valve & Fittings Company on March 18, 1936, that the complaint herein be, and the same is hereby dismissed as to said respondent, Pittsburgh Valve & Fittings Company and its respondent officers, E. C. Bostock, president, C. L. Silkregg, vice president, and B. F. Donahue, secretary-treasurer.

And it is further ordered, Because of the discharge on or about August 19, 1935, by the District Court of the United States for the Western District of Kentucky of respondent H. M. Kessler, Trustee in Bankruptcy for The Vogt Brothers Manufacturing Company, that the complaint herein be, and the same is hereby dismissed as to said respondent H. M. Kessler, Trustee in Bankruptcy for The Vogt Brothers Manufacturing Company.

IN THE MATTER OF
 TYRRELL H. DUNCOMBE, TRADING AS DUNCOMBE
 RESEARCH LABORATORY

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

Docket 2580. Complaint, Oct. 11, 1935—Decision, May 19, 1937

Where an individual engaged in sale and distribution, to physicians, hospitals, laboratories, and individuals, of a preparation made or compounded by him and generally designated "Germex"—

- (a) Represented, in folders, circulars, pamphlets, and cards distributed by him, that said preparation was a safe, non-poisonous, antiseptic which might safely be used internally, externally, and intravenously, and that it would kill or prevent growth of, or drive from the body, pathogenic or disease-bearing or forming parasites, bacteria, germs, or microbes; and
- (b) Represented that cancer cures attained by said preparation were "beyond all comprehension," and that it was a cure for syphilis, arthritis, pernicious anemia, and gangrene, and a remedy for tuberculosis, and that notable results were being obtained by use thereof in such diseases as cancer, sinus, catarrh, etc., and that it was used most successfully for various other diseases and was recommended for or effective in various other ailments, including kidney and liver trouble, pyorrhea, etc., and variously recommended same as a competent cure and remedy for everything that local doctors are called upon to treat and for any diseases caused by parasites or bacteria, and made use of circulars and other literature containing purported testimonials by various people to the effect that they had been suffering from cancer, ulcers and other diseases and had been relieved or cured thereof or completely restored to health by use of said preparation, and represented that he had thus cured numerous people;

Facts being said individual never took a course in medicine, was without personal or scientific knowledge as to the origin, course, etc., of the diseases which he claimed to be able to cure or to have cured, and for which he recommended his said remedy, as hereinabove set forth, preparation in question was not antiseptic, but highly contaminated and non-sterile and unsafe and unfit for intravenous use, would not kill or drive out disease-bearing or forming bacteria and had no therapeutic value or qualities whatever, and was of no benefit in the treatment of the aforesaid various diseases thus indicated;

With tendency and capacity to cause members of the purchasing public to form mistaken and erroneous beliefs that his said aforesaid product was a true and genuine antiseptic and sterile, and might safely be taken intravenously, had therapeutic value in the treatment of various diseases, and would relieve pain and produce beneficial results in connection therewith, and constituted a remedy or cure therefor, as above set forth, and with result that many members of the public, acting under such erroneous beliefs, induced by such various misrepresentations, purchased his said product, and with capacity and tendency unfairly to divert to him trade of competitors engaged in selling in interstate commerce drugs, prepara-

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tions, or remedies which are truthfully advertised and represented and recommended for use in connection with the treatment of the various diseases and ailments enumerated by said individual; 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. Marshall Morgan for the Commission.

Mr. Robert M. Drysdale, of Detroit, Mich., for respondent.

COMPLAINT

Acting in the public interest pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that Tyrrell H. Duncombe, trading as Duncombe Research Laboratory, has been and is using unfair methods of competition in interstate 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 Tyrrell H. Duncombe is an individual, residing at 14049 Woodward Avenue, Highland Park, Mich., and maintaining an office and conducting a laboratory at said address under the name and style Duncombe Research Laboratory. Respondent is now and for more than two years last past has been engaged, as hereinafter described, in the sale and distribution in commerce among the several States of the United States, and more particularly in the States of Ohio and Florida, of a preparation manufactured at the above stated address, and variously termed "Germex," "Epi-Phi," and "Hindoo Prescription." Said preparation so manufactured and sold by respondent has been described by respondent as a cure or remedy for cancer, arthritis, ulcers, pernicious anemia, syphilis, fistula, eczema, pyorrhea, catarrh, trench mouth, athlete's foot, diabetes, scarlet fever, sinus, tuberculosis, tumor, gangrene, and other diseases and maladies, as will be more fully and hereinafter shown. In the course and conduct of such selling respondent has been and now is engaged in competition with corporations, firms, partnerships, and individuals offering for sale or selling in like commerce preparations or compounds or medicines for use in the treatment of the same or similar ailments or diseases.

PAR. 2. In the course and conduct of his said business respondent has offered for sale and sells in interstate commerce his product called "Germex," "Epi-Phi," and "Hindoo Prescription," as described in

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paragraph 1 hereof, by means of letters, circulars, leaflets, and otherwise, and has caused various false, deceptive, and misleading statements to be inserted and to appear in said letters, circulars, and leaflets so distributed by him. The statements contained in said letters, circulars, and leaflets are addressed to and are and have been distributed among doctors, laboratories, and individuals. Said physicians, laboratories, and individuals have been induced to purchase the goods offered for sale and sold by Tyrrell H. Duncombe, trading as Duncombe Research Laboratory under the erroneous belief, that said false and misleading statements and representations were true.

In the course and conduct of his said business as described in paragraph 1 hereof, respondent Tyrrell H. Duncombe, trading as Duncombe Research Laboratory, has offered his product for sale and has sold and transported or caused the same to be transported in commerce among the several States of the United States, direct to consumers. Said goods are and were shipped in response to orders received through the mail and transported or caused to be transported in commerce among the several States of the United States. Respondent has further planned and undertaken to sell his product throughout the United States, among other methods, by the granting, by contract, of exclusive sales rights covering an entire State.

PAR. 3. Respondent Tyrrell H. Duncombe, trading as Duncombe Research Laboratory, in further connection with the sale and distribution of the aforementioned product has printed, and has distributed and distributes in interstate commerce, folders or circulars and letters in which it is represented that the aforesaid product "Germex" was and is a cure and remedy for numerous dangerous and malignant diseases of the body, some of which are regarded by medical science as incurable.

Among the representations made through such media were the following:

Hindoo Prescription (Genital)
Epi-Phi (Athletic Foot)

Non-Poisonous Antiseptic Germex
External and Internal (Carcinoma)

GERMEX

A Non-poisonous Antiseptic Destroying Parasites and Bacteria

and in which the following claims among others were made for Germex:

* * * We welcome your case, whether it is CANCER, ulcers of the stomach, pernicious anemia, syphilis, arthritis, or any other disease which has been caused by parasite or bacteria.

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Can be applied externally, taken internally, and when especially prepared and administered by a qualified physician, used intra-venously.

Germex is not a patent medicine, but rather a pharmaceutical—a new discovery to be used by physicians and public as well.

In cancer cases the pain is relieved in 24 hours and the odor will disappear in 48 hours, according to the condition of the patient.

Where others have failed heretofore, Germex will do the trick.

The Research Laboratory has had many cases where no tissue examinations, or biopsies were made and have notable results, not only for cancer, also sinus, catarrh, trench mouth, eczema, difficult sores, syphilitic sores, ulcers of the stomach. It appears that it also is a remedy for tuberculosis, but little research has been made with this disease. It is also recommended for kidney and liver troubles, giving a yielding effect to bacterial and germ life when taken internally. Germex contains no alkaloids, is non-poisonous, and has no therapeutical action, having rather a mechanical action and is safely used externally, internally and intra-venously.

Germex is a non-poisonous antiseptic which may be used freely, with only beneficial effects.

It acts only as an antiseptic, destroying the pathogenic bacteria and parasites in the intestinal tract, liver, kidneys and etc. Most all of the diseases are caused by pathogenic bacteria, hence it is curing a great many diseases heretofore incurable.

For gastric ulcer we recommend the internal as well as the intra-venous. The internal dose would be one table-spoonful, clear three times a day and the intra-venous in two c. c. twice a week,

Germex is a saprophyte that lives on dead tissues or substances and living pathogenic bacteria, and is used for antiseptic purposes possessing a peculiar action.

We are having success with diseases in general where diseases like arthritis, pernicious anemia, syphilis, septicemia, gangrene and many like diseases, including cancer, ulcers, fistula and rheumatic fever.

The preparation we are placing before the physicians is a non-poisonous antiseptic called Germex. It constitutes a saprophyte developed in a bitter media, which is harmless, yet it destroys the pathogenic, a harmful bacteria or parasite.

Germex covers a lot of territory in its action, having very distinct effect upon the following diseases, ulcers of all kinds, sores that usually are difficult to heal, fistula, syphilis, with a negative result, arthritis, pernicious anemia, cancer and septicemia, along with new results most every day reported.

At first thought the medical man thinks Oh a cure all. We have only the one preparation that covers also diabetes, as you mention in your letter, they are also using it for diphtheria.

We do not build an antibody as has been the custom by immunizing the phagocytes.

* * *

We believe it is a revolution in medicine, and would be the greatest seller in history. Germex is curing pernicious anemia, arthritis and many diseases heretofore known as incurable.

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Germex, being a non-poisonous liquid antiseptic, is taken internally and applied externally. Bacteria and parasites live upon the saccharine fluids of the body and the young cells, which contain the nourishment (Islets). Germex deprives them of this food, due to its peculiar bitter contents, and renders them inactive, thus permitting nature to function, and allowing the cells to rebuild.

Germex does not contain alkaloids, alkalies, or acids and acts only as an antiseptic therapeutically.

* * *

We recommend Germex for pernicious anemia, various forms of ulcer, eczema, trench mouth and similar diseases that require a positive antiseptic.

* * *

Germex is a non-poisonous antiseptic for both internal and external use. Antiseptics usually may only be used externally.

It is conceded that most of the ills of men are due to bacteria.

Germex does not destroy the tissues; in fact, does not kill bacteria in a test tube, but acts as an agent to prevent the development of bacteria, thus driving them out. We do know that desired results have been obtained with many heretofore considered incurable diseases, such as cancer, pernicious anemia, ulcers, fistula, syphilis, and eczema, including pyorrhea, pink toothbrush, athlete's foot, catarrh, trench mouth, and more simple diseases.

Respondent Duncombe has further represented and represents that the product Germex is a cure likewise for such diseases and ailments as ringworm, Cuban itch, streptococcus throat, lice on cows, Florida itch, scarlet fever, Psoriasis Lingae and carcinoma eczema.

PAR. 4. Respondent had further, in the course and conduct of his business issued and distributed in interstate commerce circulars and other literature containing testimonials in which statements are made by various persons to the effect that they were or had been suffering from cancer, ulcers and other diseases and had been relieved or cured or completely restored to health, and has represented that he has cured numerous persons living in various States of the United States of cancer, ulcers, and similar diseases, by the use of his remedy Germex, when in truth and in fact respondent was and is without personal knowledge as to the disease, ailment or disorder from which said persons were or had been actually suffering.

PAR. 5. The truth and facts are that respondent's product Germex, advertised and represented by him as a remedy and cure for such diseases as cancer, ulcers of stomach, pernicious anemia, syphilis, arthritis, sinus, catarrh, trench mouth, eczema, sores, syphilitic sores, kidney and liver troubles, septicemia, fistula, rheumatic fever, diabetes, diphtheria, pyorrhea, and pink toothbrush, does not possess such therapeutic value or medicinal qualities as to be truthfully represented, designated or referred to as a cure or safe remedy for or as giving lasting relief to sufferers from cancers, arthritis, ulcers, and other diseases next above enumerated, or other similar ailments, there being no known remedy or cure for several of them, respondent's

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remedy being at most an antiseptic wash or application and possessing admittedly no therapeutic qualities and virtues.

PAR. 6. The above and foregoing representations of respondent in connection with the offering for sale and sale in interstate commerce of his product Germex as set forth in this complaint have and have had the capacity and tendency to mislead and deceive and have misled and deceived the purchasing public into the belief that respondent's product known variously as "Germex," "Epi-Phi," and "Hindoo Prescription" is a remedy for cancer, ulcers of stomach, pernicious anemia, syphilis, arthritis, sinus, catarrh, trench mouth, eczema, sores, syphilitic sores, kidney and liver troubles, septicemia, fistula, rheumatic fever, diabetes, diphtheria, pyorrhea, and pink toothbrush, or "any other disease which has been caused by parasite or bacteria" and "everything that local doctors are called upon to treat," and have tended to induce, and have induced the purchase of respondent's so-called Germex in reliance upon such erroneous belief and have tended to divert from, and have diverted trade from the competitors of respondent who manufacture and sell in interstate commerce preparations intended for treatment of diseases and ailments enumerated by respondent but who refrain from making false representations in connection with the advertisement and sale thereof.

PAR. 7. The above false, misleading, and deceptive acts, practices and methods of respondent, under the circumstances and conditions herein alleged, are untruthful, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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 11, 1935, issued and served its original complaint on this proceeding on respondent, Tyrrell H. Duncombe, trading as Duncombe Research Laboratory, 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 the complaint were introduced by Marshall Morgan, 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 Robert M. Drysdale, attorney for the respondent, and said testimony and other 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 other evidence, and the brief of the Commission 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 respondent, Tyrrell H. Duncombe, is an individual, residing at 14049 Woodward Avenue, Highland Park, Mich., and maintaining an office and conducting a laboratory at said address under the name and style of Duncombe Research Laboratory. Respondent is now and for more than two years prior to the issuance of the complaint herein had been engaged in the sale and distribution to physicians, hospitals, laboratories and individuals of a preparation manufactured or compounded by him at the above stated address, variously termed "Germex" and "Epi-Phi," but generally designated as "Germex."

PAR. 2. In the course and conduct of his said business as described in paragraph 1 hereof, respondent, Tyrrell H. Duncombe, has offered the said product for sale and has sold and transported or caused the same to be transported in commerce among the several States of the United States direct from the aforesaid place of business to consumers located at points in States of the United States other than the State of Michigan, in response to orders received through the mails. Respondent has further planned and undertaken to sell his product throughout the United States, among other methods, by granting, or attempting to grant by contract, exclusive sales' rights covering an entire State.

In the course and conduct of such selling, respondent has been, and now is, engaged in competition with corporations, firms, partnerships, and individuals offering for sale and selling in like commerce preparations, compounds or medicines for use in the treatment of the same or similar ailments or diseases.

PAR. 3. Respondent, in connection with the sale and distribution of the aforementioned product, "Germex," has distributed and now distributes in interstate commerce, folders, circulars, pamphlets and cards, and letters in which he represents that "Germex" is a safe,

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non-poisonous antiseptic and is a cure or remedy for numerous dangerous and malignant diseases of the body, including many heretofore regarded as incurable. Typical of such recommendations are those to the effect that "Germex" is a non-poisonous antiseptic which may safely be used internally, externally and intravenously, and that it destroys pathogenic, or disease-causing bacteria, germs, and parasites. Respondent has further represented that the cancer cures attained by "Germex" are "beyond all comprehension"; that "Germex" is a cure for syphilis, arthritis, pernicious anemia, and gangrene; that said preparation is a remedy for tuberculosis; that notable results are being obtained by the use of "Germex" in such diseases as cancer, sinus, catarrh, trench mouth and ulcers of the stomach; that it is being used most successfully for diphtheria, scarlet fever and septicemia, fistula and rheumatic fever; that it is recommended for kidney and liver troubles; and that desired results are also being obtained in the treatment with "Germex" of fistula, pyorrhea, pink tooth brush, athlete's foot, catarrh, trench mouth, ring worm, eczema, Cuban and Florida itch, psoriasis lingae, streptococcus throat, and carcinoma. Respondent in his advertising has, in fact, variously recommended "Germex" as a competent cure and remedy for everything that local doctors are called upon to treat, and for any disease caused by parasites or bacteria and requiring a positive antiseptic.

Respondent has further, in the course and conduct of his business, issued and distributed in interstate commerce, circulars and other literature containing purported testimonials by various persons to the effect that they were, or have been, suffering from cancer, ulcers, and other diseases and have been relieved or cured, or completely restored to health by the use of respondent's "Germex." Respondent has represented that he has cured numerous persons living in various States of the United States of cancer, ulcers, arthritis and other diseases, by the use of his product "Germex."

PAR. 4. In truth and in fact, respondent is without personal or scientific knowledge as to the origin, course, nature, and characteristics of the diseases which he claims to be able to cure, or to have cured, and for which he recommends "Germex" as a remedy or cure in his literature and advertising material, and has no actual or scientific knowledge concerning either the diagnosis of or the proper treatment of such diseases.

Although respondent is, or at one time was, a pharmacist, he is not registered as such in Detroit or Wayne County, Mich. Respondent never took a course in medicine and holds no degree in medicine. Respondent, however, in written communications prescribing and selling "Germex" has signed himself "Dr. T. H. Duncombe." Re-

spondent explains that he uses the word or title "Dr." because he is a chiropractor. When questioned in regard to chiropractic, respondent was unable to state accurately the number of vertebrae in the spinal column. The laws of the State of Michigan do not permit chiropractors or osteopaths to use the title "Doctor."

Respondent never read, nor could he give the name or title of, any book on the subject of arthritis, anemia, syphilis, trench mouth, or scarlet fever. Respondent could name no book or article he had ever read on septicemia, gangrene, ulcers, diabetes, tuberculosis, or other diseases enumerated in his advertising material.

Notwithstanding the fact that respondent is not a doctor and is without medical education, he has not hesitated to consult with patients, to undertake to diagnose their troubles and to prescribe his product "Germex" for them.

PAR. 5. Respondent claims to have discovered the preparation "Germex" accidentally about the year 1895. The preparation was first tried out on insect life, being sprayed on potato plants and being called "Bug Yellow." Respondent then recommended the preparation as being destructive to various kinds of insect life, including lice on cattle and vermin on men. Respondent thereafter recommended the preparation in the treatment of, and as a cure and remedy for, various diseases and ailments of the body, including cancer, arthritis, syphilis, and tuberculosis.

Bacteriological examinations of "Germex" disclose that it is not an antiseptic, is not sterile and contains pathogenic or disease-causing bacteria. Smears from "Germex" were found to contain, among others, such types of bacteria as the Monilia, or dangerous type of yeast, Gram-negative rods, Gram-positive rods and cocci. Healthy mice injected with the Gram-positive rods became sick the following day. The yeast culture was injected intravenously into a mouse; the mouse was killed, and the autopsy showed abscesses in the liver, spleen, and intestines, thus indicating that the yeast organisms obtained from "Germex" were pathogenic; that is, disease-forming to animals. Microscopic smears made from these abscesses were in turn positive for yeast. The tests showed that the yeast, Gram-positive rods, cocci, and Gram-negative rods increased in the fluid "Germex." The yeast test also revealed that "Germex" is not a bactericide; that is, that it does not kill or destroy bacteria. Organisms grew in specimens of "Germex" from which, theretofore, all organisms had been removed. The tests further disclosed that "Germex" is not a sterile product, but contains living micro-organisms, one of which at least, as stated, was pathogenic to animals. Bacteriological examinations made by a medical technologist of the Herman Kiefer Laboratory at

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Detroit, Mich., disclosed that "Germex" does not inhibit or stop the growth of such organisms as bacillus typhosis, the typhoid fever bacteria, and staphylococcus, a type of bacteria containing various round pathogenic organisms. Further bacteriological examinations made by an expert employed by respondent resulted in the finding that "Germex" is not a sterile product and should not be used intravenously.

In a further test to determine the bacteriological qualities or aspects of "Germex," a prominent Detroit hospital planted tuberculosis bacilli in a culture and then added drops of "Germex" according to instructions given by respondent, with the result that the growth of the tuberculosis bacilli could not be determined because of the rapid overgrowth of other bacteria which were present in "Germex."

PAR. 6. The product "Germex" contains no therapeutic ingredients that would be helpful in the treatment or cure of the diseases enumerated by the respondent and the representations of respondent in such relations are false and misleading in their entirety. The record discloses that the respondent has steadfastly refused to inform anyone as to the nature or identity of the ingredients entering into the composition of "Germex." Respondent even refused to inform the American Medical Association, the Wayne County Medical Society, or the Michigan or Detroit Health authorities as to the contents of "Germex."

As a result of qualitative and quantitative analyses, the ingredients of "Germex" were determined. The analysis also indicated the absence of certain specific substances. Chemical analyses of a sample of "Germex" as made by the Laboratories of the Detroit Department of Health disclosed the product to be a brown liquid, cloudy in appearance, with a yellowish residue on the bottom and a scum on the surface of the liquid standing in the bottom. The sample contained 8.18% of ethyl alcohol by volume, a deficiency of .82%, had a musty odor, a slightly acid reaction, small amounts of resin and glucocides, total solids of .97% of this .14% representing a composition of ash, largely sodium carbonate, and a trace of potassium carbonate. The laboratory found "Germex" to be an aqueous-alcoholic solution of organic drug extractives with a very small percentage of inorganic solids. The drug extractives in "Germex" were found to be similar to, or identical with, the drug extractives of the echinacea root. The small amount of alcohol added was not found to be an efficient preservative.

The chemical analysis further disclosed the absence in "Germex" of a number of drugs, chemicals or metals commonly accepted and used by the medical profession in the treatment of various of the diseases for which the respondent recommends and administers his "Germex." No mercury or mercury salts, no bismuth or bismuth compounds, no

iron or iron salts, no arsenic or arsenic compounds, no heavy metals, no salicylic acid or salicylates, and no chemical caustics were found in "Germex."

The drug echinacea was the subject of careful investigation and report by the Council on Pharmacy and Chemistry of the American Medical Association as far back as 1909. The drug had been used as a "blood purifier" by one Dr. H. F. C. Meyer of Pawnee City, Nebr., being guaranteed by that individual as an absolute cure for rattlesnake bite within twenty-four hours. The Council on Pharmacy and Chemistry of the American Medical Association referred to the claims of Dr. Meyer as the "absurd claims of an evidently ignorant man" and recommended the rejection of echinacea.

The Department of Agriculture in 1920 made exhaustive experimental studies of echinacea therapy. These studies reported that the use of echinacea as a remedy for various disorders in both humans and animals originated with the American Indians. Echinacea root, it was stated, has entered into the composition of a number of patent, proprietary and nonsecret mixtures, but has never been officially recognized in the United States Pharmacopoeia. Those using the root, the Department reported, had recommended it in the case of blood poison, snake bite, typhoid and malarial fevers, goiter, smallpox, anthrax, hydrophobia, tetanus, erysipelas, ulcers, gangrene, burns and syphilitic nodules. The department of Agriculture, after elaborate tests on animals, found that echinacea does not possess remedial value against tetanus, that results were negative in septicemia and that echinacea does not appear to be of value as a remedy for anthrax nor for rattlesnake bite, tuberculosis, botulism, or chronic dourine conditions.

PAR. 7. The various representations of the respondent in respect to the diseases he claims "Germex" to be a remedy or cure for were carefully considered and checked in connection with the ingredients found and those not found in "Germex" as disclosed by chemical analyses and in the light of a knowledge of medicine and the accepted methods of the treatment of such diseases. As a result of their investigations competent medical authorities state and report: That "Germex" cannot be considered as a remedy for arthritis, as it contains nothing that could be employed as an analgesic and does not show the presence of any salicylates; that "Germex" is not a remedy for anemia, as it contains no iron or iron salts; that "Germex" would not be effective in the treatment of syphilis, as it contains no arsenic or arsenic salts, no heavy metals, and no bismuth or mercury salts; that "Germex" would not be effective in the treat-

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ment of trench mouth, as it contains no substance used for such purpose; that "Germex" could not be used in the treatment of scarlet fever, as it is not a biological product and is not of a germicidal nature; that "Germex" contains nothing to combat the bacteria found in the condition of septicemia; that "Germex" cannot be used in the treatment of diphtheria, as it contains no antitoxin; that "Germex" could have no influence on the cause of gangrene or serve as a cure therefor and could only be used in any event as a wash for such condition; that "Germex" would have no value in the treatment of stomach ulcers as a neutralizer of hydrochloric acid, its alkaline content being very slight; that "Germex" could not be used as a remedy for diabetes, as nothing remotely approaching insulin is found in it; that "Germex" is not a remedy for streptococcus throat, as it is not a germicide, and for the same reason could not be used locally as a treatment for tuberculosis lesions on the surface and would be ineffectual in treating tuberculosis systematically; that nothing was found in the compound suggesting that it would be useful even as an eliminant in kidney and liver trouble; that "Germex" would not be effective in the treatment of rheumatic fever; that it could not even be used as a germicide applied locally to ulcerations of an eczematous nature; and that "Germex" could not be used in the treatment of even superficial forms of cancer, as it was not found to contain anything of a caustic nature.

"Germex" was found by medical experts to be an aqueous extract of an organic substance, probably of vegetable origin, possessing no indicated pharmaceutical properties and being highly contaminated with several types of bacteria. The intravenous use of "Germex" was condemned by medical experts as being dangerous. It would be taking a terrible risk to put it in the veins of an individual, due to its contaminated condition. The yeast cells of the *Monilia* type found in "Germex" would expose a person using it to possible infection, the *Monilia* type of yeast being pathogenic and having virulent characteristics when introduced into the tissues, frequently producing destruction of tissues and abscess formation.

Medical experts, in the light of their investigations, term the claims made for "Germex," either as a medicine or an antiseptic, as "highly exaggerated and not based on any actual fact;" as a "bid for business," "fallacious," "not supported by the facts," "contradictory in many respects," "not to be believed in the light of a knowledge of medicine and the accepted methods of treatment," "highly exaggerated," and "generally untrue." One prominent medical expert termed "Germex"

as just a "sort of mess" and "entirely inert and without any pharmacological action whatsoever." As the outstanding requirement of a preparation for intravenous administration depends upon its being sterile, this expert would be very much opposed to having "Germex" get into the circulation of any patient he was responsible for.

PAR. 8. There are no positive cures known to the medical profession for cancer in an advanced state, but such profession does use or employ certain accepted treatments for cancer. It cannot be said that the cause of cancer is known. The successful eradication of a cancer is accomplished by its destruction. The accepted methods for the treatment and attempted destruction of cancer as known to medical science are three:

1. Surgical removal;
2. Destruction with X-ray;
3. Radium.

No cancer specialist would undertake to predict that a cancer would not recur. Antiseptics have no value in the treatment of cancer.

The respondent devoted more attention to the treatment of cancer than to any other diseases covered by the advertising claims and representations made by him for "Germex." The claims for cancer cure or cancer relief as made by respondent are not established. The record discloses the fact that the respondent in some instances thought or claimed that patients had cancer when they did not have it, and that those who did have cancer and were treated by respondent either died, or still have the cancer. The accepted method of diagnosing a cancer or suspected cancerous growth or condition is to cut or slice off a part of the diseased area and make an examination of such piece of tissue. This method is known as a biopsy. The respondent made or took no biopsies in connection with cancer cases treated by him with "Germex," did not diagnose the patient's trouble and frequently knew no one else who had. Nevertheless, respondent has made a practice of prescribing for patients, some of whom he has never seen, undertaking from time to time to treat them through the mails.

PAR. 9. The respondent is now selling "Germex" under the name "Neutro-Plasm" through the medium of a Detroit organization called "Neutro-Plasm Foundation," supplying the foundation with the product in 100-gallon lots. Advertisements are being run in six different medical magazines. The members of the foundation group do not know what "Germex" contains, the respondent being "unwilling at present to tell us exactly what is in it." "Neutro-Plasm" is being put out primarily as a cancer deodorant, but advertising used by the

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foundation in selling the product also contains the following statement:

It would seem that Neutro-Plasm checks the development and the spread of various forms of carcinoma, sarcoma and endothelioma, and in some instances corrects the condition to effect a restoration to normal of the patient.

PAR. 10. The various statements and representations made by respondent, through the medium of letters, circulars, pamphlets, and other advertising media employed in selling and offering for sale his product "Germex" in the respective States of the United States were and are deceptive and misleading. "Germex" is not antiseptic, and is not a germicide. It will not kill, destroy or drive out disease-forming bacteria. It has no therapeutic value or qualities whatsoever. It is not a remedy or cure for, nor will it produce beneficial results in the treatment of such diseases as arthritis, pernicious anemia, syphilis, septicemia, gangrene, cancer, ulcer, fistula, rheumatic fever, trench mouth, diphtheria, scarlet fever, diabetes, cancer, catarrh, sinus, ulcers of the stomach, tuberculosis, kidney and liver troubles, rheumatic fever, or any other disease or ailment to which mankind is subject. "Germex," being highly contaminated, is not sterile and therefore is unsafe and unfit for intravenous use.

PAR. 11. There are among the competitors of respondent as referred to hereinbefore, corporations, partnerships, firms and persons who are engaged in the sale of preparations which are recommended for use in the treatment of such diseases or ailments as those mentioned by respondent in his advertising material but who truthfully represent their products and their therapeutic value and honestly vend the same.

PAR. 12. The use of the aforesaid false and misleading representations and practices on the part of the respondent in the sale and offering for sale of his product known and designated as "Germex" has had, and now has, the tendency and capacity to cause members of the purchasing public to form the mistaken and erroneous beliefs that respondent's said product "Germex" is a true and genuine antiseptic, is sterile, may be safely taken intravenously, has therapeutic value in the treatment of various diseases; and that it will relieve pain in connection with, will produce beneficial results in the treatment of, or is a remedy or cure for the diseases named in paragraph 3 herein. Acting under such erroneous beliefs, induced by the various misrepresentations of the respondent as herein detailed, many of said members of the public have purchased respondent's product "Germex." The aforesaid representations and practices on the part

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of respondent have and have had the capacity and tendency to unfairly divert to respondent the trade of competitors engaged in selling in interstate commerce, drugs, preparations, or remedies which are truthfully advertised and represented and which are recommended for use in connection with the treatment of the various diseases and ailments enumerated by the respondent. Thereby substantial injury has been done, and is 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, Tyrrell H. Duncombe, an individual trading as Duncombe Research Laboratory, 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 thereto, testimony and other evidence in support of the allegations of the said complaint and in opposition thereto, taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and the brief in behalf of the 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 said respondent, Tyrrell H. Duncombe, individually, and trading as Duncombe Research Laboratory, or under any other trade name or through any corporate or other device, his servants, employees, or agents, individual or corporate, in connection with the offering for sale, sale and distribution in interstate commerce or in the District of Columbia, of a preparation or product in liquid, salve, or other form, designated as "Germex" or "Epi-Phi," or any other product of substantially the same ingredients so designated or designated by any other word, name, legend, or title, do forthwith cease and desist from representing:

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1. That said product, "Germex" is sterile;
 2. That "Germex" is antiseptic in its action or is an antiseptic; that it will kill, destroy, prevent growth of, or drive from the human body, pathogenic or disease-bearing or forming parasites, bacteria, germs, or microbes; and that it may be used safely as an antiseptic or may be taken safely internally, externally, or used intravenously;
 3. That "Germex" is a cure or remedy for, will relieve pain in connection with, or will produce any beneficial results in the treatment of, such diseases or ailments as cancer, pneumonia, tuberculosis, scarlet fever, ulcer, syphilis, arthritis, pernicious anemia, gangrene, diphtheria, trench mouth, septicemia, fistula, eczema, streptococcus sore throat, diabetes, sinus, pyorrhea, catarrh, athlete's foot, rheumatic fever, or any other disease or ailment to which human beings are subject.
- 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.

IN THE MATTER OF
LASALLE EXTENSION UNIVERSITY

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

Docket 2654. Complaint, Dec. 11, 1935—Decision, May 19, 1937

Where a corporation, long since organized, and in business, for profit, and which (1) conducted a school for vocational training, principally, by both correspondence and classroom plans, (2) as thus engaged, offered correspondence courses, its chief concern and interest, in a large number of subjects falling, primarily, within the divisions of law and business management and accountancy, (3) sold or supplied, as incident thereto, textbooks, used to some extent by a large number of schools, colleges and universities, prepared by it and also for it by others, (4) advertised its said courses in business magazines, trade journals, and other periodicals of wide interstate circulation, and also extensively in the lower priced so-called "pulp" magazines, and solicited purchasers therefor through some 300 so-called "Registrars" on commission basis, (5) had no entrance requirements other than competency to master the courses, (6) conferred no degree other than that in its law course, and gave no courses leading to graduate degrees or available for credit for such degrees upon transfer of the student to college or university offering the same, and (7) in connection with its classroom courses provided no facilities for its pupils other than said classrooms—

Represented, through use of term "Extension University" in its corporate name and in its advertising literature, that it conducted a university or extension university, notwithstanding fact it was not a university and did not possess the qualities and attributes considered by educators and members of the public generally as requisites for an institution to make it such or to entitle it thus to be designated, such as being an institution (1) of higher learning with a nucleus of a college of arts and sciences, with courses in such subjects as music, painting, architecture, literature, history, etc., and surrounded by a graduate school and one or more professional schools, and conferring academic and graduate and professional degrees, and with a faculty of learned persons acting as instructors in the various branches of instruction involved, as attested to a considerable extent by number of degrees earned, and (2) one not operated to make a profit from its educational operations that does not go entirely back into its funds for upkeep or expansion, or engaged in securing registrations through paid salesmen, and (3) with, as a rule, dormitories, laboratories and research facilities, and with students already adequately trained by previous study in colleges of arts and sciences leading into special fields of learning through study and seminar and laboratory instruction and research work, and notwithstanding fact it was not engaged in extension activities of a university, as indicated by said word;

With tendency and capacity to create in the minds of a part of the public, and especially those interested in obtaining education by correspondence courses, an erroneous and mistaken conception and belief as to its true character

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and nature and that of its courses of instruction, and to cause various persons to enroll as pupils with it and to subscribe to its textbooks and courses in the mistaken and erroneous belief that it was a university and possessed the attributes hereinabove indicated, and with effect of causing prospective pupils to purchase its said courses and textbooks in preference to those sold by similar institutions which do not make use of word "university" in their corporate name or otherwise, and of diverting trade to it from its said competitors which do not make similar misuse of term "extension university" or word "university", and also from recognized colleges and universities which operate and maintain extension divisions or departments offering correspondence courses similar to those offered by it; to the injury of all said competitors in the sale and distribution of correspondence courses of instruction 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. Hilldrop for the Commission.

LaRochelle, Brooks & Walrath, of Chicago, Ill. and *Mr. George L. Schein* and *Mr. H. B. Cox*, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions 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," the Federal Trade Commission, having reason to believe that the LaSalle Extension University, 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. The respondent, LaSalle Extension University, a corporation, is a corporation chartered and doing business under and by virtue of the laws of the State of Illinois, and with its principal place of business in the city of Chicago, State of Illinois. It is and has been for some time past engaged in conducting a school for vocational training on both the correspondence and residential plans, and in the selling and distribution of its courses of instruction on the subjects embraced in its curriculum, to wit, Business Management, Higher Accountancy, Traffic Management, Modern Salesmanship, Banking and Finance, Modern Business Correspondence, Credit and Collection Correspondence, Modern Foremanship, American Law and Procedure, Paper Salesman's Training, Railway Station Management, Industrial Management, Railway Accounting, Personnel Man-

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agement, Commercial Law, Telegraphy, Stenotyping, Elements of Accounting, Effective Speaking, Certified Public Accountancy Coaching, Business English and Commercial Spanish, in interstate commerce, and in the course and conduct of its business it sells and delivers to various persons in the several States of the United States other than Iowa courses and textbooks, causing same when sold to be shipped to the purchasers thereof into and through States of the United States other than Iowa.

PAR. 2. In the course and conduct of its business, respondent, LaSalle Extension University, a corporation, was and is in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 3. In the course and conduct of its business, respondent, LaSalle Extension University, a corporation, adopted as and for its corporate trade name the words, "LaSalle Extension University," which corporate and trade name so containing the words "Extension University" the said corporation has used and displayed and is still using and displaying in its advertisements and advertising matter, including catalogs, enrollment blanks, lesson papers, letterheads, and other printed matter; and in newspapers, magazines, trade journals, and other publications and periodicals having an interstate circulation. The said respondent, in advertising for pupils to enroll with it and subscribe to its courses, uses and displays its said corporate and trade name, "Extension University," and thereby induces various persons residing in various States of the United States other than Illinois, and in the District of Columbia, to enroll with respondent as a pupil and to subscribe and pay for the courses, textbooks, and correspondence composed of quizzes and answers on the subjects involved, provided and promulgated by respondent, which said courses, textbooks and correspondence composed of quizzes and answers on the subjects involved, are by respondent shipped and transported from its place of business in Chicago, Ill., into and through the various States of the United States other than Illinois and into the District of Columbia, to those various persons enrolling with respondent as pupils and subscribing to said courses.

The term and words "Extension University" are false and misleading in that they create in the minds of a part of the public, and especially those of the public who are interested in obtaining an education by correspondence courses, that respondent, LaSalle Extension University, is in truth and in fact a "University," which term is generally accepted and understood to mean an educational institution of higher learning, with power to confer degrees, with a faculty of

learned persons acting as instructors in various branches of learning, which include the liberal arts and sciences and one or more special branches of learning, such as theology, law, and medicine, when in truth and in fact the courses taught and sold in commerce by respondent, LaSalle Extension University, with the exception of that of law, do not constitute courses in liberal arts and sciences, nor can its instructors be considered a faculty of learned persons, and when in truth and in fact, while its charter from the State of Illinois gives it the right and power to confer degrees, no such degrees are by it conferred, with the exception of that of LL. B. in its law course.

The false, misleading, and deceptive practices as hereinbefore set out are to the prejudice of the public and have a tendency and capacity to and do induce various persons to enroll as pupils with respondent, LaSalle Extension University, a corporation, and to subscribe to the textbooks and courses sold by respondent, under the belief that respondent, LaSalle Extension University, a corporation, is a university, when in truth and in fact respondent is not a university; and such false, misleading and deceptive practices of respondent have the capacity to and do unfairly divert trade to respondent from its competitors who are engaged in a similar and like enterprise and business and who sell correspondence courses and textbooks in interstate commerce, without misrepresenting their true status, and who do not represent and hold themselves out as universities.

PAR. 4. The acts and things done as herein alleged by respondent are to the prejudice of the public and the competitors of the 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 December 11, 1935 issued and served its complaint in this proceeding upon respondent LaSalle Extension 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 John W. Hildrop, attorney for the Commission, before W. W. Sheppard, an examiner of the Commis-

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sion theretofore duly designated by it, and in opposition to the allegations of the complaint by LaRochelle, Brooks and Walrath, 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 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

PARAGRAPHS 1. Respondent LaSalle Extension University is a corporation organized in 1908 and doing business under the laws of the State of Illinois. It was organized as a corporation for profit and it is now engaged in business for profit. Dividends are, from time to time, paid to its stockholders. Its principal place of business is located in the city of Chicago, State of Illinois. Since its organization, it has been engaged in conducting a school, principally for vocational training, by both correspondence and classroom plans and in the sale and distribution of its courses of instruction on the subjects embraced in its curriculum. When sales of its correspondence courses are made, respondent causes the textbooks, lesson and instruction material and other literature incident to said courses of instruction to be transported through the United States mail from its principal office in Chicago, Ill., to the purchasers thereof located at points in every State of the United States and also in Canada and many other foreign countries. The average annual number of persons purchasing and subscribing to its correspondence courses of instruction is approximately 25,000. Approximately one-fifth of its students have not had a high school education prior to purchasing its course of instruction.

Respondent, in the sale and distribution of correspondence courses of instruction, has been since its incorporation and is now, engaged in substantial competition with other corporations and with copartnerships and individual likewise engaged in the sale and distribution in commerce among and between the several States of the United States of similar correspondence courses of instruction. Some of such competitors are extension divisions or departments of well-known and long recognized universities of high standing. Others of said competitors are corporations, partnerships, or individuals engaged solely

in the sale and distribution in interstate commerce of correspondence courses of instruction and are not in any way connected with any university. Some of such last named competitors also conduct schools of classroom instructions similar to those conducted by the respondent herein.

PAR. 2. In order to obtain purchasers for its various courses of instruction, the respondent maintains a staff of approximately 300 representatives designated as "Registrars." These representatives work on a commission basis and are paid in proportion to the number of orders they obtain. Some of them live in the community where they work and some of them travel throughout the country in various states explaining respondent's courses of instruction and securing orders for the purchase of said courses. Approximately one-third of respondent's pupils are secured in this matter. Prices for the various courses which respondent sells range from \$25.00 for the simpler courses to \$198.50 for other courses.

The only requirement necessary for pupils to enter its various courses of instruction is competency to master the courses. In order to obtain a degree in the Law course, a person enrolling and purchasing the course must have at least a high school education or its equivalent based on the same standards as required by any other institution. Approximately 20% of the persons purchasing respondent's courses have previously attended college to some extent.

Since its incorporation in 1908, the respondent has continually used the term or words "Extension University" in its corporate name and in all of its advertising literature. Respondent obtains a large number of pupils who subscribe to its various correspondence courses through advertisements inserted in business magazines, trade journals, and other periodicals having a wide interstate circulation such as American Magazine, Cosmopolitan, Red Book, Review of Reviews, Saturday Evening Post, Literary Digest, Collier's, Christian Science Monitor, Nation's Business and Traffic World. It also advertises extensively in the lower-priced magazines generally referred to as "pulp" magazines. Respondent has a very strict control over the placement of its advertising and approves every advertisement before it is issued. In its advertisements, various appeals are made for the purpose of securing the enrollment of pupils and the sale of its correspondence courses. Illustrative of such statements appearing in its advertisements are the following:

Right now in many lines, there is a search for really good men, managers, leaders, men who can take charge of departments, businesses, branch offices, and set things humming.

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Home Study Accountancy Training. Accountants command big incomes. Thousands needed. About 12,000 certified public accountants in the United States. Many earn \$3,000 to \$20,000. We train you thoroughly.

Are you, too, up against life's big question—How can I make more money? Study Law at home. Regularly trained men to win high positions and big success in business. Be independent. Greater opportunities now than ever before. Big income, \$3,000 to \$10,000 annually.

A coupon to be clipped by the individuals reading the advertisements and sent in to LaSalle Extension University for further information relative to its courses of instruction is included in said advertisements. Approximately one-third of respondent's pupils are secured in this manner. Its advertising expense is approximately \$225,000 per year.

PAR. 3. When it entered into business in 1908, respondent started with a course in Business Management. The Law course was developed shortly thereafter. Further courses of instruction, almost exclusively in the field of Business Management, Accountancy, Salesmanship and Transportation, have been added from time to time. The correspondence courses of instruction now offered for sale and sold by the respondent in commerce as herein set out are the following:

Business Management	Department Store Accounting
Traffic Management	Public Utility Accounting
Modern Salesmanship	Fire Insurance Accounting
Commercial Law	Construction Company Accounting
Modern Business Correspondence	Bank Accounting & Records
Industrial Management	Bookkeeping Practice
Railway Accounting	Electrical Household Appliance Sales-
Law	manship
Banking & Finance	Automobile Salesmanship
Personnel Management	Retail Salesmanship
Modern Foremanship	Commercial and Industrial Lighting
Railway Station Management	Salesmanship
Credit & Collection Correspondence	Organizing a Business
Effective Speaking	Basic Salesmanship
Business English	Principles of Profitable Management
Stenotypy	Psychology in Business
Stenotypy Teaching Normal Training	Selling and Sales Management
Practical Accounting and Office Practice	Advertising and Marketing
Office Organization and Management	Principles of Production
Higher Accountancy	Financing a Business
Elements of Accounting Practice	Credits and Collections
C. P. A. Coaching	Managing Men
Basic Accounting	Accounting and Statistical Control
Principles of Accounting Practice	Business Correspondence
Cost Accounting Procedure	Organization and Reorganization
Auditing Procedure	Better Letters
Accounting Systems, Their Design &	Industrial Traffic Field
Installation	Railroad Traffic Organization and Man-
Federal Income Tax Procedure	agement

Traffic Geography	Government Regulatory Bodies
Railroad Freight Classification	Railroad Freight Rate Structures
Railroad Freight Rates and Tariffs	Preparation of Rate Cases
Railroad Freight Tariff Guide	Grounds of Proof and Procedure Before the Commission
Railroad Overcharge Claims	Service Station Salesmanship
Shipping Freight by Rail	Mechanical Stoker Salesmanship
Marketing Transportation Services	Home Lighting Salesmanship
Industrial Transportation Facilities	Paper Trade Salesmanship
Shipping by Mail and Express	Retail Automobile Sales Management
Foreign Trade Traffic Management	Motor Truck Salesmanship
Transportation Law	Service Station Management
Interstate Commerce Act	

The respondent has prepared and published textbooks for use in connection with many of its courses of instruction. During the two years preceding the date of the hearings in this case, approximately 40 colleges and universities had, for the first time, adopted respondent's textbooks. The textbooks adopted by a substantial majority of these institutions are those dealing with auditing procedure and accounting systems. Such universities as the University of Pittsburgh, Yale University, University of Southern California, University of Illinois, Oklahoma A. & M. University, University of Alabama and Northwestern University use respondent's textbooks as a basis for vocational courses dealing with various phases of railroad and common carrier transportation such as railroad tariffs, rate structures and regulation of public carriers. The various textbooks used in the full three-year Law course were not prepared or edited by the respondent or any member of its faculty. Respondent's textbooks are used to some extent by approximately 400 schools, colleges and universities throughout the United States. Its textbooks so used by other schools and by colleges and universities throughout the United States are limited almost exclusively to textbooks dealing with auditing procedure, accounting systems and business management. In the majority of instances where the college and university have adopted respondent's textbooks for use in connection with their various courses of instruction, it is found that such institutions not only offer courses based on respondent's courses, but offer other allied courses which are not based on respondent's textbooks and do not correspond to respondent's courses.

PAR. 4. Respondent's faculty consists of 35 professors and instructors. Only one of these has a Doctor's degree, that of Juris Doctor. Five of them have various Master's degrees. The remainder hold various Bachelor's degrees. Some of them also are certified public accountants. The respondent also employs approximately 385 people in its Chicago offices who devote varying portions of their time

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to respondent's work. These assistants send out the lessons, handle the general correspondence and service for the correspondence students and grade the papers of such students. The instructors and professors have nothing to do with the details of this work. They give general supervision to the work and handle special problems submitted by students. The professors and instructors primarily devote their efforts towards instruction in the classes held in Chicago and to general supervision. The actual grading of these lessons is principally done by the assistants employed for this specific purpose. The research work done by respondent's staff is limited to the fields of auditing procedure, accounting systems, business management and salesmanship and the development of new courses of instruction in those fields.

Respondent does not offer any courses dealing with Physical Sciences, Philosophy, Psychology (except Business Psychology), Art, Music, Classical Languages or Modern Languages (except Commercial Spanish). The only degree it confers is the LL. B conferred upon the graduates of its Law department. Since its organization, approximately 1,400 persons have obtained its LL. B degree. Approximately 1,000 of these have been admitted to the bar in various states. It has never conferred any of the other degrees that are conferred by universities such as, A. B., B. S., M. A., or Ph. D, and has not given any courses leading to graduate degrees or that can be used for credit for graduate degrees upon transfer of the student to a college or university offering graduate degrees.

The course of instruction leading to the degree of LL. B. is not given by classroom instruction. The only Law course given by classroom instruction is that of Business Law. Pupils cannot obtain respondent's LL. B. degree by attending the classroom instructions in Chicago.

Approximately 600 persons residing in the city of Chicago attend respondent's classroom instruction courses. These courses are conducted in premises having classroom facilities in the Loop District in the city of Chicago. Respondent's activities are primarily centered around the correspondence school which it maintains and its principal income is derived from its correspondence school. Its interests in the courses of instruction offered on the classroom plan is secondary. In addition to the 35 members of the faculty holding degrees, some of whom teach in the classroom courses, there are also 17 other assistants, some of whom do not hold degrees, teaching in the classroom courses.

Respondent maintains no facilities for its pupils other than classrooms for those pursuing classroom instruction. It does not maintain dormitories or meeting rooms for its pupils and does not maintain

laboratories or research facilities for use by its students. It neither provides nor sponsors extra-curricular activities for its students. Its students purchasing the correspondence courses of instruction have no opportunity to confer with the members of respondent's staff except through correspondence and none of respondent's students have opportunities to engage in laboratory or research work under the guidance and supervision of respondent's instructors.

PAR. 5. The quality, character and extent of extension teaching is governed primarily by the activities of two national associations. One association is the National University Extension Association. It is composed of 48 well-known and long-recognized universities and colleges which, as an adjunct to their primary residence teaching, conduct extension teaching. The respondent is not a member of this association and is not eligible for membership therein. The other association is the National Home Study Council. The membership of this organization is made up of approximately 50 institutions engaged solely or primarily in the sale of correspondence courses of instruction and in teaching pupils through the correspondence plan. The respondent is a member of this association.

There is also an association known as the North Central Association, the membership of which is made up of many schools, colleges and universities. This association is probably the leading unit in this country for establishing and maintaining standards for accrediting students. Respondent is not a member of this association and prior to 1934, was not eligible for membership. Since 1934, the rules have been broadened and it is not now known whether respondent is eligible for membership. Respondent has not made application for membership therein.

PAR. 6. Universities do not all possess identical physical equipment, curriculum or faculty and it is not necessary that they do so. Over a period of many years, there has grown up a belief and understanding among educators and among the public generally as to the requisite characteristics necessary to be possessed by any institution to entitle it to be considered a university. A university must be an institution of higher learning. It must have a nucleus of a college of arts and sciences and must be surrounded by a graduate school and one or more professional schools. Its courses in the college of arts and sciences must generally include such subjects as music, painting, sculpture, architecture, literature, ancient languages, history, psychology, mathematics, philosophy and natural and biological sciences. It must confer academic degrees such as B. A. and B. S. It must have a faculty of learned persons acting as instructors in the various branches of learning in which it gives instruction. To a

considerable extent, the qualifications of such instructors to teach their respective courses is determined by the number of degrees that they have earned by attendance at colleges and universities, both in the college of arts and sciences and in graduate or professional colleges. A university must also confer graduate and professional degrees such as M. A., M. S., Ph. D., M. D., and J. D. upon students completing such specified courses of graduate study. In order to complete work for graduate and professional degrees, laboratories, museums, libraries, and a staff of specialized instructors with graduate and professional degrees to supervise and direct the work must be personally available to the students.

A university, even when it is not a state owned institution, is considered to be an institution interested solely in the greatest possible advancement and dissemination of learning and knowledge. It does not make a profit from its educational operations that does not go entirely back into the funds of the university for up-keep or expansion. A university is not organized for private profit of the owners of its stock and it does not sell its stock or pay dividends thereon. A university does not secure registration of students through the medium of a corps of salesmen who are paid on a commission basis. In a university, students already adequately trained by previous study in colleges of arts and sciences are lead into special fields of learning through study, seminar instruction, research work and laboratory instruction. A university generally maintains dormitories or meeting rooms for its pupils. It always maintains laboratories and research facilities for use by the students and sponsors extra-curricular activities for its students. An institution selling correspondence courses on business subjects such as Business Management and Accounting, even though it also provides courses in one profession such as Law, cannot be considered a university.

PAR. 7. While the respondent gives a total of 77 courses, all of its courses fall primarily within the divisions of Law, Business Management and Accountancy. The range of the courses provided by the respondent, being limited to Law, Business Management and Accountancy, does not cover a sufficiently broad field to be comparable to the range of courses in many various subjects offered by a university, as referred to in the first sub-paragraph of paragraphs 6 and 9. Many universities have either a separate school or college of Law or Business Administration or offer a number of courses in Accountancy. The total number of such courses offered by any of such universities, however, is in all cases small compared to the total number of courses on various subjects offered by said universities as a whole. Such other universities in many cases give courses similar to respondent's courses

and in some instances, such courses are based on the textbooks published by respondent. Such universities, however, do not maintain a school or college of Law and a school or college of Business Administration without also maintaining the other above mentioned requirements necessary to constitute them universities.

PAR. 8. From the testimony of noted and outstanding educators and from the facts hereinabove set out, it is found that the respondent is not a university and it does not possess the qualities and attributes considered by educators and members of the public generally as requisites necessary to be possessed by an institution to make it a university or to entitle it to be designated as a university. Respondent is not in any way connected or affiliated with any university or college.

PAR. 9. Many universities maintain extension departments or divisions with large enrollments in which the same courses of instruction are offered as are offered in the regular university sessions. These courses are generally taught by the same professors who teach the courses in the university proper. For example, the Home Study Correspondence Courses offered by the University of Chicago embrace such subjects as the biological sciences, the humanities, physical sciences, social sciences, anthropology, ancient and medieval arts, projective geometry, astronomy, botany, oriental languages, chemistry, finance, psychology and modern languages.

Other institutions, such as International Correspondence School, teach their courses of instruction by correspondence entirely. They obtain their pupils by advertising and by solicitation through a field organization. In many instances, their courses of instruction are similar to those of the respondent. The International Correspondence School publishes its own textbooks and also sells its books to some 400 schools, colleges and universities throughout the country and in 1935, had an enrollment of 42,000 students in the United States and Canada. The courses of instruction offered by respondent and International Correspondence School are very similar in the main though the International Correspondence School does not offer any courses in Law or in a few of the other subjects in which the respondent offers courses. Such institutions do not use the word "University" in their corporate name or in any of their advertising literature and in no way represent that they are universities or are conducting an extension division or department of a university.

PAR. 10. The use of the word "Extension" preceding the word "University" in respondent's corporate name and in all of its advertising literature, does not change or limit the characteristics and attributes generally understood as necessary to entitle an institution

to be designated as a university. In fact, it indicates a broadening and enlargement of the scope of the activities of an institution which is a university. Under these circumstances, the use of the word "Extension" means bringing to the people outside of the so-called walls of the university the advantages of whatever the particular university may have to offer in its program and thus making the institution available to those who cannot make use of its opportunities under the normal circumstances in residence.

PAR. 11. The use, in its corporate name and otherwise, of the term "Extension University" or the word "University" on the part of the respondent, creates and has the tendency and capacity to create in the minds of a part of the public, especially those who are interested in obtaining an education by correspondence courses, an erroneous and mistaken conception and belief as to the true character and nature of the respondent institution and its courses of instruction.

The use of the term "Extension University" or the word "University" in respondent's corporate name and otherwise, has the tendency and capacity to cause various persons to enroll as pupils with respondent La Salle Extension University and to subscribe to its textbooks and courses of instruction under the mistaken and erroneous belief that said respondent is a university and that it possesses the attributes hereinabove mentioned which are generally considered as being those possessed by a university. As a result, the use of the term "Extension University" or the word "University" in respondent's corporate name and otherwise, has the tendency, capacity and effect of causing prospective pupils to purchase its courses of instruction and textbooks in preference to the courses of instruction and textbooks sold by similar institutions which do not make use of the word "University" in their corporate name or in any other manner. In consequence, trade has been diverted to the respondent LaSalle Extension University from its competitors which do not make similar misuse of the term "Extension University" or the word "University" and also from recognized colleges and universities which operate and maintain extension divisions or departments offering correspondence courses similar to those offered by respondent, to the injury of all of said competitors in the sale and distribution of correspondence courses of instruction in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, LaSalle Extension University, are to the prejudice of the public and of respondent

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ent'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 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 oral arguments by John W. Hilldrop, counsel for the Commission, and by LaRochelle, Brooks and Walrath, 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 LaSalle Extension University, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of correspondence courses of instruction in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, directly or indirectly, through the use of the term "Extension University" or the word "University" in its corporate name, or in any other manner, that it is, or that it conducts, a university or an extension university.

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
HIRSCH 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 2466. Complaint, June 27, 1935—Decision, May 20, 1937

Where a corporation engaged, as wholesaler and rectifier of spirituous liquors, in purchasing, rectifying, blending, and bottling whiskies, gins, cordials, brandies, and other alcoholic beverages, and in producing gin with still used therefor, by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in producing by similar process of redistillation certain of its cordials and brandies, and in selling its aforesaid various products to wholesalers and retailers in other States and in the District of Columbia, in substantial competition with those engaged in the manufacture by true distillation of whiskies, gins, and other alcoholic beverages from mash, wort, or wash, and in selling same in trade and commerce among the various States and in said District, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and similarly selling same, and including among said competitors those who, as manufacturers and distillers, by original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, 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 catalogs and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distilling" in its corporate name, printed on its stationery and 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 same with the means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller and the said whiskies, gins, cordials, brandies, and other alcoholic beverages contained in such bottles were by it made through process of distillation as aforesaid, notwithstanding fact it did not thus distill said various beverages, thus bottled, labeled, sold, and transported by it, through aforesaid process of original and continuous distillation, as definitely understood from word "distilling" when used in connection with liquor industry and products thereof by the trade and ultimate purchasing public, and, excepting technical and limited operation for intervals of a day or more of distillery leased by it for producing portion of its distilled spirits requirements, did not own, operate, or control any place or places where such beverages are made by aforesaid process, and was not a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that it was a distiller and that the whiskies, gins, and other

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spirituous beverages sold by it were by it made or distilled from mash, wort, or wash by one continuous process, and of inducing dealers and purchasing public, acting in such beliefs, to buy the whiskies, gins, and other alcoholic beverages rectified and bottled by it, and with result of giving it an unfair competitive advantage over those of its competitors who do not, through use of such terms in their trade or corporate names, represent that package of alcoholic liquor offered to retailer, and by retailer to consumer, is a distillery-bottled package, and with tendency thereby and effect of diverting trade to it from such competitors:

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. P. Gad B. Morehouse for the Commission.

Cooke & Beneman, 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 Hirsch Distilling 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 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 Missouri, with its office and principal place of business in the city of Kansas 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, brandies, 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 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

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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, brandies, 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. Respondent also produces certain of its cordials and brandies by a similar process of redistillation. 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, the manufacturing of spirituous 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 "Distilling" 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, brandies, 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 aforesaid in the production of gin and some of its cordials and brandies, 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 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, brandies, 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 wash, 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 27, 1935, issued and served its complaint in this proceeding upon respondent, Hirsch Distilling 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 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 on April 19, 1937. 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. Hirsch Distilling Company is a Missouri corporation having its office and principal place of business at No. 414 Delaware Street, Kansas City, Mo. It is now and since a time shortly after repeal has been engaged in the distilled spirits rectifying industry. Since about November 23, 1935, it has been operating under a basic permit known as "R-208" from the Federal Alcohol Administration Division of the Treasury Department issued to it under the provisions of the Act of August 29, 1935, cited as the "Federal Alcoholic Administration Act" (49 Stat. 977). Between the time of its commencing business and September, 1935, respondent engaged solely in the liquor business as a wholesaler and rectifier of spirituous liquors, purchasing, rectifying, blending, and bottling whiskies, gins, cordials, brandies, and other alcoholic beverages and selling such products when bottled in a constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. During and after the month of September, 1935, respondent entered into a lease arrangement whereby it technically operated at limited intervals of a day or more Distillery No. 12, District of Kentucky, at Bardstown, Ky., for the pur-

pose of there producing a portion of its distilled spirits requirements and otherwise continued to engage in the same business as aforesaid. Except as here indicated this respondent does not now and never has owned, operated, or controlled a place or places where distilled spirits are produced by a process of original and continuous distillation from mash, wort, or wash.

In the course and conduct of its said business it causes its said products when sold to be transported from its place of business 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, brandies, 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. Rectifying, in the distilled spirits rectifying industry, means the mixing of whiskies of different ages and types, or the mixing of 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). Some rectifiers blend it with cane.

Many distillers operate a separate establishment 600 feet or more away from this distilleries, 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 often with spirits purchased from other distillers, or both. Some distilleries have a tax paid bottling room on a 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 done 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 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 as straight whiskey, the distiller may and does put "distilled and bottled by ——— Company." Finally, blown in the bottom of each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler. For instance, there as a "D" for a distiller and an "R" for a rectifier. The number following the said letter corresponds with the distiller's or rectifier's basic permit. Thus, "R-208" designates the Hirsch Distilling Company, a rectifier. A distiller who also operates a rectifying plant and who has both kinds of permits may use either symbol, depending upon whether the liquor contained in the bottle was produced and bottled under a distiller's or a rectifier's permit.

Section 3247 of the Revised Statutes (USCA Tit. 26, Sec. 1158 (a)) regulating Internal Revenue defines a "distiller" as follows:

Every person who produces distilled spirits or who brews or makes a mash, wort, or wash fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirits from any substance, or who, making or keeping, mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller.

Section 3244 of the Revised Statutes (USCA Tit. 26, Sec. 1398 (f)) defines a "rectifier" as follows:

Every person who rectifies, purifies, or refines distilled spirits or wine by any process other than by original and continuous distillation from mash, wort, or wash, through continuous enclosed vessels or pipes, until the manufacture thereof is complete, and every wholesaler and liquor dealer who has in his possession any still or leach tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits, and every person who without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine, or other liquor with any materials, manufacture any spurious imitation, or compound liquors for sale under the name of whiskey, brandy, gin, rum, wine spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and that being engaged in the business of rectifying, etc.

PAR. 3. 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. Respondent also produces certain of its cordials and brandies by a similar process of redistillation. 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, the manufacturing of spirituous 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. 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, 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, brandies, 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 production of gin and some of its cordials and brandies, 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 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. 5. 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, brandies, and other alcoholic beverages who do not use the words "distillery,"

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“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. 6. The representations by respondent, as set forth in paragraph 4 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. The Commission finds that the whole situation in this industry is such that the foregoing representations have a distinct tendency to give respondent what amounts to unfair competitive advantage over those of its competitors who do not, by the use of such terms in their trade or corporate names, represent that the package of alcoholic liquor offered to the retailer and in turn to the consumer, is a distillery bottled package and this in turn tends to divert trade to respondent from such competitors and thereby respondent does substantial injury to competition in interstate commerce.

PAR. 7. Because of existing regulations promulgated under the Federal Alcohol Administration Act approved August 29, 1935, (49 Stat. 977), 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 respondent Hirsch Distilling 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 and the answer filed herein on April 19, 1937 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, Hirsch Distilling Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale or sale and distribution by it in interstate commerce or in the District of Columbia 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 "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 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.

IN THE MATTER OF
KNIGHT ELECTRIC 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 2656. Complaint, Sept. 1, 1936¹—Decision, May 20, 1937

Where the names, letters and symbols "Marconi," "Victor," "R. C. A.," "Edison," "Bell" and representation of a bell, "Majestic," "Brunswick," and the letters "G. E." in a circle with scroll-like interior decorations, as names and designations of well-known and long-established individuals, companies, and corporations, and long used and extensively advertised by the various owners thereof, had come to be known and identified with the radio sets, radio parts, and like products of said owners, and constituted their standard brands and symbols when used as company, corporate, and trade names, and, as well-known marks and brands on such products thus identified, had a fixed and stable value in the trade and industry generally, throughout the United States and foreign countries, upon which well-known brands, etc., purchasing public relied when thus used on radio sets, etc., and in said industries, as indicating high standard, reliable and genuine products, and use of such names, letters and symbols influenced purchase thereof and increased sales, and said names, letters and symbols, thus attached, had value to the thousands of dealers engaged in the sale and distribution of such standard brand products, and were valuable to the owners thereof, who had used, and used and employed, the same in commerce; and thereafter—

- (1) Two corporations and three individuals, officers and agents thereof, engaged in the manufacture of escutcheons and name plates upon which they etched or stamped names, marks, brands, and symbols for use on radio sets and radio parts, and in sale thereof to manufacturers and dealers in such products, (2) five corporations and five individuals, officers and agents of said corporations, engaged in manufacture, assembly, and sale of radio sets upon which they placed and caused to be placed escutcheons and name plates purchased from the hereinabove described manufacturers and sellers thereof, and (3) four corporations and two individuals engaged in sale and distribution of such products purchased from the hereinbefore described concerns and individuals and upon which there were affixed, as above set forth, escutcheons and name plates with names, marks, brands, and symbols etched or stamped thereon to designate the names, etc., of the makers and brand names of the said products; in furtherance of a scheme engaged in by such various manufacturers and dealers to deceive the public and compete unfairly with other manufacturers and dealers in such sets and parts and escutcheons and name plates, through affixing of such articles, bearing names, marks, brands, and symbols of corporations and individuals well known and long established in the radio and similar industries, and without the authority or consent of the legal owners and users of such various names, etc., respectively, and as the case might be—
- (a) Sold, distributed, and furnished name plates and escutcheons for radio sets and similar products bearing names, letters, and symbols "Marconi,"

¹ Amended and supplemental.

"Edison," "Bell," "Victor," "Majestic," "Brunswick," "R. C. A.," and "G. E." and colorable imitations or simulations thereof, to manufacturers and assemblers of and dealers in such products as hereinbefore described, and without consent of the lawful owners or licensees of such various names, etc.; and

- (b) Represented, through use of such names, marks, letters, or symbols, and such colorable simulations and imitations thereof as "Marconi-International," "Marconi Radio Corporation," "Edison-International," "Edison-Bell," with representation of a bell, "Edison Radio Stores, Inc.," "Victor International," "Majestic International," "Brunswick," letters "R. C. I.," "R. S. A.," and "E. B.," and without the permission of the lawful owners thereof, that the radio sets, parts and like devices, appliances or products made or assembled for or by, and sold by, said various corporate and individual manufacturers of and dealers in such parts, etc., were made, assembled, sponsored, endorsed and approved, or licensed by Thomas A. Edison, or Thomas A. Edison, Inc., American Telephone & Telegraph Co., Western Electric Co., Marconi Wireless Telegraph Corporation of America, Radio Corporation of America, Victor Talking Machine Company, Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., Brunswick Radio Corporation, Grisby Grunow Company, Majestic Radio & Television Corporation, or General Electric Company, or by the agents, representatives, successors, or assigns of such various individuals and concerns:

With result that public was led to believe that products thus sold and marked and identified were those of the said well known respective companies or interests hereinabove set forth, and there was an appropriation by said manufacturers of escutcheons and name plates, and manufacturers and assemblers of and dealers in sets and parts as hereinbefore set forth, of the good will of the respective competitor companies and interests hereinbefore referred to, and an unfair diversion of business from such competitor companies to such name plate manufacturers, etc., and also such unfair diversion of business from other competitors who do not resort to such practice, and with the result, by reason of such wholly unauthorized use of names, brands, etc., of giving to the goods of aforesaid manufacturers, assemblers, and dealers a salability which they would not otherwise have, and of giving to such manufacturers, etc., an advantage over their competitors who do not similarly misrepresent the true origin of their goods and conceal the same under a reputable but false source, and of deceiving the public buying products of said manufacturers, etc., into the false belief that such products originated with well known and reputable concerns, and with the further result of placing in the hands of others, to whom said products thus marked were sold, means whereby injury might be and was done to competitors dealing in the genuine, honestly marked goods:

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. Charles Green, of Philadelphia, Pa., for Ross Distributing Co. and *Larry B. Ross*, and, along with *Mr. Julius C. Baylinson*, of Philadelphia, Pa., for Harvard Radio Tube Testing Stations of Pennsylvania, Inc., and *Julius M. Schoenberg*.

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McQuiston & Malcolm, of New York City, for Metal Etching Corp. and M. Hermann.

Mr. Herman Goldman, of New York City, for Premier Metal Etching Co. and its officers.

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 Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, Gillet Radio Corporation, Radio Products Corporation, Franklin Sales and Distributing Company, Inc., and Eric Houser, individually, and as president, director, and agent of said several companies, and David I. Morrison, A. M. Frank, Leon C. Sacks, Charles Johannes, Morris A. Weiner, Otto Dreher, Charles Dreher, Ruth Wasserman, J. R. Rosenberg, and S. Buchman, individually, and as officers, directors, and agents of said companies; Harvard Radio Tube Testing Stations of Pennsylvania, Inc., and Julius M. Schoenberg, individually, and as president, director, and agent of said company; Ross Distributing Company, and Larry B. Ross, individually, and as president, director, and agent of said company; Sun Radio and Service Supply Corporation, and Emanuel Rosensweig, individually, and as president, director, and agent of said company; Schiller Brothers, Incorporated, and Louis S. Schiller, individually, and as president, director, and agent of said company; F. C. Scruggs, individually, and trading under the name Call Radio Company; Peter Robbins, individually, and trading under the names Robbins Radio Company and Ambassador Radio Company; Metal Etching Corporation, and M. Herman, individually, and as president, director, and agent of said company; Etched Products Corporation, and Albert Nierenberg and Walter H. Miller, individually, and as officers, directors, and agents of said company; Electro Chemical and Engraving Company, and F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes, L. S. Southwick, individually, and as officers, directors, and agents of said company; Premier Metal Etching Company, and Herbert Pape, Carl J. Johnson, Ernest A. Rottach, Hugo Lehrfeld, individually, and as officers, directors, and agents of said company; Crowe Nameplate and Manufacturing Company, and E. C. Coolidge and I. Robinson Smith, individually, and as officers, directors, and agents of said company have been and now are using unfair methods of competition in commerce

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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) Respondents Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, Gillet Radio Corporation, Radio Products Corporation, and Franklin Sales and Distributing Company, Inc. are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York with their principal place of business at 16 Hudson Street in the city of New York in said State. The officers, directors, and agents of said companies who have participated in the practices herein alleged during all or part of the times here involved, are the following: Eric Houser president, director and agent of said several companies, and David I. Morrison, A. M. Frank, Leon C. Sacks, Charles Johannes, Morris A. Weiner, Otto Dreher, Charles Dreher, Ruth Wasserman, J. R. Rosenberg, and S. Buchman.

The said respondent corporations and the said respondent individuals individually, and as officers, directors, and agents of said corporations are, and have been for more than six years last past, engaged in manufacturing, assembling, and selling radio sets, radio tubes, and like products. The business carried on by said respondent corporations and said respondent individuals is essentially a single business, namely that of manufacturing and assembling radio sets, radio tubes, and like products and selling said products to dealers and the purchasing public, the profits from which enure to said individuals. Said respondents manufacture, sell, and ship said radio sets, radio tubes, and like products to dealers and buyers among the purchasing public throughout the United States, and in the District of Columbia, and foreign countries in interstate and foreign commerce.

Other individuals, partnerships, and corporations who have been, and now are, involved in the subject matter of this complaint, are the following:

(B) Respondent Harvard Radio Tube Testing Stations of Pennsylvania, Inc., a corporation organized under and by virtue of the laws of the State of Pennsylvania, domiciled and doing business at 208 North Broad Street in the city of Philadelphia in said State, and respondent Julius M. Schoenberg an individual, individually and as president, director, and agent of said company.

(C) Respondent Ross Distributing Company, a corporation organized under and by virtue of the laws of the State of Pennsylvania, domiciled and doing business at 2020 Chancellor Street in the city

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of Philadelphia in said State, and respondent Larry B. Ross an individual, individually and as president, director, and agent of said company.

(D) Respondent Sun Radio and Service Supply Corporation, a corporation organized under and by virtue of the laws of the District of Columbia, domiciled and doing business at 938 F Street, N. W. in the city of Washington in said District of Columbia, and respondent Emanuel Rosensweig an individual, individually and as president, director, and agent of said company.

(E) Respondent Schiller Brothers, Inc., a corporation organized under and by virtue of the laws of the District of Columbia, domiciled and doing business at 922 F Street, N. W. in the city of Washington in said District of Columbia, and respondent Louis S. Schiller an individual, individually and as president, director, and agent of said company.

(F) Respondent Peter Robbins an individual, individually and trading under the names Robbins Radio Company and Ambassador Radio Company, domiciled and doing business at 940 F. Street, N. W. in the city of Washington in said District of Columbia.

(G) Respondent F. C. Scruggs an individual, individually and trading under the name Call Radio Company by virtue of the laws of the District of Columbia, domiciled and doing business at 636 H Street, N. E. in the city of Washington in said District of Columbia.

(H) Respondent Metal Etching Corporation, a corporation organized under and by virtue of the laws of the State of New York, domiciled and doing business at 1001 Essex Street in the city of Brooklyn in said State, and respondent M. Hermann an individual, individually and as president, director, and agent of said company.

(I) Respondent Etched Products Corporation, a corporation organized under and by virtue of the laws of the State of New York, domiciled and doing business at 3901 Queens Boulevard in Long Island City in said State, and respondents Albert Nierenberg, and Walter H. Miller individuals, individually and as officers, directors, and agents of said company.

(J) Respondent Electro Chemical and Engraving Company, a corporation organized under and by virtue of the laws of the State of New York with its principal office and place of business at 1100 Brook Avenue, in the Borough of the Bronx, city of New York in said State, and respondents F. E. Switzer, B. L. Jacobus, Robert Schlesinger, Julius Erdoes, and L. S. Southwick individuals, individually and as officers, directors, and agents of said company.

(K) Respondent Premier Metal Etching Company, a corporation organized under and by virtue of the laws of the State of New York,

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domiciled and doing business at 2103 44th Avenue in the city of Long Island in said State, and respondents Herbert Pape, Carl J. Johnson, Ernest A. Rottach, and Hugo Lehrfeld individuals, individually and as officers, directors, and agents of said company.

(L) Respondent Crowe Nameplate and Manufacturing Company, a corporation organized under and by virtue of the laws of the State of Illinois, domiciled and doing business at 1749 Grace Street in the city of Chicago in said State, and respondents E. C. Coolidge and I. Robinson Smith individuals, individually and as officers, directors, and agents of said company.

Said respondents hereinabove described under sub-paragraphs (B) (C) (D) (E) (F) and (G) of paragraph 1 are dealers in radio receiving sets, radio tubes and like products. Said respondents during the course and conduct of their business sell and ship said radio sets, radio tubes and like products to the purchasing public in interstate and foreign commerce from their several places of business in Pennsylvania and the District of Columbia through and into other States of the United States, and in the District of Columbia, and foreign countries in interstate and foreign commerce.

Said respondents hereinabove described under sub-paragraphs (H) (I) (J) (K) and (L) of paragraph 1 in the course and conduct of their business manufacture and sell nameplates and escutcheons for use and used upon radio sets to describe or designate the makers or brand names of said products. Said respondents during the course and conduct of their said several businesses, have and do manufacture for sale and sell and ship to respondent Knight Electric Company, Inc., and the several other respondent corporations, associations, partnerships, and individuals designated in paragraph 1 (A) (B) (C) (D) (E) (F) and (G) escutcheons and nameplates to be used and used and sold by said respondents to dealers and others to be used on and in connection with radio sets, radio tubes and like products as marks or brands to designate the names of the makers and brand names used by makers of said products.

PAR. 2. Respondent Knight Electric Company, Inc., and all of the several respondent corporations, associations, partnerships, and individuals described in paragraph 1 (A) (B) (C) (D) (E) (F) and (G) are now and have been for several years last past engaged in manufacturing, assembling, selling, marketing, and distributing radio sets, radio tubes, and like products, and in the course and conduct of their said several businesses respondents have caused and now cause said radio sets, radio tubes, and like products when sold to be transported by them from their several respective places of business into and through the various States of the United States, the District

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of Columbia, and in foreign commerce to the purchasers thereof in such other States, in the District of Columbia, and foreign countries in substantial competition with other corporations, partnerships, and persons engaged in the sale and transportation of radio sets, radio tubes, and like products in interstate and foreign commerce.

PAR. 3. For the purpose of selling said radio sets, radio tubes, and like products and to induce the public to buy said products, respondent Knight Electric Company, Inc., and the several other respondent corporations, associations, partnerships, and individuals set out and described in paragraph 1 (A) (B) (C) (D) (E) (F) (G) (H) (I) (J) (K) and (L) cooperating among themselves and together with one another, have been for several years last past and are now, engaged in a scheme to deceive the public and to compete unfairly with other manufacturers and dealers in radio sets, radio tubes, and like products who are in competition with respondents in interstate and foreign commerce. In furtherance of said scheme respondents have adopted, made, used, and sold and now make, use, and sell to dealers, distributors, and others to be used on radio sets, radio tubes, and like products, escutcheons or nameplates bearing the names, brands, marks, and symbols of corporations and individuals well-known and long established in the radio and like industries, which names, marks, brands, and symbols were adopted and used and are now being used by respondents and others without authority or consent from the legal owners and users of said names, marks, brands, and symbols.

Among the names, marks, brands, and symbols so made, adopted, and used by respondents are the following: Marconi, Marconi International, Marconi Radio Corporation; Edison, Edison International, Edison-Bell, Edison with a representation of a bell, Edison Radio Stores, Inc.; Bell, Bell with a representation of a bell; Victor, Victor International; Majestic, Majestic International, Majestic Radio Corporation; Brunswick (Bronswick, a colorable imitation of the name Brunswick); RCA (RCI, RSA, colorable imitations of the letters RCA); the letters EB (a colorable imitation of the letters GE) standing alone or stamped upon the representation of a bell, and the names Marconi, Edison, Bell, Victor, Majestic, Brunswick or Bronswick standing alone or in conjunction with other words, names and devices.

Said respondents, set out and described in paragraph 1 (H) (I) (J) (K) and (L), without authority or consent of the legal owners of the names, marks, brands, and symbols use, advertise, sell, and ship said nameplates and escutcheons so marked and stamped with said well-known and long established names, marks, brands and symbols as hereinabove set out, and said respondents, set out and de-

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scribed in paragraph 1 (B) (C) (D) (E) (F) and (G), advertise said nameplates and escutcheons, and radio sets and like products upon which said nameplates and escutcheons so marked, stamped, and branded with said well-known and long established names, marks, brands, and symbols of others as hereinabove set out, without the authority or consent of the owners thereof, in catalogues, newspapers, and other periodicals circulated in interstate and foreign commerce, and sell and ship said nameplates and escutcheons, radio sets and like products from their respective places of business to purchasers thereof, located in States other than the State of origin of said shipments and in the District of Columbia and foreign countries in interstate and foreign commerce. All of which said acts and things are committed and done in pursuance and as a part of the scheme entered into, agreed upon and participated in by Knight Electric Company, Inc., its officers, directors, and agents and each and all of the respondents hereinabove designated in paragraph 1 (A) (B) (C) (D) (E) (F) (G) (H) (I) (J) (K) and (L).

PAR. 4. The use by respondents of the names, marks, brands, symbols, and devices as set out in paragraph 3 is wholly unauthorized by the owners of said names, marks, brands, symbols, and devices and gives to respondent's goods a salability which they would not otherwise have, and gives to said respondents an advantage over their competitors who do not similarly misrepresent the true origin of their goods and conceal the same under a reputable but false origin as do respondents. The said appropriation and use by said 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 has the capacity and tendency to deceive, and deceives the public purchasing said products into believing 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. 5. (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 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, and has been used and extensively advertised by, and is the rightful property of Radio Corporation of America and its subsidiaries.

(B) For many years last past the Victor Talking Machine Company, 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 Company 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 twenty-five years the Victor Talking Machine Company 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 Company 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 and like products is the rightful property of the RCA-Victor Co. and the Victor Division of the RCA Manufacturing Company.

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. Neither said Guglielmo Marconi nor Radio Corporation of America or any of its subsidiaries

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have ever granted (or consented) to respondents the right to the use of the name Marconi or the name Victor or the letters RCA (or RSA and RCI colorable imitations of the letters RCA) in any manner.

PAR. 6. For more than thirty years prior to his death on October 18, 1931, Thomas A. Edison had been known and recognized throughout the various States of the United States and foreign countries as the inventor, patentee, owner and manufacturer of numerous electrical devices of various kinds and descriptions and of machines for the reproduction of the human voice, which have acquired a wide and favorable reputation and are in great demand by the trade and purchasing public who desire Edison products. Among the machines for the reproduction of the human voice manufactured by companies which the said Thomas A. Edison organized and controlled, are phonographs, 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 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 1926-1930 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. Neither Thomas A. Edison or the said Thomas A. Edison, Inc. have ever granted (or consented) to respondents the right to the use of the name "Edison" in any manner.

PAR. 7. 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

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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. Neither the said Alexander Graham Bell nor the American Telephone & Telegraph Company and its subsidiaries nor Western Electric Company, Inc. have ever granted (or consented) to respondents the right to the use of the name "Bell" in any manner.

PAR. 8. 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 were extensively advertised, sold and shipped in interstate and foreign commerce by the said Grigsby-Grunow Company. Said name "Majestic" is now vested in Majestic Radio and Television Corporation of Illinois, which now manufactures, sells and ships in interstate and foreign commerce radio sets, radio tubes and like products branded or marked with the name Majestic. Neither Grigsby-Grunow Company, its successors or assigns nor Majestic Radio and Television Corporation of Illinois have ever granted (or consented) to respondents the right to the use of the name "Majestic" in any manner.

PAR. 9. 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 some time 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 products. 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 Brunswick Radio Corporation to operate the business. Said latter company

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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 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 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 used by the Brunswick-Balke-Collender Co. and the Brunswick Radio Corporation on radio sets, phonographs and combination radio and phonograph sets. Neither Brunswick-Balke-Collender Co., Warner Brothers Pictures, Inc. or Brunswick Radio Corporation have ever granted (or consented) to respondents the right to the use of the name Brunswick (or Bronswick a colorable imitation thereof) in any manner.

PAR. 10. A device of a circle with scroll-like interior projections enclosing the script letters "GE" 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 "EB" is a colorable imitation of this well-known device. Neither Thomas A. Edison, Thomas Edison Inc., Alexander Graham Bell, American Telephone and Telegraph Company, Western Electric Company, nor said General Electric Company or any of its subsidiaries have ever granted (or consented) to respondents the right to the use of the letters "EB" in any manner.

PAR. 11. The offering for sale and sale and shipment by respondents in interstate and foreign commerce, as set out in paragraphs 1, 2, 3, and 4 hereof, to dealers in radio sets, radio tubes and like products of escutcheons or name-plates stamped or branded with the well-known names, marks, brands and symbols of others without their consent, and the offering for sale and sale and shipment in interstate and foreign commerce by respondents of radio sets, radio tubes and like products branded or marked with the names, marks, brands and symbols of others without authority or consent of the owners thereof, places in the hands of dealers and others the means whereby injury might be done and is done to competitors and the purchasing public, and all of the acts and things alleged and done by respondents are each and all of them to the injury and 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 1st day of September 1936, issued and served its amended and supplemental complaint, hereinafter known as the complaint, in this proceeding, upon the following named corporations and individuals:

Respondents, Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, Gillet Radio Corporation, Eric Houser, David I. Morrison, A. M. Frank, Leon C. Sacks, Charles Johannes, Morris A. Weiner, Arthur Dreher, Charles Dreher, Ruth Wasserman, J. R. Rosenberg, Harvard Radio Tube Testing Stations of Pa., Inc., Julius M. Schoenberg, Ross Distributing Company, Larry B. Ross, Sun Radio and Service Supply Corporation, Emanuel Rosensweig, Schiller Brothers, Inc., Louis S. Schiller, F. C. Scruggs, individually, and trading under the name Call Radio Company, Peter Robbins, individually, and trading under the names Robbins Radio Company and Ambassador Radio Company, Metal Etching Corporation, M. Hermann, Etched Products Corporation, Albert Nierenberg, Walter H. Miller, Electro Chemical Engraving Company, F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes, L. S. Southwick, Premier Metal Etching Com-

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pany, Herbert Pape, Karl D. Johnson, Ernest A. Rottach, Hugo Lehrfeld, Crowe Nameplate and Manufacturing Company, E. C. Coolidge, and I. Robinson Smith.

Respondents, Radio Products Corporation, Franklin Sales and Distributing Company, Inc., and S. Buchman could not be located and were not served with the complaint.

Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint and the answers thereto, and the Commission, having duly considered the matter, and being now 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

PARAGRAPH 1. Respondents, Etched Products Corporation, Albert Nierenberg, Walter H. Miller, Electro Chemical Engraving Company (named in the complaint Electro Chemical and Engraving Company), F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes, L. S. Southwick, Premier Metal Etching Company, Herbert Pape, Karl D. (named in the complaint Carl J.) Johnson, Ernest Rottach, and Hugo Lehrfeld filed answers in which they deny all the material allegations of the complaint;

Respondents, Leon C. Sacks, Charles Johannes, Morris A. Weiner and J. R. Rosenberg filed an affidavit signed by Sylvia Zondel, secretary to Fred Rosenberg, the attorney who drew up the incorporation papers of certain corporations, in which it is averred that said respondents' names "have been used only as dummies for the purpose of execution" certificates of incorporation. That said respondents "have never been interested in the control, management, operation and conduct of any one of said corporations," namely, "Knight Electric Company, Inc.," "Temple Electric Inc.," "Acme Radio Corporation," "Pirate Electric Corporation," "Gillet Radio Corporation," and "Franklin Sales Distributing Corporation," and that said respondents "had no financial interest whatsoever in any of said corporations."

It appears that said respondents did not participate in the acts and practices charged in the complaint, and the complaint should be dismissed as to said respondents.

PAR. 2. Respondent, Metal Etching Corporation is a corporation organized under the laws of the State of New York, domiciled and doing business at 1001 Essex Street, Brooklyn, N. Y., and respondent, M. Hermann was and is an officer and agent of said corporation.

Respondent, Crowe Nameplate and Manufacturing Company is a corporation organized under the laws of the State of Illinois, domiciled and doing business at 1749 Grace Street, Chicago, Ill., and respondents, E. C. Coolidge and I. Robinson Smith are officers and agents of said corporation.

Respondents herein named are now, and have been for several years last past, engaged in the manufacture and sale of escutcheons and name plates—upon which said products they have attached or stamped names, marks, brands, letters, and symbols—for use as marks and brands on radio sets and radio parts to designate the names, marks, brands, letters, and symbols of the makers, and brand names of said radio sets and radio parts. They have sold and shipped, and now sell and ship, said products to manufacturers and dealers in radio sets and radio parts, including the respondents named in paragraphs 3 and 4 hereof. They have caused, and now cause, said escutcheons and names plates so marked and branded when sold to be transported from their respective places of business in the States of New York and Illinois to purchasers thereof at their respective points of location in States of the United States other than the State of origin of the shipment, and in the District of Columbia, and foreign countries.

PAR. 3. Respondents, Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation and Gillet Radio Corporation are corporations organized under the laws of the State of New York, domiciled and doing business at 16 Hudson Street, New York City, N. Y., and respondents, Eric Houser, David I Morrison, A. M. Frank, Arthur Dreher, Charles Dreher, and Ruth Wasserman were and are officers, agents, and representatives of said respondent corporations.

Respondents, Eric Houser, David I. Morrison, and A. M. Frank conducted business in an individual capacity as free agents, and also as agents and representatives of said respondents, Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, and Gillet Radio Corporation, with their principal places of business at 16 Hudson Street, New York City, N. Y.

The respondents herein named have been for several years last past, and are now engaged in the manufacture, assembly, and sale of radio sets and radio parts, upon which said products they placed and caused to be placed escutcheons and name plates—purchased from respondents set out and described in paragraph 2—with names, letters, marks, brands, and symbols etched or stamped thereon to designate the makers and brand names of said radio sets and radio parts.

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Said respondents sell and ship said products to the respondents named in paragraph 4 hereof and to other dealers and to the public, and have caused and now cause said radio parts and radio sets, and escutcheons and name plates so marked and branded, when sold, to be transported from their respective places of business in the State of New York to purchasers thereof at their respective points of location in States of the United States other than the State of origin of the shipment, and in the District of Columbia, and foreign countries.

PAR. 4. Respondent, Harvard Radio Tube Testing Stations of Pennsylvania, Inc., is a corporation organized under the laws of the State of Pennsylvania, domiciled and doing business at 208 N. Broad Street, Philadelphia, Pa., and respondent Julius M. Schoenberg is an officer, representative, and agent of said corporation.

Respondent, Ross Distributing Company, is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at 2020 Chancellor Street, in the city of Philadelphia, Pa., and respondent Larry B. Ross is an officer, agent, and representative of said corporation.

Respondent, Sun Radio and Service Supply Corporation, is a corporation organized under the laws of the District of Columbia, domiciled and doing business at 938 F Street N. W., Washington, D. C., and respondent, Emanuel Rosensweig, is an officer, agent, and representative of said corporation.

Respondent, Schiller Brothers, Inc., is a corporation organized under the laws of the District of Columbia, domiciled and doing business at 922 F Street, N. W., Washington, D. C., and respondent, Louis S. Schiller is an officer, agent, and representative of said corporation.

Respondent, Peter Robbins, is an individual trading under the names Robbins Radio Company and Ambassador Radio Company, domiciled and doing business at 940 F Street, N. W., Washington, D. C.

Respondent, F. C. Scruggs, is an individual trading under the name Call Radio Company, domiciled and doing business at 636 H Street, N. E., Washington, D. C.

The respondents herein named have been for several years last past, and are now, engaged in the sale and distribution of radio sets and radio parts, upon which said products there are affixed escutcheons and name plates with names, marks, brands, and symbols etched or stamped thereon to designate the names, marks, brands, and symbols of the makers and brand names of said products. Said radio sets and radio parts so offered for sale and sold with said escutch-

eons and name plates affixed thereto, were, and are, bought from the several respondents set out and described in paragraphs 2 and 3. Said products, so marked and branded, were, and are, sold by said respondents to the purchasing public, and, when sold, are transported from their several respective places of business in the city of Philadelphia, State of Pennsylvania, and the city of Washington, D. C. to purchasers thereof at their several points of location in States other than the State or point of origin and in the District of Columbia, and in foreign countries.

The respondents named herein in paragraphs 2, 3, and 4 all filed answers admitting the material allegations of the amended and supplemental complaint. The individuals named in paragraphs 2, 3, and 4 are officers and directors of the various corporations with which they are identified and participated in the control and direction of the activities of the respective corporations with which they are connected in performing the acts and practices hereinafter set forth.

PAR. 5. For the purpose of selling escutcheons and nameplates and of inducing manufacturers and dealers in radio sets, radio parts, and like products to buy said products, the several respondents set out and described in paragraph 2 have been for several years last past, and are now, engaged in a scheme to deceive the public and to compete unfairly with other manufacturers and dealers in escutcheons and nameplates and like products who are in competition with respondents in interstate and foreign commerce.

For the purpose of selling radio sets, radio parts, and like products and of inducing the public to buy said products, the several respondent corporations and the several respondent individuals, individually, and as officers, agents, and representatives of said respondent corporations, herein set out and described in paragraphs 2, 3, and 4, cooperating among themselves and together with one another, have been for several years last past, and are now, engaged in a scheme to deceive the public and to compete unfairly with other manufacturers and dealers in radio sets, radio parts, escutcheons, and nameplates, and like products, who are in competition with the said respondents in interstate and foreign commerce. In furtherance of said scheme, the said respondents have adopted, made, used, and sold, and now make, use, sell, and ship in interstate and foreign commerce to distributors, dealers, and others, escutcheons, and nameplates, and radio sets, radio parts and like products, upon which are attached, or to which are affixed, escutcheons and nameplates bearing the names, marks, brands, and symbols of corporations and individuals well known and long established in the radio and like industries, which names, marks,

brands, and symbols were adopted and used and are now being used by said respondents and others without authority or consent from the legal owners and users of said names, marks, brands, and symbols.

Among the names, marks, brands, and symbols so made, adopted, and used by respondents are the following:

"Marconi" and also "Marconi-International," "Marconi Radio Corporation," which are found to be colorable imitations and simulations of said name "Marconi";

"Edison" and also "Edison-International," "Edison-Bell," "Edison" with the representation of a bell, "Edison Radio Stores, Inc.," which are found to be colorable imitations and simulations of said name "Edison";

"Bell," and the representation of a bell, which is found to be a simulation of the name "Bell";

"Victor" and also "Victor International," which is found to be a colorable imitation and simulation of said name "Victor";

"Majestic," and also "Majestic International," and "Majestic Radio Corporation," which are found to be colorable imitations and simulations of the said name "Majestic";

"Brunswick" and also "Bronswick," which is found to be a colorable imitation and simulation of the said name "Brunswick";

The letters "R. C. A." and also "R. C. I." and "R. S. A.," which are found to be colorable imitations and simulations of said letters "R. C. A.";

The letters "G. E.," either alone or in the circle with scroll-like interior decorations, and also the letters "E. B.," which are found to be a colorable imitation and simulation of said letters "G. E."; and

"Marconi," "Edison," "Bell," "Victor," "Majestic," "Brunswick," or "Bronswick," standing alone or in conjunction with other words, names and devices, or any other colorable imitations or simulations of said trade names, or any other trade names, marks or brands.

Said respondent corporations, and said respondent individuals, individually, and as officers, agents and representatives of said corporations, set out and described in paragraph 2, with respect to escutcheons and nameplates, and said respondent corporations, and said respondent individuals, individually, and as officers, agents, and representatives of said corporations, set out and described in paragraphs 3 and 4, with respect to escutcheons, nameplates, radio sets, radio parts and like products, marked and branded with the said well known and long established names, marks, brands, and symbols hereinabove set out and described, advertise said products in pamphlets, circulars, catalogues, newspapers, and other periodicals circulated in interstate and foreign commerce, and in the District of Columbia,

and sell and ship said products so marked from their respective places of business to purchasers thereof located in the District of Columbia and in States other than the State or place of origin of said shipments, in interstate and foreign commerce and in the District of Columbia; without the authority or consent of the legal owners of said names, marks, brands, and symbols.

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 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. Said name "Marconi" is now, and has been used and extensively advertised by, and is the rightful property of Radio Corporation of America and its subsidiaries.

(b) For many years last past the Victor Talking Machine Company, 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 Company 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

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radio and phonograph sets are sold to the purchasing public by retail dealers throughout the United States. During the past twenty-five years the Victor Talking Machine Company 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 Company 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 and like products is the rightful property of the RCA-Victor Company and the Victor Division of the RCA Manufacturing Company.

(c) The 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 Company, the Victor Division of the RCA Manufacturing Company and the Radio Corporation of America. Neither said Guglielmo Marconi nor Radio Corporation of America or any of its subsidiaries have ever granted (or consented) to respondents the right to the use of the name Marconi or the name Victor or the letters RCA (or RSA and RCI, colorable imitations of the letters RCA) in any manner.

(d) For more than thirty years prior to his death on October 16, 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 good will as identifying the manufacture 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,

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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 is now used by Thomas A. Edison, Inc., on radio sets, phonographs and other electrical devices and appliances, sold and shipped in interstate and foreign commerce. Neither Thomas A. Edison nor the said Thomas A. Edison, Inc., have ever granted (or consented) to respondents the right to the use of the name "Edison" in any manner.

(e) 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 the 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. Neither the said Alexander Graham Bell nor the American Telephone and Telegraph Company and its subsidiary Western Electric Company, Inc., have ever granted (or consented) to respondents the right to the use of the name "Bell" in any manner.

(f) 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 were extensively advertised, sold and shipped in interstate and foreign commerce by the said Grigsby-Grunow Company. Said name "Majestic" is now vested in Majestic Radio and Television Corporation of Illinois, which now manufactures, sells and ships in interstate and foreign commerce radio sets, radio tubes and like products branded or marked with the name Majestic. Neither Grigsby-Grunow Company, its successors or assigns nor Majestic Radio and Tele-

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vision Corporation of Illinois have ever granted (or consented) to respondents the right to the use of the name "Majestic" in any manner.

(g) During many years last past the Brunswick-Balke-Collender Company has been a large manufacturer of billiard and pocket billiard tables, bowling alleys and various other articles, and its products have acquired a wide and favorable reputation and have been in great demand by the trade and purchasing public 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 Company began the manufacture and sale of phonographs and phonograph records, and some time 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 products. In 1930 the radio and phonograph division of said Brunswick-Balke-Collender Company was sold to Warner Brothers Pictures, Inc., which company organized the corporation under the corporate name 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 some time in the future. The radio sets and combination radio and phonograph sets manufactured by Brunswick-Balke-Collender Company 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 used by the Brunswick-Balke-Collender Company and the Brunswick Radio Corporation on radio sets, phonographs and combination radio and

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phonograph sets. Neither Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., nor Brunswick Radio Corporation has ever granted (or consented) to respondents the right to the use of the name Brunswick (or Bronswick, a colorable imitation thereof) in any manner.

(h) 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 of this well known device. Neither Thomas A. Edison, Thomas A. Edison, Inc., Alexander Graham Bell, American Telephone and Telegraph Company, Western Electric Company, nor said General Electric Company or any of its subsidiaries have ever granted (or consented) to respondents the right to the use of the letters "E.B." or "G.E." in any manner.

Said names, letters and symbols are the names and designations of said 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 parts, 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 parts 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 names "Marconi", "Victor", "Bell", "Edison", "Brunswick", "Majestic", and the letters "G.E.", either standing alone or in a circle with scroll-like interior decorations, and the letters "R.C.A.", and the products bearing these names, letters, and symbols, manufactured and sold by the lawful owners thereof; the use by respondents of said names, letters and symbols, and simu-

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lations 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. 7. The use by respondents of the names, marks, brands, symbols and devices as set out in paragraph 5 is wholly unauthorized by the owners of said names, marks, brands, symbols and devices and gives to respondents' goods a salability which they would not otherwise have, and gives to said respondents an advantage over their competitors who do not similarly misrepresent the true origin of their goods and conceal the same under a disputable but false origin as do respondents. The said appropriation and use by said 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, has the capacity and tendency to deceive, and deceives the public purchasing said products into believing 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.

The purchasing public buying radio sets, radio parts 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 parts 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 6 hereof. The name or brand being depended upon, influences the sale of said products.

Members of the purchasing public have purchased radio sets, radio parts 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.

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The manufacture, sale, and delivery by respondents set out and described in paragraphs 2, 3, and 4, of escutcheons and nameplates, and radio sets, radio parts, and like products, marked and branded with the names, letters, and symbols set out and described in paragraph 5, without authority or consent of the legal 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 said products falsely marked, sold, and shipped in interstate and foreign commerce. Injury to the lawful owners and users of said standard brands, names, marks, and symbols is suffered because of the manufacture, sale, and competition of said respondents' said products.

CONCLUSION

The aforesaid acts and practices of the said respondents, Metal Etching Corporation, M. Hermann, Crowe Nameplate and Manufacturing Company, E. C. Coolidge, I. Robinson Smith, Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, Gillet Radio Corporation, Eric Houser, David I. Morrison, A. M. Frank, Arthur Dreher, Charles Dreher, Ruth Wasserman, Harvard Radio Tube Testing Stations of Pa., Inc., Julius M. Schoenberg, Ross Distributing Company, Larry B. Ross, Sun Radio and Service Supply Corporation, Emanuel Rosenzweig, Schiller Brothers, Inc., Louis S. Schiller, F. C. Scruggs, individually, and trading under the name Call Radio Company, and Peter Robbins, individually, and trading under the names Robbins Radio Company and Ambassador Radio Company, are to the prejudice of the public and respondents' 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, ETC.

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint, hereinafter designated the complaint of the Commission; the answers of those respondents upon whom the complaint was served, some of which answers deny the material allegations of the complaint, and some of which admit the material allegations of the complaint; and the Commission being fully advised in the premises,

Order

It is ordered, That the complaint herein issued be and the same is hereby dismissed as to the respondents, Etched Products Corporation, Albert Nierenberg, and Walter H. Miller; Electro Chemical Engraving Company (designated in the complaint as Electro Chemical & Engraving Company), F. E. Switzer, N. L. Jacobus, Robert Schlessinger, Julius Erdoes and I. S. Southwick; Premier Metal Etching Company, Herbert Pape, Karl D. (designated in the complaint as Carl J.) Johnson, Ernest A. Rottach and Hugo Lehrfeld; Leon C. Sacks, Charles Johannes, Morris A. Weiner and J. R. Rosenberg, for the reason that there is no evidence to establish the allegations of the complaint as to said respondents.

It is further ordered, That the case growing out of the complaint herein as to the respondents, Radio Products Corporation, Franklin Sales and Distributing Company, Inc., and S. Buchman, be and the same hereby is closed, for the reason that the said respondents were not located and the complaint was not served upon them, without prejudice to the right of the Commission to reopen the case and resume prosecution of the complaint as to said respondents in accordance with its regular procedure should the facts so warrant.

It is further ordered, That the respondents, Metal Etching Corporation and Crowe Name Plate and Manufacturing Company, their respective officers, agents and representatives, and the respondent individuals, M. Hermann, E. C. Coolidge and I. Robinson Smith, individually and as officers, agents and representatives of said corporations, and their respective agents and representatives in connection with the offering for sale, and sale and shipment in interstate and foreign commerce and in the District of Columbia of escutcheons and name plates, cease and desist from: selling, distributing or furnishing name plates and escutcheons for radio sets and like products bearing the names, letters and symbols, "Marconi," "Edison," "Bell," "Victor," "Majestic," "Brunswick," the letters "R. C. A.," and the letters "G. E.," or colorable imitations or simulations of said names, letters and symbols, to any manufacturers, assemblers, or dealers in radio sets and like products, or to any other person, firm, or corporation, except to the manufacturers, assemblers and dealers owning said trade names or marks, or to the licensees of the owners thereof.

It is further ordered, That the respondents, Knight Electric Company, Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, Gillet Radio Corporation, Harvard Radio Tube Testing Stations of Pa., Inc., Ross Distributing Company, Sun Radio and Service Supply Corporation, Schiller Brothers, Inc., and their respective officers, agents and representatives, and the respondent individuals, Eric Houser, David I. Morrison, A. M. Frank, Arthur

(named Otto in the complaint) Dreher, Charles Dreher, Ruth Wasserman, Julius M. Schoenberg, Larry B. Ross, Emanuel Rosensweig, Louis S. Schiller, and the respondent, Peter Robbins, individually, and trading as Robbins Radio Company and as Ambassador Radio Company, and respondent, F. C. Scruggs, individually, and trading as Call Radio Company, and said respondent individuals trading under any other name or names, in connection with the offering for sale and sale in interstate and foreign commerce, and in the District of Columbia, of radio sets, radio parts and like products, and es-cutchions and nameplates, do cease and desist from:

Representing directly or indirectly, through the use in any manner, of the trade names or marks, "Marconi," "Edison," "Bell," "Victor," "Majestic," "Brunswick," or the letters "R. C. A.," or the letters "G. E.," or through the use, in any manner, of any colorable simulations and imitations thereof, such as, but without limitation, "Marconi-International," "Marconi Radio Corporation," "Edison International," "Edison-Bell," "Edison" with the representation of a bell, "Edison Radio Stores, Inc.," the representation of a bell, "Victor International," "Majestic International," "Majestic Radio Corporation," "Brunswick," or the letters "R. C. I.," "R. S. A.," "E. B.," or through the use of any other trade names or marks of which they are not the legal owners, without the permission of the lawful owners thereof, or through any other means or device, or in any manner that the radio sets, radio parts, and like devices, appliances or products manufactured or assembled for or by, and sold by any of said respondents, are manufactured, assembled, sold, sponsored, endorsed, approved, or licensed by Thomas A. Edison, Thomas A. Edison, Inc., American Telephone and 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 Majestic Radio & Television Corporation, General Electric Company, or the agents, representatives, successors, or assigns of any of said persons, partnerships or corporations, or that said products are manufactured, assembled, sold, sponsored, endorsed, approved or licensed by any corporation, association, partnership or person who, in fact, did not and does not manufacture, assemble, sell, sponsor, endorse, approve or license said products.

It is further ordered, That the said 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
BRITISH AMERICAN TOFFEE COMPANY

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

Docket 3085. Complaint, Mar. 23, 1937—Decision, May 22, 1937

Where a domestic corporation engaged, at its office and principal place of business in the United States, in the manufacture and sale of confectionery products, including one known to the trade as "toffee," and making said last-named product from formulas prepared by an English stockholder and former candy manufacturer in England for a number of years and at its aforesaid office and principal place of business only, and neither owning, operating, nor controlling manufacturing plants, branches, or selling agencies in any part of England, or in any other foreign country, and in competition, as thus engaged, with many who sell toffee and other confectionery products made in England and imported therefrom, and who rightfully and lawfully represent their said merchandise as imported, and with others who make and sell such products made in the United States and in no manner represent their said domestic confectionery or toffee as an English or foreign made and imported confection, such as long popular and in demand among the consuming public throughout the United States and considered, in the case of many, as superior, and especially so in case of English-made toffee, to similar domestic products, and purchased by many of said public, in the case of such toffee, in preference to the domestic-made product—

Made use of such words and phrases, on the individual wrappers of the candy pieces, as "Delicious English Toffees," and included on the statements lithographed or printed on the cellophane bags or containers of such individually wrapped pieces, along with its name of "British American Toffee Company," words "England's Most Popular Sweet, Piccadilly Toffee," and also set forth thereon depictions of the Tower of London and London Bridge and two soldiers simulating in dress and appearance British soldiers, and upon the cartons containing said cellophane bags or toffee in bulk set forth labels, along with its aforesaid name, containing words "Piccadilly Toffee made by," etc.;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that its said toffee products, thus designated as "English" and "Piccadilly" toffee, were importations of a foreign made product and that it owned and operated factories in England in which it made the same, and with result that such public, by reason of said belief thus induced, bought substantial volume of its said products, and trade was unfairly diverted from those competitors engaged in similar businesses who do not make use of the same or similar misrepresentations, acts and 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.

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Mr. J. T. Welch for the Commission.

Tilson, Stanley & McCuen, 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 British American Toffee Company, a corporation, hereinafter referred to as respondent, 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 its charges in that respect as follows:

PARAGRAPH 1. British American Toffee Company is now, and has been at all times mentioned herein, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business at 102 Hill Street, New Haven, Conn. It is now, and has been at all times mentioned herein, engaged in the business of manufacturing and selling confectionary products, including a product known to the trade as "toffee."

PAR. 2. Said respondent causes its said product, when sold to wholesale and retail dealers to be transported from its principal place of business in the State of Connecticut, to the purchasers thereof located in other States of the United States, and in the District of Columbia. There is now, and has been at all times mentioned herein, a constant current of trade and commerce in said product known as "toffee" 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, has been at all times mentioned herein, engaged in substantial competition with other corporations, partnerships, and individuals, engaged in commerce among the several States of the United States and in the District of Columbia, in the manufacture, importation, distribution, and sale of domestic and foreign confectionary products, including the product known as "toffee."

PAR. 4. Respondent, British American Toffee Company, in the course and conduct of its business, as set forth herein, has offered for sale and sold in commerce as herein set out, certain of its products, to wit: "English Toffee," "English Toffees," and "Piccadilly Toffee,"

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in cellophane or paper bags or containers and in cartons. By way of advertisement or inducement to purchase, there is lithographed or printed thereon as to "English Toffee" or "English Toffees," the following:

Delicious English Toffees
Printed in England

and as to "Picadilly Toffee," the following:

"England's Most Popular Sweet" Piccadilly Toffee
British-American Toffee Company

together with figures or pictures of an English castle representing the Tower of London and London Bridge, a coat-of-arms and two soldiers simulating British soldiery in dress and appearance. The cartons in which respondent has shipped and now ships its said products, had and have affixed to them labels containing the following words:

Piccadilly Toffee

The cartons in which respondent's said products are shipped bear printed words or legends such as "Printed in England" which have the capacity and tendency to mislead and deceive a substantial number of the purchasing public into the mistaken and erroneous belief that the contents of said cartons are also made in and imported from England. Respondent has caused invoices and billings to be forwarded to its customers, located in States other than the State of Connecticut, containing as a description of its said product: "Piccadilly Toffee."

PAR. 5. Respondent, British American Toffee Company, does not manufacture any of its products, including those described herein, in any part of England, does not own or operate manufacturing plants, branches or selling agencies in any part of England. All toffee products of the respondent are of domestic manufacture. Respondent's corporation is not a "British" corporation, nor it is a "British-American" corporation.

PAR. 6. Confectionary products, including "toffee" manufactured in England or other foreign countries, have for many years enjoyed widespread popularity, good-will, and demand among the consuming public throughout the United States, many of whom believe and consider that confectionary products, especially those designated as "toffee," manufactured in England, are superior in quality and other desirable characteristics to similar confectionary products manufactured in the United States. Many of the consuming public throughout the United States purchase "toffee" manufactured in England

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and imported into the United States in preference to "toffee" manufactured in the United States.

PAR. 7. The false and misleading advertising and representations hereinabove set out, on the part of the respondent, places in the hands of wholesale and retail dealers and jobbers, an instrument and means whereby said dealers and jobbers may commit a fraud upon a substantial portion of the consuming public by enabling dealers to represent and offer for sale and sell the said products known as "English Toffee" or "English Toffees" and "Piccadilly Toffee," either as an imported product or as a product manufactured in the United States in conjunction with or under license from English manufacturers of "toffee." There are, among the competitors of the respondent, many who deal in confectionary products and sell "toffee," as well as other confectionary products manufactured in England and imported into the United States, who rightfully and lawfully represent such merchandise to be imported. There are others among the competitors of the respondent, who deal in confectionary products, including "toffee" that are manufactured in the United States, who in no manner represent their products as having been manufactured in or imported from England or any other foreign country.

PAR. 8. The effect of the foregoing false and misleading advertisements and representations of the respondent is to mislead a substantial number of wholesale and retail merchants and jobbers, as well as a substantial portion of the consuming public, in the several States, by inducing them to erroneously and mistakenly believe:

1. That respondent owns and operates factories in England, in which it manufactures the products known as "English Toffee" or "English Toffees" and "Piccadilly Toffee";

2. That respondent is a British corporation or a British-American corporation;

3. That the products known as "English Toffee" or "English Toffees" and "Piccadilly Toffee" are importations of a foreign manufactured product that can be, and often are, sold by dealers on the open market to the consumer public at a higher price than like products of domestic manufacture;

4. That the products known as "English Toffee" or "English Toffees" and "Piccadilly Toffee" are manufactured in conjunction with or under license from foreign manufacturers who have been engaged in the confectionary business for many years.

The foregoing false and misleading statements and representations on the part of respondent are added inducements for a substantial number of wholesale and retail merchants and jobbers, as well as consumer purchasers, to buy the products known as "English Toffee" or

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"English Toffees" and "Piccadilly Toffee," manufactured, sold and distributed by respondent, and have a tendency and a capacity to, and do unfairly divert trade from competitors of respondent engaged in similar businesses who do not make use of the same or similar false and misleading statements and representations, with the result that substantial quantities of said products known as "English Toffee" or "English Toffees" and "Piccadilly Toffee" are sold to said dealers and purchasers and to the consuming public on account of said beliefs induced by the said false and misleading representations. As a consequence thereof, substantial injury has been done by the respondent to competition in commerce among the several States of the United States, and in the District of Columbia.

PAR. 9. 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, 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 March 23, 1937 issued and served its complaint in this proceeding upon said respondent, British American Toffee Company, charging it with the use of unfair methods of competition in violation of the provisions of said act. 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 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. British American Toffee Company is a corporation organized in January 1936 and existing and doing business under and by virtue of the laws of the State of Connecticut with its office and principal place of business at 102 Hill Street, New Haven, Conn. Since its organization, it has been engaged in the business of manufacturing and selling confectionery products, including a product known to the trade as "toffee." The capital stock of the corporation is owned by Theodore R. Blakeslee of New Haven, Conn., and James Whitefield and H. E. Tilbrooke of London, England. The ownership of the stock of said corporation is equally divided among the above named individuals.

PAR. 2. When its toffee is sold to wholesale and retail dealers located in various States of the United States, the respondent causes said toffee to be transported from its principal place of business in the State of Connecticut to the purchasers thereof at their respective points of location in other States of the United States. The respondent has, at all times since its organization, maintained a constant current of trade in commerce in its toffee between and among the various States of the United States and in the District of Columbia.

PAR. 3. British American Toffee Company has, at all times since its organization, been engaged in substantial competition with other corporations and with partnerships and individuals likewise engaged in the manufacture, distribution and sale of domestic confectionary products, including toffee, and with corporations, partnerships, and individuals engaged in the importation, distribution, and sale of foreign confectionary products, including toffee, in commerce among and between the several States of the United States.

PAR. 4. In the course and conduct of its business, British American Toffee Company has offered for sale and sold its toffee in commerce, as herein set out, in cellophane or paper bags or containers and in cartons. By way of advertisement, there are lithographed or printed, on the individual wrapper for each piece of candy, the words "Delicious English Toffees." There are lithographed or printed on the cellophane bags or containers which hold a number of individual pieces of toffee the following words:

England's Most Popular Sweet
Piccadilly Toffee
British American Toffee Company

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On the cellophane bags or containers, there also appear figures or picturizations representing the Tower of London and London Bridge and two soldiers simulating British soldiery in dress and appearance.

The other containers or cartons in which the cellophane bags or the toffee in bulk have been shipped from respondent's place of business to dealers and purchasers located in the several States bear labels containing the following words:

Piccadilly Toffee
made by
The British American Toffee Co.
New Haven, Conn.

PAR. 5. British American Toffee Company actually manufactures said toffee in New Haven, Conn. It does not manufacture its toffee in any other place and it does not own, operate, or control manufacturing plants, branches, or selling agencies in any part of England or in any other foreign country. Its toffee is made from formulas prepared by the aforesaid James Whitefield who has been engaged in the manufacturing of candy in England for a number of years.

PAR. 6. Confectionary products, including toffee manufactured in England or other foreign countries, have for many years enjoyed widespread popularity, good-will and demand among the consuming public throughout the United States, many of whom believe and consider that confectionary products, especially those designated as "toffee" manufactured in England are superior in quality and other desirable characteristics to similar confectionary products manufactured in the United States. Many of the consuming public throughout the United States purchase toffee manufactured in England and imported into the United States in preference to toffee manufactured in the United States.

PAR. 7. Since the filing and service of the complaint, the respondent has altered the advertising matter appearing on the cellophane bags and containers used in transporting its toffee in commerce as herein described. The cellophane bags now bear the following words—

Piccadilly Style Toffee
Made by British American Toffee Co.
In New Haven, Conn.

The cellophane bags continue to have lithographed or printed thereon a picturization of London Bridge and the Tower of London and two soldiers simulating British soldiery. The letters of the word "Style" are plainly and clearly printed in close connection with the words "Piccadilly" and "Toffee" and are readily discernible. The remaining portion of the legend indicating that the product is ac-

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tually manufactured in New Haven, Connecticut appears to be conspicuously placed in letters of sufficient size to be easily readable.

Various wrappers for the individual pieces of toffee contained in the cellophane bags above referred to have been altered so that the following words are printed thereon:

Coronet Toffee
Vanilla Flavor Toffee
Molasses Flavor Toffee
Brazil Nut Flavor Toffee
Rum and Butter Flavor Toffee

These wrappers as now printed and now used by the respondent do not contain the word "English."

Since the filing and service of complaint, the respondent has altered the advertising matter appearing on the labels of the other containers and cartons so as to read—

Piccadilly Style Toffee
made by
The British American Toffee Co.
in
New Haven, Conn.

The letters of the word "Style" are plainly and clearly printed in close connection with the words "Piccadilly" and "Toffee" and are readily discernible. The remaining portion of the legend indicating that the product is actually manufactured in New Haven, Conn., appears to be conspicuously placed in letters of sufficient size to be easily readable.

PAR. 8. There are among the competitors of respondent many who deal in confectionary products and sell in commerce, as herein set out, toffee as well as other confectionary products manufactured in England and imported to the United States and who rightfully and lawfully represent such merchandise to be imported. There are others among the competitors of respondent who manufacture and sell in commerce, as herein set out, confectionary products, including toffee, that are manufactured in the United States and who in no manner represent their products as manufactured in or imported from England or any other foreign country.

PAR. 9. The foregoing misleading statements and representations on the part of the respondent have, and have had, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that its toffee products heretofore designated as "English Toffee" and "Piccadilly Toffee" are importations of a foreign manufactured product and that respondent owns and operates factories in England in which it

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manufactures said products. As a result of said belief, induced by the statements and representations of the respondent as hereinabove detailed, the purchasing public has purchased a substantial volume of respondent's toffee products with the result that trade has been unfairly diverted from those competitors engaged in similar businesses who do not make use of the same or similar representations, acts and practices. As a consequence, substantial injury has been 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, British American Toffee 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 and the agreed stipulation of facts entered into between the respondent herein, British American Toffee Company, 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, British American Toffee Company, and its officers, representatives, agents, and employees, in connection with the advertising, offering for sale, and sale and distribution of confectionery products, including toffee, in interstate commerce, forthwith cease and desist from:

1. Representing, through the use of such phrases as "England's Most Popular Sweet," or any other word or phrase of similar import and effect, or through any other means or device, or in any manner,

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that its said toffee products are manufactured in England or in any other foreign country or that said products are imported into the United States.

2. Using the word "Piccadilly" alone or in conjunction with any other words or phrases, or using picturizations of English soldiery or the Tower of London and London Bridge, or similar picturizations as descriptive of its toffee products on bags or containers, or in any other manner, unless there is placed in close proximity to and equal prominence with said words, phrases and picturizations, other words that clearly indicate that said product is actually produced or manufactured in the United States.

It is further ordered, That the respondent shall within 90 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

BERNARD LIGHT, TRADING AS LIGHT'S FUR FACTORY

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

Docket 2787. Complaint, Apr. 25, 1936—Decision, May 27, 1937

- Where an individual engaged in the sale of furs and fur garments, and owner of all the outstanding stock of a corporate manufacturer, wholesaler, and retailer of such garments, located at same address; in advertising, in an adjoining State, his said furs and fur garments through radio broadcasts over a station, wavelength of which was of such character that it could be heard by people in States other than such adjoining State of origin—
- (a) Represented that he owned the building in which his business was carried on, and that he possessed, or was in a position to offer for sale, thousands of fur coats in the newest styles and models, etc., and that by purchasing from him, the customer could save the middleman's profit and that the saving thereby effected amounted to as much as fifty percent of the price of similar garments sold through the usual retail channels, facts being neither he nor aforesaid corporation owned said building, but he was only a tenant and occupied and paid rent for the second floor thereof, he was not in a position to offer "thousands" of fur coats and other garments, but number thereof on hand and available for sale at any other time was substantially less than stated and represented over such broadcast, he made use of fur sewing machines not owned by him in manufacture of such garments made by him, purchased many of his fur garments from aforesaid corporation and other fur manufacturers, coats advertised by him as aforesaid at varying prices were purchasable from other large retail establishments in the same city for substantially smaller amounts, those advertised for \$39 were "rebuilt" or "renovated" coats, and customers or prospective customers could not and did not effect any such saving as above set forth through purchase from him;
- (b) Represented that all repairs for furs or fur garments were furnished free of charge, and that storage for such products was likewise thus furnished, facts being amount of free repairs furnished by him was limited and did not include use of material necessary to make repairs involved, for which additional amount of money was charged, and he did not give "free storage" to his customers, as understood among members of trade as including "proper refrigerated space where the garment is hung, and adequate insurance to cover the garment in the event of loss that would be sustained," but charged his said customers for insurance against fire, burglary, and theft on furs and fur garments stored by them; and
- (c) Represented that customers or prospective customers could purchase new fur garments consisting of genuine Hudson seal, raccoons, and other fur garments, at the low price of \$45 for each coat, and that purchases of fur coats could be effected by them through turning in their old coats in trade and having allowance made therefor to apply on the purchase price of the new coat offered by him; facts being that he did not disclose that many of the coats which he offered at low prices were made from old skins taken from coats previously worn, repaired and made over, and he did not sell

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garments at low price quoted in broadcast, but asked substantially more therefor;

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, as a direct consequence of the mistaken and erroneous beliefs induced as aforesaid, purchased substantial volume of his said furs and fur garments, and trade was unfairly diverted to him from those likewise engaged in sale of such products between and among the various States and who truthfully advertise the same; 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. George Foulkes for the Commission.

Rathkopf & Rathkopf, 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 Bernard Licht, trading as Licht's Fur Factory, 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, Bernard Licht, is an individual trading under the name and style of Licht's Fur Factory, with his principal place of business located at 102 West 29th Street, in the city of New York, State of New York. Respondent is now and for several months last past has been engaged in the business of selling furs and fur garments at retail, which he distributes to purchasers, many of whom reside in States other than the State of New York, and when orders are received therefor, they are filled by respondent by shipping the same from the said city of New York, State of New York, into and through other States of the United States, and in the District of Columbia, to the respective places of business or residences of such purchasers. In the course and conduct of his business said respondent was and is in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of furs and fur garments 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 set forth in paragraph 1 hereof, respondent in soliciting the sale of said prod-

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ucts in interstate commerce advertised and now advertises the same by means of radio broadcasts over a station having a wide interstate reception. Induced by the statements and representations which respondent makes or causes to be made over said radio broadcasts, persons residing in various States have purchased furs and fur garments from said respondent, in some cases for shipment to them at their respective places of residence and in other cases to be immediately carried by such purchasers into other States.

PAR. 3. In the radio broadcasts, described in paragraph 2 hereof, respondent represents and has represented that he owns the factory building in which he carries on his business and which is located at 102 West 29th Street, New York, N. Y. In truth and in fact, respondent has not owned nor does he own the building in which he conducts his said business, but occupied and now occupies a small space on one of the floors of the building where his business has been and is carried on.

PAR. 4. Respondent further states and represents in his radio broadcasts as aforesaid and also by means of advertising literature and cards that respondent is a manufacturer of the furs and fur garments which respondent offers for sale and sells, and that by purchasing from respondent the customer can save the middleman's profit, and that the saving thereby effected amounts to as much as 50% of the price of similar garments sold through the usual retail channels. In truth and in fact, said respondent is not a manufacturer of fur garments but purchases the finished garments advertised and sold by him from jobbers, wholesalers, and other manufacturers. Nor can customers or prospective customers effect a saving of 50% by purchasing furs or fur garments from respondent.

There is a preference on the part of certain customers in different States of the United States for furs and fur garments purchased directly from the manufacturer thereof, and there is an impression and belief existing among certain of said customers that by dealing directly with the manufacturer they can eliminate the profit of the middleman, and that they can buy goods at a cheaper price and on more favorable terms than they can from jobbers or corporations, partnerships, firms, or persons not manufacturing furs or fur garments that sell to such customers.

PAR. 5. In the course and conduct of such radio broadcasts, respondent made or caused to be made the following statements and representations:

Licht's offer thousands of beautiful fur coats in the newest styles and models made from only the finest furs consisting of Seal, Persian Lamb, Mink, Caracul,

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Raccoon and many others, in all sizes, and prices as low as \$35.00 and up to \$1,000.00 * * *

Licht's Fur Factory are now displaying thousands of beautiful fur coats such as Seal, Caracul, Marmink, Raccoon, Muskrat—plain or trimmed with Fitch, Raccoon or Beaver, for only \$39.00! Just imagine, a beautiful fur coat for only \$39.00.

In truth and in fact, respondent at no time had on hand or was in the position to offer for sale "thousands" of fur coats or other garments, but the number of such garments on hand and available for sale at any one time was substantially less than stated and represented, nor did respondent have on hand furs consisting of seal, Persian lamb, mink, caracul, and raccoon for sale at the low prices mentioned over said radio broadcasts.

PAR. 6. Respondent further states and represents by the media of radio broadcasts that customers who would purchase furs or fur garments from respondent would receive free repairs and that respondent offers with the purchase of furs or fur garments free storage for the same. In truth and in fact, the amount of "free" repairs furnished by respondent was and is very limited, and does not include the use of materials necessary to make said repairs; but respondent charges an additional amount of money for the materials necessary to make said repairs. In truth and in fact, the respondent does not give free storage to his customers but charges said customers for insurance against fire, burglary and theft on furs and fur garments stored by such customers.

PAR. 7. Respondent by the media of radio broadcasts further represented that customers or prospective customers could purchase furs consisting of genuine Hudson seals, raccoons, black Russian ponies, marminks, muskrats, brown, black or gray caraculs at the price of \$15.00 for each coat, and that purchases of fur coats could be effected by customers or prospective customers turning in their old coats in trade for which an allowance would be made by respondent to apply to the purchase price of said new coats offered by respondent. In truth and in fact, many of the coats offered by respondent at low prices were and are "rebuilt" or "renovated" coats, that is, coats made from old skins taken from coats which had been previously worn, then repaired and made over, and respondent did not sell the furs at the low prices quoted in said radio broadcasts but on the contrary asked prices substantially higher than those stated over the radio broadcasts.

PAR. 8. The false and misleading statements and representations, as aforesaid, have the capacity and tendency to divert and have diverted to said respondent trade from his competitors, both those who

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are in truth manufacturers of fur garments and represent themselves as such, and those who do not manufacture the garments they sell, but who resell them on the same basis as this respondent but do not misrepresent their status, and from those competitors who do not misrepresent the value or usual selling price of the garments sold by them. Such statements and misrepresentations have the tendency and capacity to deceive and mislead and do deceive and mislead the purchasing public into the belief that respondent is a manufacturer, and that the garments sold by respondent are manufactured by him, and that by reason of respondent's being a manufacturer, respondent's customers can acquire greater value by purchasing furs and fur garments from respondent than by purchasing such garments from retailers, and that by purchasing from respondent a saving of 50% of the real value and usual retail selling value can be effected, and that expensive furs can be acquired from respondent at nominal or low prices, and that all the furs and fur garments advertised and sold by respondent are new fur garments and not "rebuilt" or "renovated" garments or garments previously worn and repaired, then renovated, and that the purchase of a garment or garments from respondent entitles a purchaser or purchasers to free repairs, and to free storage, and that such free storage includes payment by respondent of all insurance charges against burglary, theft, and fire.

The acts and practices of respondent as hereinbefore set forth are calculated to and tend to and do unfairly divert trade to respondent from said competitors, and by the acts and practices of respondent hereinbefore described substantial injury is done by respondent to competition in interstate commerce.

PAR. 9. 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 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 April 25, 1936, issued and served its complaint in this proceeding upon respondent, Bernard Licht, doing business as Licht's Fur Factory, 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 Edward M. Averill, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint, by Charles Rathkopf, attorney for the respondent, and said testimony and other evidence were fully 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 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 Bernard Licht is an individual trading under the name and style of Licht's Fur Factory. Respondent has his principal place of business at 102 West 29th Street, in the city of New York, State of New York.

Respondent is now and since the month of June 1935, has been, engaged in the business of selling furs and fur garments.

When said fur garments are sold by respondent, he causes them to be shipped from his place of business in the city of New York, State of New York, to purchasers located in the various States of the United States.

In the course and conduct of his business, respondent was and is in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of furs and fur garments between and among the various States of the United States.

There is also located at 102 West 29th Street, New York City, State of New York, Harry Licht and Sons, Inc., a corporation organized under the laws of the State of New York in April 1933.

Harry Licht is the father of the respondent Bernard Licht, and at one time a manager of the corporation Harry Licht & Sons, Inc.

Harry Licht & Sons, Inc., is a manufacturer, wholesaler, and retailer of furs and fur garments.

Respondent Bernard Licht owns all of the outstanding stock of Harry Licht & Sons, Inc., 19 shares in all, which have a par value of \$100 per share.

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Harry Licht, father of the respondent Bernard Licht, often acted as a salesman in the place of business of Bernard Licht, trading as Licht's Fur Factory.

PAR. 2. In the course and conduct of his business, respondent Bernard Licht, trading as Licht's Fur Factory, in soliciting the sale and sale of furs and fur garments, advertised by means of radio broadcasts over Station WAAT, which is located in Jersey City, State of New Jersey.

The wave length of Station WAAT, is of such character that it can be heard by people in States other than the State of New Jersey. Respondent represented over radio Station WAAT by means of radio broadcast that he owned the factory building in which he carries on his business and which is located at 102 West 29th Street, New York City, N. Y. During the months of September, October, November, and December, in the year 1935, respondent caused the following statements to be made over radio Station WAAT:

This is the address of Licht's Fur Company—spelled L-I-C-H-T'S which is open week days from 9:00 A. M. to 9:00 P. M. and Sundays from 10:00 A. M. to 5:00 P. M.—remember—don't look for a retail store—Licht's occupy their own factory building at this address—which is one door from Sixth Avenue in New York City—

In fact, respondent has not owned nor does he own the building in which Licht's Fur Factory has been and is located.

Respondent is a tenant in said building and pays rent for his occupancy of the second floor thereof. Neither does Harry Licht & Sons, Inc., own said building.

Harry Licht & Sons, Inc. has the use of space rented by Bernard Licht, doing business as Licht's Fur Factory.

PAR. 3. Respondent further represented over said radio broadcast that Licht's Fur Factory was and is a manufacturer of the furs and fur garments which respondent offers for sale and sells, and that by purchasing from respondent the customer can save the middleman's profit, and that the saving thereby effected amounts to as much as fifty percent of the price of similar garments sold through the usual retail channels.

During the month of November 1935, respondent caused the following announcement to be broadcast over radio Station WAAT:

Why not purchase your Fur Coat from a Manufacturer this year—Licht's have been manufacturing furriers for over twenty-eight years—and are now selling direct to you from their own fur factory at manufacturer's prices—and you save up to fifty percent—don't let warm weather fool you—prepare for winter now—at Licht's Fur Factory.

Respondent further represented over said radio broadcast that fine fur garments could be purchased at very low prices.

During the month of October 1935, respondent caused the following announcement to be broadcast over Station WAAT:

Licht's offer thousands of beautiful fur coats in the newest styles and models made from only the finest furs consisting of Seal, Persian Lamb, Mink, Caracul, Raccoon and many others, in all sizes, and priced as low as \$35 and up to \$1000 dollars * * *—

In fact during the year 1935, respondent Bernard Licht, doing business as Licht's Fur Factory, operated several fur sewing machines with which he manufactured fur garments.

The fur sewing machines used by respondent, while operated by him, were owned by his father Harry Licht, doing business as Harry Licht & Sons, Inc.

Respondent purchased many of his fur garments from Harry Licht & Sons, Inc., and from other fur manufacturers.

In fact customers, or prospective customers could not, nor can they effect a saving of fifty percent by purchasing furs or fur garments from respondent.

Coats advertised by respondent over said radio broadcasts at \$110 and \$135 could be purchased from other large retail fur establishments in New York City for \$98.

Coats of similar quality and for which respondent charged \$139 could during the time of said radio broadcast be purchased in other retail stores for \$119.

The coats which respondent advertised for \$39 were "rebuilt coats" or "renovated coats," that is, coats made up from skins which had been previously worn.

Respondent further caused to be represented over said radio broadcast that he had on hand at his factory, located at 102 West 29th Street, New York City, N. Y., "thousands" of fur garments, and that he was in the position to offer for sale thousands of fur garments to the purchasing public.

During the month of November in the year 1935 respondent caused the following announcement to be broadcast over radio Station WAAT:

Licht's fur factory—Located at 102 West 29th St., one door from 6th Avenue in New York—kept right on manufacturing fur coats and are now displaying thousands of beautiful fur coats, such as seal, caracul, marmink, raccoon, beaver and mink—priced as low as \$39 and up to \$1000.

In fact, respondent at no time had on hand or was in the position to offer for sale "thousands" of fur coats or other garments, but the number of such garments on hand and available for sale at any one time was substantially less than stated and represented over said radio broadcast.

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PAR. 4. Respondent caused to be represented over said radio broadcast that customers who would purchase furs or fur garments from respondent would receive free repairs, and that respondent offers with the purchase of furs or fur garments, free storage for the same.

During the months of September and October in the year 1935, respondent caused the following announcements to be broadcast over radio Station WAAT:

* * * Your old coat will be accepted as cash against the purchase of any new coat—and with every purchase—you are given free repair service and free storage for three years * * *.

* * * Every coat is guaranteed with free storage and repair service for three years.

During the month of November 1935 respondent caused the following announcement to be made over radio Station WAAT:

Repair service and storage for three years absolutely free.

In fact, the amount of free repairs furnished by respondent was and is limited, and does not include the use of material necessary to make said repairs; but respondent charges an additional amount of money for the materials necessary to make said repairs.

When a customer purchased a fur garment said customer received a certificate from respondent, which contained the following provision:

1—In addition to our Free Storage we will repair all rips, sew up seams. Glaze your Garment free of charge for the period of this guarantee.

2—Should your garment need repairings, whereas we will have to use material of any kind, there will be a charge to you on same at actual cost of labor and material.

In truth and in fact respondent does not give free storage to his customers but charges said customers for insurance against fire, burglary and theft on furs and fur garments stored by such customers.

The guarantee certificate which respondent gives to a customer who purchases a fur coat also contains the following provision:

3. We will insure your Furs, Protecting them against Fire, Burglary and Theft at a small minimum per cent charge on valuation placed thereon.

In accordance with the provisions of said guarantee certificate, respondent charged customers a fee, which fee represented an insurance charge for protection of the fur garment from loss sustained by reason of fire, burglary and theft while placed in storage by respondent.

The words "free storage" are understood, among members of the fur trade, to include "proper refrigerated space where the garment

is hung, and adequate insurance to cover the garment in the event of loss that would be sustained."

PAR. 5. Respondent, by the media of said radio broadcasts, further represented that customers or prospective customers could purchase new fur garments consisting of genuine Hudson seals, raccoons, and other fur garments at the low price of \$45 for each coat. Respondent further represented that purchases of fur coats could be effected by customers or prospective customers turning in their old coats in trade, for which an allowance would be made by respondent to apply to the purchase price of said new coat offered by respondent.

In fact, many of the coats offered by respondent at low prices were coats made from old skins taken from coats which had been previously worn, then repaired and made over, which fact respondent failed to disclose over said radio broadcasts, and respondent did not sell the garments at the low price quoted in said radio broadcasts but asked prices substantially higher.

PAR. 6. Each and all of the false and misleading statements made by respondent as hereinabove set forth, in offering for sale and selling his furs and fur garments, 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 false and misleading statements of respondent as hereinabove enumerated, a number of the consuming public purchased a substantial volume of respondent's furs and fur garments, with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of selling furs and fur garments, between and among the various States of the United States, 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.

CONCLUSION

The aforesaid acts and practices of respondent, Bernard Licht, doing business as Licht's Fur Factory, 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, the answer of respondent, testimony and other 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 herein, (oral argument having been waived) by George Foulkes, counsel for the Commission, and by Chas. Rathkopf, 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, Bernard Licht, doing business as Light's Fur Factory, or under any other trade name, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of furs and fur garments in interstate commerce, do forthwith cease and desist from representing:

1. That he owns the building in which his business is carried on;
2. That he possesses or is in the position to offer for sale "thousands" or any other number of furs and fur garments substantially in excess of the amount that he actually has on hand;
3. That a saving of 50 percent or any saving can be effected by purchasing furs or fur garments from him;
4. That all repairs for furs or fur garments are furnished free of charge;
5. That storage for furs or fur garments is furnished free of charge, unless and until said free storage includes the placing of the garment in properly refrigerated space, and adequate insurance for protection of the garment from loss sustained by fire, burglary and theft;
6. That all the furs and fur garments sold by him are made from new skins not previously used or worn.

It is further ordered, That the respondent above named 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 in which he has complied with this order.

IN THE MATTER OF
KIENZLER DISTILLING CORPORATION

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

Docket 2634. Complaint, Nov. 18, 1935—Decision, May 28, 1937

Where a corporation engaged, as rectifier and wholesaler of spirituous liquors, in purchasing, rectifying, blending, and bottling whiskies, gins and other alcoholic beverages, and in producing gin with stills used therefor, by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products to hotels, bars, clubs, and restaurants through a corporate sales agency with preponderant identity in the matter of officers, personnel, and in other respects, and in the sale thereof also to wholesalers and retailers, in substantial competition with those engaged in the manufacture by true distillation of whiskies, gins and other alcoholic beverages from mash, wort, or wash, and in selling same in trade and commerce and in the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and similarly selling same, and including among said competitors those who, as manufacturers and distillers by original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, of whiskies, gins, and other spirituous beverages sold by them, truthfully used words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and catalogs and on the labels of the bottles in which they sell and ship their said products. and those who, engaging in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distilling" in its corporate name, printed on its stationery and 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 same with the means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller and that the said whiskies, gins, cordials, brandies, and other alcoholic 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 said various beverages, thus bottled, labeled, sold, and transported by it, through process of original and continuous distillation as above set forth, and as long definitely understood from word "distilling" when used in connection with liquor industry and products thereof by trade and ultimate purchasing public, did not own, operate, or control any place or places where such beverages are made by aforesaid process of continuous distillation from mash, wort, or wash, and was not, notwithstanding its aforesaid production of gin, as commonly accepted and understood by trade and public, a distiller, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

With effect of misleading and deceiving dealers and purchasing public into the belief that it was a distiller or distilling company in the ordinary accepted sense of those terms, and that the whiskies, gins, and other spirituous

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beverages sold by it were by it made or distilled from mash, wort, or wash by one continuous process, and of inducing dealers and purchasing public, acting in such beliefs, to buy the whiskies, gins, and other alcoholic beverages rectified and bottled by it, and with result of giving it an unfair competitive advantage over those of its competitors who do not, through use of such terms in their trade or corporate names, represent that package of alcoholic liquor offered to retailer, and in turn to consumer, is a distillery-bottled package, and with tendency thereby to divert trade to it from such 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. John L. Hornor*, trial examiner.

Mr. PGad B. Morehouse and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Mortimer S. Gordon and *Mr. Herman Keller*, 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 Kienzler Distilling Corporation, 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 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 one year last past has been, engaged in the business of a wholesaler and rectifier, purchasing, rectifying, blending, and bottling 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 said business it causes its said products when sold to be transported from its place of business 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, 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. 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, the manufacturing of spirituous 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 "Distilling" 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, 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 production of gin, 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

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"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 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, 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 November 18, 1935, issued and on November 19 served its complaint in this proceeding upon respondent Kienzler Distilling 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 and DeWitt T. Puckett, attorneys 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 Herman Keller and Mortimer S. Gordon, 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 complaint, the answer thereto, testimony and other evidence and briefs in support of the complaint and in opposition thereto, counsel for respondent having failed to appear at the time and place set for oral argument herein, to wit: May 3, 1937, and no argument therefore having been made; and the Commission having duly considered the foregoing 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 New York on November 27, 1933, existing and doing business at 30-32 West 24th St., New York City, under a basic permit from the Federal Alcohol Administration known as "R-46" as a rectifier and wholesaler of spirituous liquors, and has engaged in the distilled spirits rectifying and wholesaling business since the date of its organization. Its average sales are approximately \$500,000.00 a year in volume. At the same address, but on a different floor of the same twelve-story building is located the business of the Kienzler Company, another corporation which was formed in 1883 to handle rectified liquors and foodstuffs. This latter company having the same offices and using the same employees as respondent, is respondent's only customer except for one or two local jobbers, and acts as respondent-

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ent's distributor and sales agent. Prior to April 1936, Mr. Albert Guggenheim was president of Kienzler Distilling Corporation, Mr. Michael Neuberger was its secretary, and Miss Jessie E. Simonson, assistant secretary, but Mr. Guggenheim and the witness Morris Keller, respondent's general manager, controlled the business. On or about April 1, 1936, there was a reorganization in the affairs of the two companies. Mr. Keller was elected president in the place of Mr. Guggenheim, and the other officers remained the same, Mr. Guggenheim, however, becoming president of the Kienzler Company, the selling agent, Mr. Guggenheim and Mr. Keller, the present president of respondent company, consult in the operation of both companies and their respective office forces occupy the same space and are 75% identical. The respondent, Kienzler Distilling Corporation, purchases its distilled spirits requirements in bulk from distillers and bottles them straight or blended. It then sells the bottled products already labeled to the Kienzler Company and the liquor is shipped by respondent to the customers of the Kienzler Company upon the Kienzler Company's order and direct from the premises of respondent, except that sometimes when the Kienzler Distilling Corporation is heavily stocked the surplus merchandise is moved from the Kienzler Distilling Corporation's warehouse to the Kienzler Company's premises.

Of the bottled liquors, about 75% consists of respondent's own brands bearing its name, Kienzler Distilling Corporation thereon, and about 25% consists of what is known as "private brand" business, whereon the name of Kienzler Distilling Corporation does not always, but does sometimes appear. The Kienzler Company, the selling agent, also imports or buys from other sources than respondent, approximately \$100,000 worth of alcoholic beverages.

Approximately 85 to 90% of respondent's total products are sold through the sales agency of the Kienzler Company to hotels, bars, clubs and restaurants both in New York and elsewhere, including Pittsburgh, Pa., Cincinnati, Ohio, and Chicago, Ill., the Kienzler Company as respondent's distributor and agent selling the liquors principally at wholesale.

The Commission finds that respondent is now and for more than one year last past has been engaged in purchasing, rectifying, blending, and bottling 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 said business it causes its said products when sold to be transported from its place of busi-

ness 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, 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. Upon the premises of respondent are four 500-gallon gin stills, of which two are in regular operation. These stills are used by respondent 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. This gin constitutes approximately 56½% of respondent's total business.

Rectifying, in the distilled spirits rectifying industry, means the mixing of whiskies of different ages and types, or the mixing of ages or 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). Some rectifiers blend it with cane.

Many distillers operate a separate establishment 600 feet or more away from their distilleries, 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 often 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 done by a distillery, 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 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 as straight whiskey, the distiller may and does on said bottles, put "distilled and bottled by ----- Company." Finally, blown in the bottom of each bottle is a symbol, consisting of a letter followed by a number, identifying the bottler. For instance, there is a "D" for a distiller and an "R" for a rectifier. The number following the said letter corresponds with the distiller's or rectifier's basic permit. Thus, "R-46" designated the Kienzler Distilling Corporation, a rectifier. A distiller who also operates a rectifying plant and who has both kinds of permits may use either symbol, depending upon whether the liquor contained in the bottle was produced and bottled under a distiller's or a rectifier's permit.

This respondent does not now and never had produced or manufactured distilled spirits of any kind from mash or raw materials, although its charter would authorize it so to do. Its rectifier's permit authorized it to engage in the business of rectifying and blending, and is conditioned upon compliance by respondent with all applicable regulations made pursuant to law, which are or may hereafter be in force.

Section 3247 of the Revised Statutes (U. S. C. A. Tit. 26, Sec. 1158 (a)) regulating Internal Revenue defines a "distiller" as follows:

Every person who produces distilled spirits or who brews or makes a mash, wort, or wash fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirits from any substance, or who, making or keeping, mash, wort, or wash, has also in his possession or use a still, shall be regarded as a distiller.

Section 3244 of the Revised Statutes (U. S. C. A. Tit. 26, Sec. 1398 (f)) defines a "rectifier" as follows:

Every person who rectifies, purifies, or refines distilled spirits or wine by any process other than by original and continuous distillation from mash, wort, or wash, through continuous enclosed vessels or pipes, until the manufacture thereof is complete, and every wholesaler and liquor dealer who has in his possession any still or leach tub, or who keeps any other apparatus for the purpose of refining in any manner distilled spirits, and every person who without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine, or other liquor with any materials, manufacture any spurious imitation, or compound liquors for sale under the name of whiskey, brandy, gin, rum, wine spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and that being engaged in the business of rectifying, etc.

The rectification of alcoholic spirits by this respondent as aforesaid in the production of its gin, does not make or constitute respond-

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ent a distiller or a distilling company as defined by Sec. 3247 of the Revised Statutes of the United States regulating Internal Revenue.

PAR. 3. The testimony of those having long experience in both the distilled spirits rectifying industry and the distilling industry, established that the foregoing rectification of alcoholic spirits by redistillation over juniper berries and other aromatics in the production of gin does not make or constitute this respondent a distilling company in the sense commonly understood by the liquor industry. There were also called a large number of witnesses who were lay-members of the purchasing public, 22 in number, and with few exceptions their testimony was to the effect that by such terms as "distilling" or "distillery" or "distiller" when used in the trade or corporate name of a concern handling alcoholic beverages, the public understands that that concern is engaged in the initial distilling process of producing spirituous or alcoholic beverages from fermented grain or mash, and that they have a preference for a distillery-bottled package over one bottled by a rectifier.

The Commission finds that 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 spirituous 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. 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, 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, brandies, 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 production of gin 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 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. 5. 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, 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. 6. The representations by respondent, as set forth in paragraph 4 hereof, have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller or distilling company in the ordinarily accepted sense of those terms, 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 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. The Commission finds that the whole situation in this industry is such that the foregoing representations have a distinct tendency to give respondent what amounts to unfair competitive advantage over those of its competitors who do not, by the use of such terms in their trade or corporate names, represent that the package of alcoholic liquor offered to the retailer and in turn to the consumer, is a distillery bottled package and this in turn tends to divert trade to respondent from such competitors and thereby respondent does substantial injury to competition in interstate commerce.

PAR. 7. Because of existing regulations promulgated under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. 977), providing that rectifiers who redistill purchased alcohol

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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 respondent Kienzler Distilling 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 L. Hornor, 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 by PGad B. Morehouse and DeWitt T. Puckett, counsel for the Commission, and by Mortimer S. Gordon and Herman Keller, counsel for the respondent (no oral arguments having been made), 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, Kienzler Distilling Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale or sale and distribution by it in interstate commerce or in the District of Columbia 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 "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 other spirituous beverages; or (b) that the said

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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.

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IN THE MATTER OF

H. N. HEUSNER & SON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2355. Complaint, Apr. 6, 1935—Decision May 29, 1937

Where a corporation engaged in the manufacture, sale, and distribution of cigars to wholesalers, cigar stores and drug stores in various parts of the United States, including two brands respectively and usually sold at retail at a price of two for five cents and five cents apiece, and wholly composed of domestic tobacco grown in the United States—

Respectively designated, branded and sold said cigars as "Heusner's Original Havana Smokers" and "Martinez Havana Smokers," notwithstanding fact said cigars were not made of Cuban or Havana tobacco, as (1) long understood from term "Havana" by the cigar purchasing and consuming public of the United States and by cigar manufacturers and dealers throughout the United States as meaning and designating tobacco grown on the Island of Cuba and finest quality of tobacco for cigar purposes, and (2) as designating cigars made from such tobacco, preferably purchased as more desirable by many cigar dealers and many of the consuming public;

With capacity and tendency to mislead and deceive substantial portion of the purchasing public into the erroneous belief that said cigars were composed of tobacco grown on aforesaid island, and with result that many members of the public, acting in such erroneous belief induced by such misrepresentations, bought said cigars, and with capacity and tendency thereby to divert unfairly to it trade of competitors engaged in sale in commerce of cigars composed of Havana tobacco, and also of cigars composed of tobacco grown in the United States, and who truthfully advertise and represent their 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. John L. Hornor*, trial examiner.

Mr. DeWitt T. Puckett for the Commission.

Mr. John Walsh, 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 H. N. Heusner & Son, a corporation, 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, hereby issues its complaint stating its charges in that respect as follows:

Complaint

PARAGRAPH 1. The respondent is now, and since 1918 has been, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business at Hanover, in said State. It is now and since its organization has been engaged in the manufacture of cigars and in the sale thereof between and among the various States of the United States to retailers thereof. In the course and conduct of its business it ships the cigars manufactured by it, when sold, to the purchasers thereof located in the various 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 such cigars. In the course and conduct of its said business respondent is now, and at all times since its organization has been, in substantial competition with other corporations and with individuals, firms and partnerships engaged in the sale of cigars between and among the various States of the United States.

PAR. 2. For many years prior to the organization of respondent, and at all times since its organization, tobacco grown on the Island of Cuba and cigars made from such tobacco have been referred to, sold, purchased and designated as "Havana" tobacco and as "Havana" cigars, respectively, by the trade and the purchasing public throughout the United States. The word "Havana," when applied to tobacco, has for many years signified and meant to the trade and purchasing public of the United States that such tobacco was grown on the Island of Cuba. The word "Havana" when applied to cigars has for many years signified and meant to the trade and purchasing public of the United States that such cigars are made of tobacco grown on the Island of Cuba. For many years many retailers and the purchasing public throughout the United States have preferred and still prefer to purchase cigars made or composed in whole or in greater part of tobacco grown on the Island of Cuba, which cigars, as hereinbefore stated, are known and designated as "Havana" cigars, and which tobacco, as hereinbefore stated, is known and designated as "Havana" tobacco, and such retailers and purchasing public have considered and still consider such Havana tobacco to be superior in quality or value to tobacco grown elsewhere than on the Island of Cuba, and Havana cigars to be superior in quality or value to cigars made of tobacco grown elsewhere than on the Island of Cuba.

PAR. 3. In the course and conduct of its business hereinbefore described, respondent, since 1918 has caused, and still causes, certain of the cigars manufactured by it to be designated, branded or labeled with the words "Havana Smokers." Such cigars it has caused and still causes to be packed in box containers, on the inner and outer

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face of which have appeared and still appear the imprint, "2 for 5¢ Martinez Bigger and Better Havana Smokers," or "Heusner's Original Havana Smokers," which such cigars, so branded, labeled, and packed, the respondent has sold and still sells between and among the various States of the United States, as described in paragraph 1 hereof. In truth and in fact, such cigars have not been made and are not made wholly, or in greater part, of tobacco grown on the Island of Cuba.

PAR. 4. The use by respondent of the words "Havana Smokers," "2 for 5¢ Bigger and Better Havana Smokers," and "Heusner's Original Havana Smokers," in describing, designating, labeling, and branding such cigars, is false and misleading and has the capacity to mislead and deceive retailers and the purchasing public into the erroneous belief that such cigars are composed wholly or in greater part of tobacco grown on the Island of Cuba and to purchase such cigars in such erroneous belief. The aforesaid use by respondent of the word "Havana" places in the hands of retailers the means of deceiving the purchasing public into the belief that the cigars so labeled, branded, and designated, are made wholly or in greater part of tobacco grown on the Island of Cuba. The aforesaid misrepresentations in designating, labeling, and branding such cigars has tended to and does divert, and has diverted trade to respondent from its competitors engaged in the sale of cigars between and among, the various States of the United States who truthfully designate, brand, and label the cigars manufactured and sold by them. Thereby, substantial injury is done by respondent to substantial competition in interstate commerce.

PAR. 5. The acts and practices set forth in paragraph 3 hereof 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 April 6, 1935, issued and served its complaint in this proceeding upon respondent H. N. Heusner & Son, 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 John L. Hornor, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Joseph G. Denny, 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. The respondent, H. N. Heusner & Son, is a Pennsylvania corporation organized in 1918, with its principal office and place of business located at Hanover, Pa. Respondent is now, and since the date of its incorporation has been, engaged in the business of manufacturing various brands of cigars and selling and distributing the same to wholesale dealers, cigar stores and drug stores located in various parts of the United States. The said cigars are manufactured by respondent in Hanover, Pa., where they are packed, branded, and labeled by respondent for sale and distribution by it to the purchasing and consuming public of the United States. In consummating such sales and in distributing such products the respondent causes the cigars so sold to be transported and delivered from its place of business in Hanover, Pa., through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of its business the respondent has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of cigars in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. The cigar originated in the Spanish West Indies. The finest quality of tobacco for cigar purposes is grown in Cuba, not far from the city of Havana. The word "Havana," also spelled "Habana," is the name and designation of the tobacco grown on the Island of Cuba, which name and designation is and has been since

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time immemorial used and understood by the cigar-purchasing and consuming public of the United States, and by cigar manufacturers and dealers throughout the United States, as meaning and designating tobacco which has been grown on the Island of Cuba. Such Havana tobacco has the reputation among the cigar consuming and purchasing public of the United States as being cigar tobacco of highest quality and excellence, and cigars made in whole or in part from said tobacco are in large demand throughout the United States. Many of the cigar dealers and many of the consuming public of the United States prefer to purchase cigars containing Havana tobacco and have believed, and still believe, that the use of such Havana tobacco in cigars adds to and increases the quality and desirability of such cigars.

For many years cigars made of Cuban and Havana tobacco were manufactured in the city of Havana, Cuba, and shipped therefrom to the various cigar markets of the world. Consequently such cigars became known in the trade and to the public as Havana cigars and Cuban cigars, the terms being used interchangeably and synonymously. In fact, the term "Havana" has been used for many years to designate or brand said cigars and has come to mean, when applied to cigars, cigars manufactured from tobacco grown in the Island of Cuba.

Cuban tobacco has long been imported into the United States and widely and extensively used and consumed therein in cigars manufactured from such tobacco.

During the past several years factories making cigars from Havana tobacco have been located in the United States, principally in and near the city of Tampa, Fla. Cigars manufactured at those factories from tobacco grown in the Island of Cuba and imported into the United States are also known in the trade and to the public as Havana cigars.

PAR. 3. Among the cigars manufactured and sold by respondent, as aforesaid, is a type of cigar designated, labeled, and branded "Havana Smokers."

The brand name "Havana Smokers" appears on the cigar band that surrounds each cigar. The containers in which the said cigars are packed, offered for sale, and sold are the usual and customary cigar boxes. Imprinted on the outside and inside of the lid of one type of said boxes appears the following:

2 for 5

2 for 5

HEUSNER'S
ORIGINAL

HAVANA

SMOKERS

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The expression "Heusner's Havana Smokers" also appears on the edge and one end of said box.

On both sides of the lid, the front edge and one end of another type of box in which said cigars are packed, offered for sale and sold is imprinted the following:

MARTINEZ

HAVANA

SMOKERS

The cigars designated, branded and sold by respondent as "Heusner's Original Havana Smokers" are usually resold by the retail dealer at the price of two for five cents. The cigars designated, branded and sold by respondent as "Martinez Havana Smokers" are usually resold by the retailers at five cents each.

PAR. 4. In truth and in fact respondent's cigars branded, labeled, described and advertised, respectively, as "Heusner's Havana Smokers" and as "Martinez Havana Smokers", and sold by the respondent and by dealers to the purchasing and consuming public, as hereinbefore described, do not contain Havana tobacco, or tobacco grown on the Island of Cuba, and they have not at any time contained such tobacco. Such cigars are, and have been manufactured entirely from, and wholly composed of, domestic tobacco grown in the United States.

PAR. 5. The use of the aforesaid false and misleading representations and practices on the part of the respondent in the sale and offering for sale of its cigars branded and labelled with the word "Havana" has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that respondent's said cigars are composed of tobacco grown on the Island of Cuba. Acting under such erroneous belief, induced by the various misrepresentations of the respondent as herein detailed, many members of the public have purchased respondent's cigars. The aforesaid representations and practices on the part of respondent have and have had the capacity and tendency to unfairly divert to respondent the trade of competitors engaged in selling in interstate commerce cigars composed of Havana tobacco and likewise cigars composed of tobacco grown in the United States, and who truthfully advertise and represent their cigars. As a result thereof, substantial injury has been done, and is being done, by respondent to competition in commerce, among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

The aforesaid acts and practices of the respondent, H. N. Heusner & Son, 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 thereto, 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, briefs filed herein, and oral argument by DeWitt T. Puckett, counsel for the Commission, and by John Walsh, 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, H. N. Heusner & Son, a corporation, its officers, representatives, employees, or agents, individual or corporate, in connection with the offering for sale, sale and distribution of cigars in interstate commerce and in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the words "Havana" or "Habana," alone or in conjunction with any other word or words, or through the use of any other words of similar import and effect, or in any other manner, that cigars not manufactured entirely from tobacco grown on the Island of Cuba are Havana Cigars.

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.

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

C. ROSENBLUM, INC. Complaint, June 17, 1935. Order, December 2, 1936. (Docket 2436.)

Charge: Misbranding or mislabeling as to composition of product; in connection with the manufacture and sale of paint.

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 charter of the respondent, C. Rosenblum, Inc., has been annulled by proclamation of the Governor of Maryland, dated February 14, 1936, for non-payment of the corporation tax to the State, and that the said respondent may renew its charter upon payment of the said tax, 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 issued herein on June 17, 1935, 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. Edward E. Reardon for the Commission.

CHATTANOOGA AUTOMOTIVE JOBBERS ASS'N ET AL. Complaint, December 18, 1935. Order, December 10, 1936. (Docket 2661.)

Charge: Combining or conspiring to eliminate price competition; in connection with sale of automobile parts and accessories to garages, automobile dealers, etc.

Record dismissed as to certain respondents and closed as to others, after answers 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 it appearing that the Chattanooga Automotive Jobbers Association, a corporation, and the Tennessee Automotive Jobbers Association, a corporation, have been dissolved and have officially surrendered their charters, and it further appearing that the officers, directors and members of the Tennessee Automotive Jobbers Association did not engage in the practices charged in the complaint, and the Commission now being fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed as to the Chattanooga Automotive Jobbers Association, a corporation, the Tennessee Automotive Jobbers Association, a corporation, its officers, directors, and members, T. F. Condon, D. A. Graves, D. M. Beaman, Loyd Smith, Bruce Sinclair, R. E. Fly, R. H. Hart, Jr., J. M. Sharp, W. H. Sloan, Sam Horne; Sharp Battery and Electric Corporation, Southern Auto Supply Company, a corporation, Hart's Automotive Parts Company, a corporation, Joe Lawwill trading as Joe Lawwill and Company, W. H. Sloan trading as Sloan Electric Company, Automotive Equipment and Supply Co., a partnership, Service Auto Parts Co., a partnership, R. T. Clapp, trading as R. T. Clapp Co., Sam Horne Co., a corporation, Buford Brothers, a corporation, McWorther-Weaver Company, a corporation, The Chapman Company, a corporation, J. B. Cook Auto Machine Company, a corporation, R. H. Chilton, trading as R. H. Chilton Machine Company, Auto Bearings and Parts Company, a corporation, R. E. Fly, trading as The Alemite Company of Nashville, Keith-Simmons Company, a corporation, and J. C. Peterson trading as Peterson Machine Company.

It is further ordered, That the case growing out of the complaint heretofore issued on December 18, 1935, 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 as to J. M. Sharp, D. A. Graves, R. H. Hart, Sr., R. H. Hart, Jr., Joe Lawwill, W. H. Sloan, D. A. Graves, W. B. Gates, J. M. Sharp; Sharp Battery & Electric Corporation, Southern Auto Supply Co., a corporation, Hart's Automotive Parts Company, a corporation, Joe Lawwill an individual trading as Joe Lawwill & Company, and W. H. Sloan an individual trading as Sloan Electric Company, the same being the officers, directors, and members of the Chattanooga Automotive Jobbers Association.

Before *Mr. W. W. Sheppard* and *Mr. Edward M. Averill*, trial examiners.

Mr. Morton Nesmith for the Commission.

Strange, Fletcher & Carriger, of Chattanooga, Tenn., for Chattanooga Automotive Jobbers Ass'n, and for numerous other respondents.

Douglas & Douglas, of Nashville, Tenn., for Tennessee Automotive Jobbers Ass'n, and for numerous other respondents.

Mr. William P. Cooper, of Nashville, Tenn., for McWorther-Weaver Co.

R. M. BARNETT, trading as HOME AND SCHOOL EDUCATION SOCIETY.
Complaint, February 14, 1936. Findings as to the facts and order,

December 8, 1936.¹ Order setting aside, etc., December 12, 1936. (Docket 2721.)

Charge: Offering deceptive inducements to purchase as to free product, special offers and prices, misrepresenting business status, connections, and nature, history and success and endorsement of product or offering, and using misleading trade name; in connection with the purchase and sale of books or encyclopedias together with a looseleaf extension service.

Findings and cease and desist order set aside and case set for final argument by order as follows:

This matter coming on to be heard by the Commission upon the record, and it appearing that respondent, in a letter dated November 9, 1936, made application for oral argument, and that said application was not brought to the attention of the Commission, and the Commission having duly considered the aforesaid facts and the record, and being now fully advised in the premises;

It is ordered, That the findings as to the facts and order to cease and desist heretofore entered by the Commission on December 8, 1936, be, and the same are, hereby set aside.

It is further ordered, That this matter be brought on for final hearing before the Commission on complaint and answer, evidence submitted in support of the allegations of the complaint and in opposition thereto, and the briefs filed in support of the allegations of the complaint and in opposition thereto, on the 6th day of January, A. D., 1937, at 2:00 o'clock, p. m., at the office of the Federal Trade Commission, 815 Connecticut Avenue, Northwest, in the city of Washington, D. C.²

Before *Mr. William C. Reeves*, trial examiner.

Mr. Allen C. Phelps for the Commission.

UNITED IMPORTERS & DISTILLERS, INC. Complaint, July 3, 1935. Order, December 14, 1936. (Docket 2487.)

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 purchasing, rectifying, blending and bottling and sale of whiskies, gins, and other spirituous beverages.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon complaint issued herein July 3, 1935 and respondent's answer thereto, and it appearing to the Commission that on July 26, 1935, respondent changed its name by amendment of its corporate charter to "United Importers and Distributors, Inc."; that prior to November 23, 1935,

¹ Not published.

² See, for subsequent disposition of case on stipulation, *infra*, at page 1389.

it had abandoned the practices and violations of law alleged in the Commission's complaint, and has ever since engaged in business under its amended name as aforesaid; and, it therefore appearing to the Commission that it is unlikely that 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 July 3, 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.

Mr. PGad B. Morehouse for the Commission.

HAVANA-FLORIDA CIGAR Co., INC. Complaint, August 5, 1936.¹ Order closing case with respect to use of the term "Garcia," December 23, 1936. (Docket 2667.)

Charge: Misbranding or mislabeling and advertising falsely or misleadingly; in connection with the manufacture and sale of cigars.

Order closing case with respect to use of the term "Garcia" 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 case growing out of the amended supplemental complaint hereinbefore issued on the 5th day of August 1936, insofar as said case relates to the alleged unfair or misleading use of the word "Garcia" be, and the same hereby is, closed.

It is further ordered, That as to all other allegations growing out of the aforesaid amended and supplemental complaint, the case proceed to trial in accordance with the regular procedure of the Commission.

Mr. Marshall Morgan for the Commission.

JOHN F. BOLON, TRADING AS JOHN F. BOLON CIGAR Co. Complaint, December 30, 1935.² Order closing case with respect to use of the term "Garcia," December 24, 1936. (Docket 2293.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling; in connection with the manufacture and sale of cigars.

Order closing case with respect to use of the term "Garcia" 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;

¹ Amended and supplemental.

² Amended.

It is ordered, That the case growing out of the amended complaint heretofore issued on the 30th day of December 1935, insofar as said case relates to the alleged unfair or misleading use of the word "Garcia" be, and the same hereby is, closed.

It is further ordered, That as to all other allegations growing out of the aforesaid amended complaint, the case proceed to trial in accordance with the regular procedure of the Commission.

Mr. Marshall Morgan for the Commission.

THAYER PHARMACAL CO. AND THAYER SALES CORP. Complaint, September 23, 1935. Order, December 28, 1936. (Docket 2557.)

Charge: Misbranding or mislabeling as to composition of product; in connection with the manufacture and sale of so-called "Turtle Oil Cream."

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.

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

Mr. DeWitt T. Puckett for the Commission.

SAMPSON PAPER PRODUCTS CORP. and L. HYMAN & SONS. Complaint, April 29, 1935. Order, December 30, 1936. (Docket 2379.)

Charge: Advertising falsely or misleadingly as to quality of product; in connection with the sale of adding machine paper rolls and small paper roll products.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration 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 case growing out of the complaint hereinbefore issued on the 29th day of April 1935, 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.

Before *Mr. Edward M. Averill*, trial examiner.

Mr. John W. Hilldrop for the Commission.

Frackman & Robins, of New York City, for respondents.

R. II. MACY & Co. Complaint, August 21, 1936. Order, December 30, 1936. (Docket 2906.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to nature and place of manufacture; in connection with the sale of safety razor blades.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent, R. H. Macy & Company, Inc., has entered into a stipulation as to facts and an agreement to cease and desist from certain enumerated practices, which stipulation and agreement was, on the 29th day of December 1936, 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 August 21, 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. Robert N. McMillen for the Commission.

Mr. Leon Lauterstein, of New York City, for respondent.

UNITED DISTILLERS IMPORTERS, INC. Complaint, June 27, 1935. Order, January 15, 1937. (Docket 2468.)

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 alcoholic beverages.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the complaint issued herein on June 27, 1935 and it appearing to the Commission that respondent has renewed none of its permits or licenses under either State or Federal governments, and has not engaged in the liquor business since the 30th day of June 1935, and it further appearing from a supplemental investigation that it is unlikely that respondent will resume the acts and practices in said complaint alleged, and the Commission being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on June 27, 1935, be, and the same is, hereby closed, without prejudice to the right of the Commission, should the facts and circumstances so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Mr. PGad B. Morehouse for the Commission.

NUWAY PRINTING Co., also trading as PROFESSIONAL RECORD CARD Co. Complaint, February 20, 1936. Order, January 15, 1937. (Docket 2727.)

Charge: Advertising falsely or misleadingly as to source or maker of product dealt in; in connection with the printing and sale of dental record cards.

Dismissed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record and brief of attorney for the Commission 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.

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

Mr. Joseph C. Fehr for the Commission.

Mr. Maxwell F. Cargill, of Chicago, Ill., for respondent.

JOHN D. MYERS, doing business as JOHN STERLING REMEDY CO. Complaint, September 4, 1936. Order, January 15, 1937. (Docket 2918.)

Charge: Advertising falsely or misleadingly as to properties, results, safety, and endorsements of product; in connection with the sale of a treatment for syphilitic ailments.

Record closed, after answer, by the following order:

This matter coming on for consideration 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 case growing out of the complaint herein-before issued on the 4th day of September 1936, be, and the same hereby is closed upon the ground that the respondent is no longer in business, 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.

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

Mr. John Darsey for the Commission.

STRUTWEAR KNITTING Co. Complaint, August 30, 1935.¹ Order, January 21, 1937. (Docket 2538.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling; in connection with the manufacture and sale of ladies' hosiery.

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.

Before *Mr. Edward M. Averill* and *Mr. W. W. Sheppard*, trial examiners.

¹ As amended pursuant to order of January 5, 1937.

Mr. John W. Hilldrop and Mr. Astor Hogg for the Commission.
Williamson & Williamson, of Minneapolis, Minn., for respondent.

INTERNATIONAL CHAMPAGNE CORP. AND WINES OF FRANCE, LTD.
Complaint, June 27, 1935. Order, January 23, 1937. (Docket 2467.)

Charge: Using misleading corporate name, misbranding or mislabeling and advertising falsely or misleadingly as to source of product; in connection with the processing and sale of still wines.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon complaint and answers herein filed, and it appearing to the Commission that the matters and things forming the subject matter of this complaint are covered by Regulations No. 4 relating to labeling and advertising of wine, effective December 15, 1936, pursuant to the Federal Alcohol Administration Act of August 29, 1935, (49 Stat. L. 977), and the Commission being fully advised in the premises:

It is ordered, That the case growing out of the complaint hereinbefore issued on June 27, 1935, be, and the same is hereby, closed without prejudice.

Mr. PGad B. Morehouse for the Commission.

Mr. Philip T. Morehouse, of New York City, for respondents.

JOSEPH DELLA MONICA, trading as DELMONICO'S. Complaint, November 12, 1935. Order, January 23, 1937. (Docket 2623.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to nature, source and quality of product dealt in; in connection with the sale of still and aerated wines and processing some of said still wines into aerated wines.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon complaint and answers herein filed, and it appearing to the Commission that the matters and things forming the subject matter of this complaint are covered by Regulations No. 4 relating to labeling and advertising of wine effective December 15, 1936, pursuant to the Federal Alcohol Administration Act of August 29, 1935 (49 Stat. L. 977), and the Commission being fully advised in the premises:

It is ordered, That the case growing out of the complaint hereinbefore issued on November 12, 1935, be, and the same is hereby closed, without prejudice.

Mr. PGad B. Morehouse for the Commission.

Mr. M. Mac Schwebel, of New York City, for respondent.

E. A. WENTE AND H. L. WENTE, doing business as WENTE BROTHERS.
Complaint, January 31, 1936. Order, January 23, 1937. (Docket 2703.)

Charge: Using misleading name as to source or origin of product and advertising falsely or misleadingly, and misbranding or mislabeling in said respect; in connection with growing and cultivating grapes and manufacture and sale of wines therefrom.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon complaint and answer herein filed, and it appearing to the Commission that the matters and things forming the subject matter of this complaint are covered by Regulations No. 4 relating to labeling and advertising of wine, effective December 15, 1936, pursuant to the Federal Alcohol Administration Act of August 29, 1935 (49 Stat. L. 977), and the Commission being fully advised in the premises:

It is ordered, That the case growing out of the complaint hereinbefore issued on February 17, 1936, be, and the same is hereby, closed without prejudice.

Mr. William L. Pencke and *Mr. PGad B. Morehouse* for the Commission.

Mr. Marion DeVries, of Washington, D. C., for respondents.

SHAWAN-JONES, INC. Complaint, February 17, 1936. Order, January 23, 1937. (Docket 2723.)

Charge: Misbranding product as to source or origin and advertising falsely or misleadingly; in connection with the manufacture and sale of wines.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon complaint and answer herein filed, and it appearing to the Commission that the matters and things forming the subject matter of this complaint are covered by Regulations No. 4 relating to labeling and advertising of wine effective December 15, 1936, pursuant to the Federal Alcohol Administration Act of August 29, 1935 (49 Stat. L. 977), and the Commission being fully advised in the premises:

It is ordered, That the case growing out of the complaint hereinbefore issued on February 17, 1936, be and the same is hereby closed without prejudice.

Mr. PGad B. Morehouse for the Commission.

Mr. Marion DeVries, of Washington, D. C., for respondent.

UNIVERSAL DISTILLERS, INC. Complaint, June 20, 1935. Order, January 27, 1937. (Docket 2448.)

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 purchasing, rectifying, blending, and bottling whiskies, gins, and other alcoholic beverages and sale thereof.

Record closed, after trial, by the following order:

This matter coming on for consideration by the Commission upon the complaint herein issued June 20, 1935, and it appearing to the Commission that this respondent is no longer engaged in business as a rectifier and wholesaler of spirituous liquors and has no permit of any kind to so engage in interstate commerce or in the District of Columbia; and it therefore appearing to the Commission that it is unlikely that said respondent will resume the acts and practices constituting the violations of law as alleged in 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 June 20, 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 thereof, in accordance with its regular procedure.

Before *Mr. John L. Hornor* and *Mr. Charles P. Vicini*, trial examiners.

Mr. PGad B. Morehouse for the Commission.

CHOCOLATE PRODUCTS Co., INC. Complaint, November 6, 1936. Order, January 27, 1937. (Docket 2971.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Record closed by the following order:

This matter having come on for consideration by the Commission upon supplemental investigation from which it appears that respondent, Chocolate Products Company, Inc., has not engaged in the business of manufacturing and selling candies since the 4th day of October 1936; that its physical assets have been dismantled and sold; and it appearing that respondent is not likely to resume the violations of law alleged in the Commission's complaint hereinbefore issued on November 6, 1936, and the Commission having duly considered the same and being fully advised in the premises;

It is ordered, That the case growing out of the said complaint of November 6, 1936, be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume prosecution thereof in accordance with its regular procedure at such future time as the facts and circumstances may warrant.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

ELECTRIC PAINT & VARNISH Co. Complaint, March 19, 1935. Order, January 30, 1937. (Docket 2336.)

Charge: Advertising falsely or misleadingly and misrepresenting business status and history of business and prices, nature, and com-

position of product; in connection with the sale of paints, caulking materials, roof coating, and allied products.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration 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 case growing out of the complaint hereinbefore issued on March 19, 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 and upon the understanding that the closing of this case is based upon the record herein and is not to be regarded as a precedent.

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

Mr. Astor Hogg for the Commission.

Mr. Samuel Doerfler, of Cleveland, Ohio, for respondent.

EDWARD A. KATZ and SAMUEL KATZ, trading as GLOBE DISTILLING Co. Complaint, May 18, 1935. Order, January 30, 1937. (Docket 2398.)

Charge: Using misleading corporate name as to business status, and misbranding or mislabeling and advertising falsely or misleadingly in said respect, in violation of Section 5, and of Section 1 of Article V of the Code of Fair Competition for the Distilled Spirits Rectifying Industry, and as such in violation of Section 3 of Title 1 of the National Industrial Recovery Act and Section 5 of the Federal Trade Commission Act; in connection with the purchasing, rectifying, blending and bottling of whiskies, gins, and other spirituous beverages, and in the sale thereof.

Record closed by the following order:

This matter coming on for consideration by the Commission upon supplemental investigation, and it appearing that the respondents, Edward A. Katz and Samuel Katz, trading under the firm name and style Globe Distilling Company, have dissolved their copartnership and formed a corporation known as Liquor Syndicate, Inc., to which their rectifying plant has been transferred and a rectifier's basic permit issued by the Federal Alcohol Administration of the Treasury Department under date of November 23, 1935, and that it does not appear that the said Edward A. Katz and Samuel Katz will resume commerce in spirituous beverages under the name Globe Distilling Company, and the Commission being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein issued on the 18th day of May 1935, against said Edward A. Katz

and Samuel Katz 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.

Mr. William H. Hodges, of Los Angeles, Calif., for respondents.

AMERICAN SAFETY RAZOR CORP. Complaint, October 8, 1935. Order, January 30, 1937. (Docket 2571.)

Charge: Discriminating in prices; in connection with the manufacture and sale of safety razors, safety razor blades, shaving brushes and other shaving accessories.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon respondent's petition filed herein on January 15, 1937; and it appearing to the Commission that respondent, on or about June 20, 1936, abandoned the practices and violations of law alleged in the Commission's complaint issued herein on October 8, 1935, and has not since resumed said practices and violations, and that it is unlikely that respondent will resume said practices and violations; and the Commission being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on October 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, or to issue new complaint, in accordance with its regular procedure.

Before *Mr. Edward M. Averill*, trial examiner.

Mr. Everett F. Haycraft and *Mr. A. W. DeBirny* for the Commission.

Mr. Charles F. Goldberg, of New York City, for respondent.

THE VOGAN CANDY CORP. Complaint, May 23, 1936. Order, January 30, 1937. (Docket 2818.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candy.

Record closed, after answer and trial, by the following order:

This matter having come on for consideration by the Commission upon testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, from which it appears that respondent, The Vogan Candy Corporation, has not engaged in the business of manufacturing and selling candies since the 19th day of August 1936; that its physical assets have been dismantled and sold; and it appearing that respondent is not likely to resume the violations of law alleged in the Commission's complaint

hereinbefore issued on May 23, 1936, 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 said complaint of May 23, 1936, be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume prosecution thereof, in accordance with its regular procedure, at such future time as the facts and circumstances may warrant.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

R. M. BARNETT, trading as **HOME AND SCHOOL EDUCATION SOCIETY**.
Complaint, February 14, 1936. Findings as to the facts and order, December 8, 1936.¹ Order setting aside, etc., December 12, 1936. Order accepting stipulation in settlement of case, February 4, 1937. (Docket 2721.)

Charge: Offering deceptive inducements to purchase as to free product, special offers and prices, misrepresenting business status, connections, and nature, history and success and endorsement of product or offering, and using misleading trade name; in connection with the purchase and sale of books or encyclopedias together with a loose-leaf extension service.

Stipulation accepted in settlement of case by order as follows:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent above named has entered into a stipulation as to the facts and agreement to cease and desist from certain enumerated practices, which stipulation and agreement was on the 1st day of February, 1937, tendered to the Commission in settlement of this case, and the Commission having duly considered the same and being now fully advised in the premises;

It is ordered, That said stipulation and agreement to cease and desist so entered into by respondent be, and the same hereby is, accepted in settlement of this case, and that the case growing out of the complaint hereinbefore issued on February 14, 1936, be, and the same hereby is, settled by such stipulation and agreement to cease and desist from such practices, without prejudice, however, 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.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Allen C. Phelps for the Commission.

¹ Not published.

F. A. NORTH CO. ET AL. Complaint, September 22, 1936. Order, February 5, 1937. (Docket 2927.)

Charge: Advertising falsely or misleadingly by the use of "bait" or "come on" advertisements and letters to contact prospects; in connection with the manufacture and sale of pianos.

Record closed, after answer, by the following order:

This matter coming on for consideration 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 case growing out of the complaint hereinbefore issued on the 22nd day of September 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. Wm. T. Chantland for the Commission.

Chapman & Chapman and *Mr. Leighton P. Stradley*, of Philadelphia, Pa., for respondents.

THE NACOR MEDICINE CO. Complaint, July 23, 1936. Order accepting stipulation in settlement of case, February 6, 1937. (Docket 2879.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to properties and safety of product; in connection with the manufacture and sale of a proprietary medicine designated "Nacor" and "Nacor Kaps" for asthma.

Stipulation accepted in settlement of case by order as follows:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent has 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 22nd day of January 1937, tendered to the Commission having duly considered the case, and being now fully advised in the premises;

It is ordered, That said stipulation and agreement to cease and desist so entered into by respondent be, and the same hereby is, accepted in settlement of this case, and that the case growing out of the complaint hereinbefore issued on July 23, 1936, be, and the same hereby is, settled by said stipulation and the agreement to cease and desist from such practices, without prejudice, however, 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. A. W. DeBirny and *Mr. William L. Pencke* for the Commission.

Bright, Thompson & Hinrichs, of Washington, D. C., for respondent.

GROUP SALES CORP. Complaint, September 17, 1936. Findings as to the facts and order, January 23, 1937.¹ Order setting aside, etc., February 9, 1937. (Docket 2922.)

Charge: Advertising falsely or misleadingly as to source or origin and quality and nature of product; in connection with jobbing, wholesaling and sale of silk and rayon piece goods.

Order granting motion to set aside and vacate findings as to the facts and conclusion and order to cease and desist as follows:

This matter coming on to be heard by the Commission upon the motion filed herein on the 4th day of February 1937, by Bangser and Kaufmann, attorneys for the respondent herein, to set aside and vacate the findings as to the facts and conclusion and order to cease and desist heretofore made and entered on January 23, 1937, and the Commission having duly considered the said motion and the record herein and being now fully advised in the premises:

It is ordered, That the motion to set aside and vacate the findings as to the facts and conclusion and order to cease and desist made and entered on January 23, 1937, be and the same hereby is granted.

It is further ordered, That the stipulation as to the facts, motion to withdraw answer and the substitute answer dated December 15, 1936, heretofore filed in this cause be and the same are hereby stricken from the record.

It is further ordered, That the original answer dated October 2, 1936 and heretofore filed herein, be and the same hereby is reinstated into the record and this cause proceed regularly to trial.

Before *Mr. Miles J. Furnas* and *Mr. John J. Keenan*, trial examiners.

Mr. Morton Nesmith for the Commission.

Bangser & Kaufmann, of New York City, for respondent.

STERLING PRODUCTS, INC. Complaint, July 25, 1935. Order, February 11, 1937. (Docket 2502.)

Charge: Acquiring stock in competitor in violation of Section 7 of the Clayton Act; in connection with the manufacture and sale of pharmaceutical preparations including dental and hair preparations.

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.

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

¹ Not published.

Mr. Everett F. Haycraft and Mr. Reuben J. Martin for the Commission.

Rogers, Ramsay & Hoge, of New York City, for respondent.

THOMAS LEEMING & Co., INC. Complaint, March 30, 1936. Order, March 1, 1937. (Docket 2751.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to properties and unique character of product; in connection with the sale of a treatment for the relief of pain designated Analgesique Baume Bengue.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent, Thomas Leeming Company, Inc., has 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 23rd day of February 1937, 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 March 30, 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. John Darsey for the Commission.

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

DISTILLERS Co., LTD. Complaint, June 15, 1935. Order, March 12, 1937. (Docket 2435.)

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 producing and bottling of gins in a rectifying plant and in the sale thereof.

Record closed, after answer, by the following order:

This case coming on for consideration by the Commission upon the complaint herein issued June 15, 1935, and respondent's motion and affidavit herein filed February 27, 1937, and it appearing to the Commission that this respondent has engaged and is now engaged solely in the manufacture and sale of gins by it produced by a process of rectification whereby tax-paid purchased alcohol is redistilled over juniper berries and other aromatics, and it further appearing that under existing laws and regulations applicable thereto respondent is permitted to label such gin as distilled gin and required to state on said label who distilled it, and the Commission now being fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on June 15, 1935, be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume prosecution thereof in accordance with its regular procedure, should future facts and circumstances so warrant.

Mr. Edw. W. Thomerson for the Commission.

Davis, Polk, Wardwell, Gardiner & Reed, of New York City, and *Alvord & Alvord*, of Washinfon, D. C., for respondent.

LOUIS SCHEAR AND JACK SCHRADER, doing business as SCHEAR & SCHRADER. Complaint, June 10, 1936. Order, March 20, 1937. (Docket 2839.)

Charge: Simulating falsely and misleadingly trade name, labels and printed matter and instructions of product of competitor; in connection with the sale of a novelty designated "Hindu Cones".

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 without prejudice.

Before *Mr. W. W. Sheppard* and *Mr. Robert S. Hall*, trial examiners.

Mr. John Darsey for the Commission.

Mr. Harry Krokow, of New York City, for respondents.

CEREAL PRODUCTS REFINING CORP., ACME BREWING CO., BOHEMIAN DISTRIBUTING CO., LTD. and CALIFORNIA BREWING ASS'N. Complaint, August 5, 1936. Order, March 23, 1937. (Docket 2888.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to properties of product; in connection with the manufacture and sale of beer products.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission and it appearing that respondents have duly executed a stipulation as to the facts and agreement to cease and desist from certain enumerated practices, which stipulation and agreement is hereby approved by the Commission, and the Commission having duly considered the same 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 August 5, 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 the Commission's regular procedure.

Mr. Jay L. Jackson for the Commission.

Mr. Norman A. Eisner, of San Francisco, Calif., and *Mr. William Stanley*, *Mr. J. Edward Burroughs, Jr.* and *Mr. William P. Arnold*, of Washington, D. C., for respondents.

FLORI MOTHPROOFING METHOD, INC. Complaint, Dec. 31, 1936. Order, April 3, 1937. (Docket 3027.)

Charge: Advertising falsely or misleadingly as to use or endorsement and properties of product and service and guarantee incident thereto; in connection with the sale of a liquid preparation designated "Flori" for use on fabrics, garments, carpets, rugs, furniture, etc., to protect them from the ravages of moths, beetles, etc.

Dismissed, after answer and stipulation, 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.

Mr. Edward E. Reardon for the Commission.

C. E. TREES & Co., INC. Complaint, November 11, 1935: Order, April 15, 1937. (Docket 2622.)

Charge: Using misleading trade name and misbranding or mislabeling; in connection with the manufacture and sale of a flavoring extract for bottling with carbonated water, and for use in mixing alcoholic drinks.

Record closed, after answer and trial, by the following order:

This matter coming on to be heard upon the application of attorney for respondent that the case be closed without prejudice to the right of the Commission to renew the same should future circumstances warrant, and it appearing to the Commission that the respondent has entered into a satisfactory stipulation with the Commission to cease and desist forever from the unfair methods of competition alleged in a complaint herein issued on November 11, 1935, and the Commission having duly considered the same and being now fully informed in the premises;

It is ordered, That the case growing out of the aforesaid complaint issued herein on November 11, 1935, be and the same is hereby closed without prejudice to the right of the Commission, should future facts and circumstances warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Before *Mr. John J. Keenan*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Lockwood, Goldsmith & Galt, of Indianapolis, Ind., for respondent.

CUMMER PRODUCTS Co. Complaint, November 18, 1935. Order, April 17, 1937. (Docket 2632.)

Charge: Misrepresenting properties of product; in connection with the sale of a cleaning fluid designated as "Energine".

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 without prejudice.

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

Mr. John Darsey for the Commission.

Schaefer & Lawrence, of Cleveland, Ohio, for respondent.

W. H. CHARLESTON, trading as MARAJAH & Co. and KALA PRODUCTS Co. Complaint, February 24, 1936. Order, April 20, 1937. (Docket 2730.)

Charge: Advertising falsely or misleadingly as to qualities of product; in connection with the sale of various cosmetic and medical preparations.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and its appearing that the respondent, W. H. Charleston, trading as Marajah & Company and Kala Products Company, is no longer engaged in business and has discontinued the use of the practices charged in the complaint;

It is ordered, That the case growing out of the complaint hereinbefore issued on February 24, 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.

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

Mr. George Foulkes for the Commission.

Mr. John S. Leahy and *Mr. Herbert E. Barnard*, of St. Louis, Mo., for respondent.

NATIONAL CANDY Co., INC. Complaint, April 30, 1930. Original order, April 3, 1934. (Docket 1802). 18 F. T. C. 282. Order vacating, etc., April 21, 1937.

The cease and desist order in this candy lottery case was ordered vacated and set aside by the following order:

This matter coming on for consideration, and the Commission being fully advised in the premises;

It is ordered, That the order to cease and desist heretofore entered and issued on April 3, 1934, be and the same is hereby vacated and set aside.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Lowenhaupt, Waite & Stolar, of St. Louis, Mo., for respondent.

CHILEAN NITRATE SALES CORPORATION AND CHILEAN NITRATE EDUCATIONAL BUREAU, INC. Complaint, March 23, 1937. Order, April 29, 1937. (Docket 3089.)

Charge: Advertising falsely or misleadingly as to unique advantages and properties of product and facts pertaining thereto; in connection with the importation and sale of a fertilizer designated as Chilean nitrate of soda.

Dismissed by the following order:

This matter coming on to be heard by the Commission, and it appearing that the respondents have entered into a stipulation whereby they agree that they will not further exhibit or circulate a motion picture entitled "Minor Elements and Natural Salts in Plant Nutrition" or a pamphlet entitled "Vital Impurities, The Fascinating Story of Chilean Natural Nitrate, the Only Nitrogen That Comes from the Ground," 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.

Mr. Floyd O. Collins for the Commission.

Mr. William S. Culbertson, of Washington, D. C., for respondents.

J. A. STRANSKY MANUFACTURING Co. Complaint, April 25, 1929. Original order, June 30, 1930. (Docket 1612). 14 F. T. C. 123. Order setting aside, etc., April 30, 1937.

The cease and desist order in this misrepresentation case was ordered set aside and case reopened by the following order:

This matter coming on to be heard by the Commission upon the recommendation of the Chief Counsel, that the outstanding order to cease and desist be set aside and the case be reopened for the taking of testimony, and the Commission having duly considered the said recommendation and being now fully advised in the premises;

It is ordered, That the outstanding order to cease and desist herein be set aside and the case be reopened for the taking of testimony.

Before *Mr. John W. Norwood* and *Mr. William C. Reeves*, trial examiners.

Mr. Floyd O. Collins for the Commission.

M. SWIFT & SONS, INC. Complaint, December 7, 1935. Order, May 1, 1937. (Docket 2649.)

Charge: Advertising falsely or misleadingly as to quality of product; in connection with the manufacture and sale of gold leaf used for gold lettering on signs and for gilding various articles, such as badges, picture frames, etc.

Record closed, 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 case growing out of the complaint hereinbefore issued on December 7, 1935, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to resume prosecution of the complaint in accordance with its regular procedure.

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

Mr. Joseph C. Fehr for the Commission.

Rounds, Dillingham, Mead & Neagle, of New York City, for respondent.

THE NASH MOTORS' CO. Complaint, November 30, 1936. Order, May 5, 1937. (Docket 3000.)

Charge: Advertising falsely or misleadingly as to nature and terms; in connection with deferred or time-payment plan sale of motor vehicles, and in the use, as alleged in the complaint and set forth in the approved stipulation as to the facts and agreement to cease and desist, of the following language in advertising the financing plan or method in question, namely:

New C. I. T. 6% Budget Plan

New 6%

C. I. T. TIME

PAYMENT PLAN

Convenient 6% Terms.

Dismissed by the following order:

This matter coming on to be heard by the Commission and it appearing that the respondent The Nash Motors' Company has entered into a stipulation whereby it agreed to cease and desist from separately, concertedly, cooperatively or otherwise using any advertising matter or furnishing to authorized dealers or distributors any advertising matter in which the expression "6%" is used, without equally prominent use, in direct conjunction therewith, of explanatory language which makes it clear that the said 6% does not refer to or indicate 6% per annum, simple interest, 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.

Mr. Daniel J. Murphy for the Commission.

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

NOTE.—Stipulation referred to (submitted, executed, by Nash-Kelvinator Corporation by letter authorizing, "in the interest of accuracy", certain charges "to cover both the merger of The Nash Motors Company with the Kelvinator Corporation under the name 'Nash-Kelvinator Corporation' and also to cover the fact that our business dealings have been with subsidiaries of Commercial Investment Trust Corporation", as there set forth), after preliminary recitals detailing investigation and complaint in the premises and that dismissal of such complaint, subject to execution of stipulation in question, is within the public interest, etc., and after setting forth stipulation and agreement between Commission and the respondent to dispose of the matter without necessity of taking testimony, etc., and corporate status of respondent Nash Motors' Co., its business as a motor manufacturer selling to dealers and distributors, etc., and adoption, in cooperation with its various authorized dealers, of the plan in question through the Commercial Investment Trust Corporation, and advertisement thereof in the language above set forth by respondent motor company and its authorized dealers and distributors, proceeds as follows (in common with the approved stipulations agreed to in the other similar cases hereinafter set forth, and dismissed by the Commission):

The said advertising was the outgrowth of the following facts:

Prior to the adoption of the said plan or method of finance as set forth in this proceeding, the general practice in the sale of motor vehicles in the United States on an instalment basis involved the use of fixed schedules of financing charges supplied to the dealer by the finance companies. These tables were stated in terms of dollars and cents, and there existed no formula by which the retail purchaser of the motor vehicle on an instalment basis could check the accuracy of the added charges. Under this system, for the computation of instalment financing charges, it was possible for certain dealers to enhance financing charges to the purchaser without the purchaser's knowledge, and such practices were at times employed by the dealer. To eliminate this practice and to afford to the retail purchaser a convenient means by which he could himself compute the correct amount of the financing charge, the so-called "6% Plan" was adopted by one of the Motor Companies in conjunction with a Finance Company; and by force of competition, the plan was adopted throughout the motor vehicle industry in the United States. This plan offered lower financing charges for the purchase of motor vehicles on an instalment basis than had ever theretofore been generally offered.

The purpose of the respondent in the employment of the advertising of the above quoted was to acquaint the retail purchaser of motor vehicles, first, with the fact that a lower financing charge was being offered, and, second, with the method of computation of the correct financing charge which he should pay on an instalment contract; and in the use of the said advertising the respondent did not contemplate that it would be construed to mean 6% simple interest per annum.

Certain purchasers and prospective purchasers did interpret and understand that the advertising of said finance plan or method as above set forth did con-

template a simple interest charge at 6% per annum upon the deferred and unpaid balance of the purchase price of motor vehicles, and this did cause such members of the purchasing public to buy motor vehicles in that belief.

For competitive reasons the type of advertising above quoted was discontinued before the issuance of the complaint herein.

The respondent hereby stipulates and agrees, To cease and desist from separately, concertedly, cooperatively or otherwise using any advertising matter or furnishing to authorized dealers or distributors any advertising matter in which the expression "6%" is used, without equally prominent use, in direct conjunction therewith, of explanatory language which makes it clear that the said 6% does not refer to or indicate 6% per annum, simple interest.

And it is further stipulated and agreed, That the respondent will not at any time use or employ any advertising, which, regardless of lack of any deceptive intent, may reasonably be construed as indicating that the additional cost of purchasing on time payments is only 6% or any other percent simple interest per annum on unpaid balances of the purchase price of motor vehicles, if such is not the fact.

It is also stipulated and agreed, That if the said respondent should ever resume or indulge in any of the practices, the use of which it has herein agreed to cease and desist, this stipulation of facts may be used in evidence against it in any proceeding that the Commission may institute against the said respondent.

MEMORANDA

Commission, as of May 5, 1937, by similar orders based on substantially similar stipulations,¹ due allowance for varying corporate identities, etc., and also for some variance in description of plan in question, dismissed complaints in five cases in which charge was, in substance, the same, in which complaints issued December 1, 1936, and in which Commission was represented by *Mr. Daniel J. Murphy*, and respondents by *Davies, Richberg, Beebe, Busick & Richardson*, of Washington, D. C., along with *Foster & Cameron*, of Lansing, Mich., for *Reo Motor Car Co.*, and *Bodman, Longley Bogle, Middleton & Farley*, of Detroit, Mich., for *Packard Motor Car Co.*

Said cases, together with the language variously employed in describing plan in question, as set forth in the respective stipulations (thereafter similar to that in the Nash case), follow: ²

¹ As in the stipulation in the Nash case, hereinbefore referred to, three of the stipulations, namely, those having to do with the Graham-Palge, Hudson and Reo cases, in which Commercial Investment Trust Corporation was involved, had explanatory letters setting forth that said corporation was not an operating concern, but that its various subsidiaries were the concerns which conducted business, and suggesting and authorizing, therefore, certain changes on such account.

² In Ford Motor Co. and Universal Credit Corp., Docket 3005, in which complaint issued as of December 1, 1936, said complaint was on May 5, 1937, dismissed as to Universal Credit Corp., it appearing that said last named corporation had entered into a stipulation, as hereinabove set forth, agreeing to cease and desist from using such representations as to the 6% terms, as there stated, namely:

"With the usual low down-payment, \$25 a month buys any type of new Ford car. Financing at ½ of 1% a month, or 6% for twelve months. You receive insurance at conference rates. Complete fire and theft insurance—and \$50 deductible collision, and

CHRYSLER CORP., CHRYSLER SALES CORP., DESOTO MOTOR CORP., DODGE BROTHERS CORP., PLYMOUTH MOTOR CORP., AND COMMERCIAL CREDIT Co. (Docket 3002.)

Ask for the New Official Chrysler Motors Commercial Credit Company Time Payment 6% Plan. You can figure it out for yourself.

1. Start with your unpaid balance
2. *Then add insurance cost.
3. Then multiply by 6%—for a 12 months' plan. One-half of one per cent per month for periods more or less than 12 months.

*In some states a small legal documentary fee is required.

NO OTHER CHARGES

Through the Official Chrysler Motors Commercial Credit Company New 6% Time Payment Plan you will find it easy and less costly to arrange time payments to fit your budget.

Ask about the new Chrysler Motors-Commercial Credit 6% Time Payment Plan.

You pay for credit accommodations only $\frac{1}{2}$ of 1% per month on your original unpaid balance.

6% time payment plan . . . Ask for the Official Chrysler Motors-Commercial Credit Company 6% Time Payment Plan Available through all Chrysler Dealers.

NEW EASY TERMS

6% Chrysler Motors Commercial Credit Company

TIME PAYMENT PLAN

EASY TO UNDERSTAND!

GRAHAM-PAIGE MOTORS CORP. AND COMMERCIAL INVESTMENT TRUST CORP. (Docket 3003.)

GRAHAM-PAIGE CARS CAN BE PURCHASED ON THE SIX PER CENT C. I. T. CREDIT PLAN

USE THE CONVENIENT C. I. T. CREDIT PLAN WITH PAYMENTS AS LOW AS \$25.00 PER MONTH

protection against accidental physical damage to your car. The Universal Credit Company offers exclusively the Authorize Ford Finance Plan."

"\$25 a month buys any model 1936 Ford V-8. Usual low down-payment. $\frac{1}{2}$ % per month, or 6% per year, includes insurance. Ask any Ford dealer about the Universal Credit Company \$25-a-month 6% Finance Plans."

"\$25 a month with the usual low down-payment, buys any new Ford V-8 car on new U. C. C. $\frac{1}{2}$ % per month finance plans."

"Ask about the \$25-a-month and $\frac{1}{2}$ % per month Finance Plans of the Universal Credit Company."

"Ask your Ford dealer about the new \$25 a-month and U. C. C. 6% finance plan."

HUDSON MOTOR CAR CO. AND COMMERCIAL INVESTMENT TRUST CORP.
(Docket 3004.)

Save—with the new Hudson—C. I. T. 6% time payment
plan . . . Low Monthly Payments.

The new C. I. T. Hudson 6% Budget Plan Reduces Time
Payment Costs.
6%

C. I. T. CORPORATION
IN COOPERATION WITH
HUDSON MOTOR CAR CO.

REO MOTOR CAR CO. (Docket 3006.)

Buy on Reo's New C. I. T. 6% Finance Plan. The new
Reo or—C. I. T. 6% Plan—makes it possible for you to buy
America's finest Six on most favorable terms.

PACKARD MOTOR CAR CO. (Docket 3007.)

6% Payment-out-of-Income Plan [Through Commercial
Credit Co.]

CONTINENTAL BRIAR PIPE CO., INC. Complaint, April 27, 1937.
Order, May 15, 1937. (Docket 3118.)

Charge: Advertising falsely or misleadingly and misbranding or
mislabeling as to properties of product and circumstances of manu-
facture and sponsorship or endorsement thereof; in connection with
the manufacture and sale of tobacco pipes.

Record closed by the following order:

This matter coming on for consideration by the Commission upon
the record, and it appearing that the respondent, Continental Briar
Pipe Company, Inc., has entered into a stipulation as to the facts
and an agreement to cease and desist from certain enumerated prac-
tices, which stipulation and agreement was, on the 12th day of May
1937, 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 herein-
before issued on April 27, 1937, 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 com-
plaint in accordance with its regular procedure.

Mr. Wm. T. Chantland for the Commission.

E. S. BERGHOLT, trading as MARILYN LOUISE COSMETICS. Com-
plaint, November 14, 1935. Order, May 17, 1937. (Docket 2626.)

Charge: Advertising falsely or misleadingly as to business status and agents' earnings or opportunities and quality and value of product; in connection with the sale of cosmetics.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent is no longer marketing his products under the trade name Marilyn Louise Cosmetics and has entirely ceased his business activities under such trade name, 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 November 14, 1935, 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.

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

Mr. William L. Taggart for the Commission.

D. GOLDENBERG, INC. Complaint, May 1, 1930. Original order, April 3, 1934. (Docket 1810). 18 F. T. C. 327. Order vacating, etc., May 18, 1937.

The cease and desist order in this candy lottery case was ordered vacated by the following order:

This matter coming on to be heard, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the order to cease and desist heretofore issued on April 3, 1934, be and the same hereby is vacated and set aside.

It is further ordered, That an amended and supplemental complaint forthwith issue, charging respondent, in its own name and right and trading as P. C. Sales Company, with the violation of Section 5 of the Federal Trade Commission Act (15 U. S. C. A., Section 45).

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

Mr. William Ginsburg, of Philadelphia, Pa., for respondent.

PROCON GROCERY SERVICE Co., INC. ET AL. Complaint, March 12, 1937. Order, May 19, 1937. (Docket 3076.)

Charge: Discriminating in price in violation of Subsection (c) of Section 2 of Clayton Act; in connection with the sale of groceries and food products.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent, Procon Grocery

Service Co., Inc., was dissolved on May 6, 1937, subsequent to the issuance of the complaint herein, and is no longer in existence, and that the other respondents in this proceeding being all of the stockholders and cooperative members of said respondent Procon Grocery Service Co., Inc., have certified to the Commission a statement to the effect that they have dissolved said corporation in the utmost good faith, and that they do not intend, as a group or individually, to organize any similar corporation or any unincorporated association to engage in the business practices described in the complaint; and the Commission having duly considered the above matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on March 12, 1937, 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. Allen C. Phelps for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., for respondents.

ROY STRINGER CO., LTD. Complaint, November 18, 1935. Order, May 22, 1937. (Docket 2633.)

Charge: Offering deceptive inducements to purchase, through use of misleading and fraudulent sales scheme; in connection with the sale of coin-vending machines of various types.

Record closed, under answer, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the business of the respondent, Roy Stringer Company, Ltd., was conducted under the sole management of its president, who is now deceased; that no business has been done by the respondent concern since the death of its president in October, 1935; that the respondent concern has not maintained any office or business address since October, 1935; and that there is no likelihood of the resumption of business on the part of the respondent, 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 November 18, 1935, 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. John Darsey for the Commission.

White & Jones, of Indianapolis, Ind., for respondent.

INTERNATIONAL SILVER Co. Complaint, March 3, 1936. Order, May 26, 1937. (Docket 2735.)

Charge: Misrepresenting prices; in connection with the manufacture and sale of silver-plated ware.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon a stipulation as to the facts and an agreement to cease and desist executed for and on behalf of said respondent by its attorneys of record, and the Commission having duly considered the said stipulation and the record, and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein issued on the 3rd day of March 1936, against the said International Silver Co. be, and the same hereby is, 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. James M. Hammond for the Commission.

Bartlett, Eyre, Scott & Keel, of New York City, for respondent.

STIPULATIONS ¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST ²

1882. False and Misleading Advertising—Auxiliary Lubricant.—Albert S. Braaten, an individual engaged in the compounding of an auxiliary lubricant with a colloidal graphite base, intended to be added to ordinary lubricating oils and motor fuel oils; and in the sale and distribution of said product under the trade name of "More-X-Super-Charged Colloidal Graphite", 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.

Albert S. Braaten in soliciting the sale of and selling his lubricant in interstate commerce, agreed to cease and desist from the use in his advertisements or advertising matter of statements or representations to the effect that by the use of "More-X" friction has been or can be reduced as much as 50%, or in any other exaggerated degree not warranted by experiments conducted under scientific test conditions; and/or that the quantity of oil required to be used is reduced; that by the use of "More-X" wear or repairs are stopped; that by the use of "More-X" it is possible for a motor to function for phenomenal lengths of time, without damage, in change or temporary failure of the oil supply; that the product, "More-X", defies heat and lubricates up to 7500° F.; that "More-X" penetrates or adheres to the metal surfaces of motors, or penetrates the pores; the use of extravagant and misleading claims of superiority of "More-X" over other similar lubricants. (Dec. 1, 1936.)

¹ For false and misleading advertising stipulations effected through the Commission's special board. See p. 1469 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, Dec. 1, 1936, to May 31, 1937, inclusive. Digests of all previous stipulations of this character accepted by the Commission, that is, numbers 1 to 1881, inclusive, may be found in vols. 10 to 23 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."

1883. **False and Misleading Trade or Corporate Name and Advertising—Air Conditioning Device.**—Gaylord Manufacturing Co., a corporation, engaged in the sale and distribution in interstate commerce of a multiple speed fan having a so-called “purifying” attachment composed of two electrically heated devices which vaporize chemicals that are introduced into the air current by the circulator, the chemicals consisting of chlorine and formaldehyde whose strong odor is neutralized by perfume, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The words “air conditioning” signify the simultaneous control by a mechanical device of various factors affecting both the physical and chemical conditions of the atmosphere within a given structure as a room, building, and the like, said factors including temperature, humidity and motion or circulation of the air within the structure. A device which does not control each and all of the designated factors is not properly represented, designated or referred to as an air conditioner within the purview and meaning of these words as generally understood by the trade and public.

Gaylord Manufacturing Co. agreed to cease and desist from the use in its advertising matter of the words “air conditioning” as descriptive of its device designated “Fresh’nd-Aire” when in fact, said device is not such as falls within the class of air conditioners according to the understanding of the trade and purchasing public; and from the use in its advertising of the words “air conditioning” either alone or in connection or conjunction with the word “system” or “unit” or “features” or with any other word or words or in any way so as to import or imply that said device will perform air conditioning, that is to say, that it simultaneously controls by a mechanical device the various factors affecting both the physical and chemical conditions of the atmosphere within any given structure, as a room, building, or the like, said factors including temperature, humidity and motion or circulation. Said corporation also agreed to cease and desist from the use in its advertising of the word “sterilizes” so as to import or imply that its device, actually destroys all germs within the space in which said device is operated; of statements such as “Fresh’nd-Aire Alone Accomplishes Cooling Effects of 8 to 10 degrees Lower Temperatures in Summer” or “Real Cooling Comfort” so as to import or imply that said device, when operated within a room or other enclosed space gives the effect of reducing temperature in such space from 8 to 10 degrees. The said corporation further agreed to cease and desist from the use of the word “manufacturing” as part of its corporate or trade name under which to carry on its said business; and from the use of the word “manufacturing” in any way so as to import or imply that the said

corporation actually owns and operates or directly and absolutely controls a plant or factory wherein the products which it sells and distributes in interstate commerce are made or manufactured, when such is not the fact. (Dec. 1, 1936.)

1884. **False and Misleading Advertising—Courses of Instruction and Textbooks.**—Oxford Institute, a corporation engaged in conducting a correspondence school and in the sale in interstate commerce of courses of instruction and textbooks in commercial branches, 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.

Oxford Institute, in soliciting the sale of and selling its courses of instruction and textbooks in interstate commerce, agreed to cease and desist from stating or representing, directly or indirectly, through its salesmen or other representatives, by means of its advertisements or advertising matter circulated in interstate commerce, or in any other way that its prospective subscribers are selected or designated by leading people in their communities; that the opportunity to become a subscriber to its course is limited to one, or to a small number in each community, when no such limitation is observed; that an arrangement has been made with a local teacher to give examinations and instructions, when such is not the fact; that the Oxford Institute is a college institution; that the Institute will defer the payment of balances due for tuition until the completion of the course, when such is not the fact; that the Institute employs students as its local representative; that where more than one student is enrolled in a community, the payments made by the extra ones would be refunded; that the completion of the Oxford Institute's course would give a student two years college credit in business administration; that the textbooks furnished subscribers would, if purchased elsewhere, cost more than was asked for the complete course; that subscribers paid for the textbooks; that students who passed their examination with the Oxford Institute were in a position to pass a university entrance examination; that the Oxford Institute's examination papers are examined and corrected only by professors holding a university degree; failing and refusing to make refunds of partial payments on account of subscriptions in cases where agents have made representations regarding the time of payment of deferred amount by which the Oxford Institute is unwilling to abide; publishing and distributing the lecture by Dr. Russell H. Conwell, entitled "Acres of Diamonds", so dressed as to make it appear that the same was delivered for the benefit of students of the Oxford Institute; and/or without disclosing that the same was not so delivered. (Dec. 2, 1936.)

1885. **Disparaging and False and Misleading Advertising—Razor Blades.**—Cooperative Distributors, Inc., a corporation, engaged in the

sale and distribution of razor blades, as well as other articles of merchandise 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.

Cooperative Distributors, Inc., in offering for sale and selling its razor blades in interstate commerce, agreed to cease and desist from the use in its advertising matter or otherwise of statements or representations to the effect that it has made tests of the blades of all blade manufacturers in America and/or that not one of such blades was good or dependable; and from the use of said statement or representation or of any other statement or representation of similar meaning or import, the effect of which is to unwarrantably disparage the products of competitors. The said corporation also agreed to cease and desist from the use in its advertisements of the statement "Samples were sent to 1200 shaver-consumers for testing. This time more than 90% reported them eminently satisfactory" when in fact said statement exaggerates the percentage or number of people who reported and/or misconstrues the answers of many of those who did report. The said corporation further agreed to cease and desist from the use in its advertising of all statements such as "Blades in some cases were being made purposely bad in order to increase turnover and sky-rocket sales", when in fact such statement is not warranted by the facts. (Dec. 2, 1936.)

1886. False and Misleading Brands or Labels and Advertising—Soaps.—George F. Dodge, an individual, engaged in the sale and distribution, in interstate commerce, of soaps 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 F. Dodge, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the words "olive oil" on brands, labels, or other advertisements and advertising matter, to describe or designate products the fatty content of which is not composed wholly of olive oil; and from the use of the word "olive" in any way which may import or imply that the fatty content of the products so described and designated is composed wholly of olive oil, when such is not the fact; the use of the words "soap makers" and/or "factory" on letterheads or other advertisements and advertising matter; and from the use of the words "soap makers" and/or "factory" or either of them in any way which may import or imply that he owns, controls, or operates a factory wherein the products which he sells and distributes are manufactured, when such is not the fact. (Dec. 7, 1936.)

1887. **False and Misleading Brands or Labels and Prices—Toilet Goods, Etc.**—Gero Products, Inc., a corporation, engaged in the business of manufacturing toilet goods, insecticides, and deodorants, and in the sale and distribution of its 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.

Gero Products, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on the cartons in which said products are packed, of exaggerated or misleading statements or representations concerning the value of said products or the price at which said products are sold or are intended to be sold in the usual course of trade. (Dec. 4, 1936.)

1888. **False and Misleading Brands or Labels and Advertising—Groceries.**—B. H. Rudo and Isadore Rudo, copartners, trading under the names and styles of B. H. Rudo and Brother and Atlantic Wholesale Grocery Co., engaged in the sale and distribution of groceries at wholesale, 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.

B. H. Rudo and Isadore Rudo, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from marking, stamping, branding, advertising, or representing their products as "Fancy" grade or quality which are not of that grade or quality as the same is understood by the trade and the purchasing public; and from marking, stamping, branding, advertising, or representing their products, or any thereof, as being of a higher grade or quality than is the fact. (Dec. 8, 1936.)

1889. **False and Misleading Brands or Labels and Prices—Clocks.**—Sessions Clock Co., a corporation, engaged in the business of manufacturing clocks 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.

Sessions Clock Co., in offering for sale and selling in interstate commerce, agreed to cease and desist from distributing in interstate commerce to others for sale, said products to which are affixed tags bearing what purports to be the retail selling price of said products but which said price is exaggerated, fictitious, and/or much in excess of the price at which said products are sold and/or intended to be sold in the ordinary course of trade. (Dec. 10, 1936.)

1890. **False and Misleading Advertising—Boxes.**—Marinette and Menominee Box Co., a corporation, engaged in the business of manufacturing boxes 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.

Marinette and Menominee Box Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating or representing on its letterheads or other printed matter that it has a plant at Menominee, Mich., when such is not the fact; and from the use on its printed matter of the words "Menominee, Mich.", in connection with the words "Plants at", or with any other word or words or in any way so as to import or imply that it actually owns and operates or directly and absolutely controls a plant or plants at Menominee, Mich., in which are made or manufactured products offered for sale and sold by it, when such is not the fact. (Dec. 10, 1936.)

1891. **False and Misleading Advertising—Auxiliary Lubricant.**—Leo J. Ratheim, an individual trading under the name and style of St. Clair Graphite Co., engaged in the sale of an auxiliary lubricant intended to be added to ordinary lubricating oils and motor fuel oils, under the trade name of "Graf-ex", 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.

Leo J. Ratheim, in soliciting the sale of and selling his lubricant in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter of statements or representations to the effect that by the use of Graf-ex, oil and gas bills can be cut in half; and of any other similar extravagant and misleading claims regarding an alleged reduction in the quantity of oil and gasoline used; that an advertised price of 85 cents for two pints of said product is a price of "two pints for the price of one". (Dec. 10, 1936.)

1892. **False and Misleading Advertising—Radio Tubes.**—Arcturus Radio Tube Co., a corporation, engaged in the business of manufacturing radio tubes 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.

Arcturus Radio Tube 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 otherwise of the word "metal" as descriptive

of the tubes offered for sale and sold by it in interstate 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 for use in radio receiving sets, that is to say, such tubes in which the technical elements are sealed in a vacuum in steel or such tubes wherein metal functions instead of glass, provided that if and when the technical elements of said products are sealed in a vacuum in glass which is placed within a metal shell or tube covering member and the words "metal tube" are used to designate such metal covering member, then in that case the words "metal tube" shall be conspicuously accompanied by some other suitable word or words so as to indicate clearly that said product is not that product the technical elements of which are sealed in a vacuum in steel and that will otherwise indicate clearly that said product is a product other than one wherein metal functions instead of glass. (Dec. 11, 1936.)

1893. **False and Misleading Brands or Labels and Prices—Mattresses, etc.**—National Bedding Co., a corporation, engaged in the business of manufacturing mattresses and kindred articles of bedding 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.

National Bedding Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from selling, offering for sale, or supplying to its customers for resale, its products tagged, labeled, or otherwise marked with any false, fictitious, or misleading price which is in excess of the price at which said products are intended to be sold and usually are sold at retail. (Dec. 11, 1936.)

1894. **Maintaining Resale Prices—Cutlery, Manicuring Instruments, etc.**—Schnefel Brothers, Inc., a corporation, engaged in the manufacture of cutlery, manicuring instruments and accessories, including two nail polishes which it sells and distributes under the trade name of "La Cross" 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.

Schnefel Brothers, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from seeking or obtaining agreements, promises, or assurances from the wholesale or retail trade that such trade will cooperate in the maintenance of any system of resale price maintenance established by it; seeking or obtaining promises, agreements, or assurances of cooperation from dealers failing to maintain established resale prices, that they will in future maintain the resale prices established by it, as a condition of

their being further supplied with its products; directly or indirectly carrying into effect, by cooperative methods, any system whatsoever for the maintenance of resale prices established by it. (Dec. 11, 1936).

1895. **False and Misleading Advertising—Publications.**—New York Post, Inc., a corporation, engaged in business as the publisher of the "New York Post", a daily publication, and in connection with such business, as a printer and seller of books, including the works of Charles Dickens, 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.

New York Post, Inc., in offering for sale and selling its publications in interstate commerce, agreed to cease and desist from the use in its advertising matter of the statement "embossed in gold" as descriptive of the titles and borders of said publications, which are not in fact embossed in gold or gold leaf; and from the use of the word "gold" in any way so as to import or imply that the material used, on the titles and borders of said publications, is gold or gold leaf when such is not the fact. (Dec. 14, 1936.)

1896. **False and Misleading Brands or Labels and Advertising—Cleaning Fluid.**—Sidney Warmbrand and Ben Warmbrand, copartners trading under the name of "Superkleen Company", engaged in the manufacture of a cleaning fluid and in the sale and distribution of the same, under the trade name of "Superkleen" 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.

Sidney Warmbrand and Ben Warmbrand, in soliciting the sale of and selling their said cleaning fluid "Superkleen" in interstate commerce, agreed to cease and desist from the use of the words "Leaves No Rings" on labels or other advertisements or advertising matter, and from the use of any other word or words which may import or imply that said cleaning fluid will not leave a ring or rings on any fabric to which the same may be applied. (Dec. 14, 1936.)

1897. **False and Misleading Advertising—Bath Preparations.**—Pine Products International, Inc., a corporation, engaged in the production, manufacture, and distribution in interstate commerce, of bath preparations, including pine needle extract, 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.

Pine Products International, 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 distributed in interstate commerce, of statements or representations that its products sold and distributed under the trade names of "Swiss Pine Bath", "Pine Bath Siberia", and "Balpine", possess, or that any of them possesses, such therapeutic properties as to render them a competent treatment for disorders of the nervous system, sleeplessness, neuritis, neuralgia, rheumatism, body and chest colds, faulty respiration, disorders of the respiratory organs or the heart and lungs, anemia, abdominal ailments, constipation, indigestion, acidity, head colds, sinus troubles or catarrh; and from the use in such advertisements or advertising matter of exaggerated claims or representations respecting the therapeutic value of said products, not warranted by the facts; the use in advertisements or advertising matter of the word "Imported" as descriptive of its said products, or any of them, either independently or in connection or conjunction with any other word or words, or in any way which may import or imply that said products consist wholly of pine essence or that the same are wholly imported, when such is not the fact; the use in such advertisements or advertising matter of the word "Laboratories" in any way which may import or imply that said corporation owns, controls, or operates a laboratory or laboratories, that is to say, a place devoted to experimental study in a branch of natural science or the application of scientific principles in the preparation of drugs and chemicals. (Dec. 15, 1936.)

1898. **False and Misleading Advertising—Cleansing Preparation.**—The Mystic Foam Corporation, engaged in the manufacture or compounding of a soapy foam solution for use in cleaning carpets, rugs, and furniture, and in the sale and distribution of said product, under the trade name of "Mystic Foam" 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 Mystic Foam Corporation, in soliciting the sale of and selling and distributing its "Mystic Foam" in interstate commerce, agreed to cease and desist from stating or representing in advertisements or advertising matter that its said product is a disinfectant, or that said product contains chemicals which instantly destroy bacteria and moths lurking in fabrics on which it is used, or in any other way, directly or indirectly, that said product will eliminate the larvae or eggs of moths from fabrics treated. (Dec. 17, 1936.)

1899. **False and Misleading Advertising—Furnaces and Air Conditioning Systems.**—Holland Furnace Co., a corporation, engaged in the business of manufacturing furnaces and air-conditioning systems 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.

Holland Furnace Co., in offering for and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising matter, or otherwise, of the statement, "Find out why only Holland can guarantee perfect heat in every room", or of any other statement of similar meaning, when in fact the Holland Furnace Co. is not the only concern which guarantees perfect or satisfactory heat in every room. (Dec. 17, 1936.)

1900. False and Misleading Trade or Corporate Name and Advertising—Food Flavors.—George W. Hogue Extract Co., a corporation, engaged under its corporate name, and also under the names of George W. Hogue Manufacturing Co. and McMillen Products Co., in the sale and distribution, in interstate commerce, of food flavors 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.

George W. Hogue Extract Co. also agreed, in soliciting the sale of and selling its products in interstate commerce, to cease and desist from the use of the word "Extract" as part of or in connection with its corporate or trade name; the use of the word "Extract" in advertisements or advertising matter to describe products which are not extracts; and from the use of the word "Extract" in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that said company manufactures or deals in extracts, when such is not the fact. (Dec. 17, 1936.)

1901. False and Misleading Advertising—Exhaust Fans, etc.—Airmaster Corporation, engaged in the assembling, sale, and distribution in interstate commerce, of exhaust fans, ventilators, and propellers, 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.

Airmaster Corporation, 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 of statements or representations which materially exaggerate the volume of air delivered by its fans or materially under-state the power required to operate the same. (Dec. 17, 1936.)

1902. False and Misleading Brands or Labels and Prices—Mattresses.—Sanotuf Mattress Co., a corporation, engaged in the business of manufacturing various kinds of mattresses and other articles of

merchandise and in the sale and distribution of same in interstate commerce, in competition with other corporations, firms, partnerships, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Sanotuf Mattress Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from selling, or supplying its customers with, its products to which are affixed or which bear any false, fictitious, or misleading price known to be in excess of the price at which said products are intended to be sold and usually are sold at retail. (Dec. 21, 1936.)

1903. **False and Misleading Advertising—Poultry Supplies.**—Brower Manufacturing Co., a corporation, engaged in the business of manufacturing a line of poultry supplies, such as automatic feeders, brooders, heaters, and the like, and in the manufacture of a feed mixer known as the "Giant Whirlwind Mixer", which product 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.

Brower Manufacturing Co., in soliciting the sale of and selling its Giant Whirlwind Feed Mixer in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter of statements to the effect that the said device has "measured up to the exacting demands of the U. S. Government" and/or that it "is now being used successfully in" the Soil Erosion Department of the said Government, or of any other statements or representations of similar meaning, so as to import or imply or to convey or tend to convey the belief by purchasers that the said device has been officially sanctioned, endorsed, or approved by the United States Government or by any department or branch thereof, when such is not the fact. (Dec. 21, 1936.)

1904. **False and Misleading Brands or Labels, Advertising, and Prices—Household Utilities, Toiletries, etc.**—William Alt, an individual trading under the name and style of "Star Novelty Utilities", and also as "Star Products Company", engaged in the sale and distribution of household utilities, notions, toiletries, razor blades, soaps, toothpaste, and other similar 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.

William Alt, in soliciting the sale of and selling his merchandise in interstate commerce, agreed to cease and desist from the use on labels and/or in catalogues of exaggerated or misleading statements

or representations concerning the value of his merchandise or the prices at which the same are sold or intended to be sold in the usual course of trade; the use of the words "New York" on labels or other advertisements or advertising matter, in any way which may import or imply that he has an office or place of business in the city of New York, when such is not the fact. (Dec. 24, 1936.)

1905. **False and Misleading Advertising—Hygiene Preparations.**—Dilex Institute of Feminine Hygiene, a corporation, engaged, under the trade name "La-Dila Hygienic Institute", in the sale and distribution in interstate commerce of a so-called "La-Dila Method", consisting of a dilating syringe, a tube of antiseptic jelly, with a glass applicator, and a box of 20 capsules, 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.

Dilex Institute of Feminine Hygiene, 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 circulated in interstate commerce of any and all words, statements or representations, the effect of which is to directly assert or to import or imply that the use of said products, when and if used as a contraceptive, can be relied upon generally to accomplish their purpose; from stating or representing that the so-called La-Dila Method is harmless and non-irritating no matter how frequently it is used as a douche, when such is not the fact; from the use of the words "The Perfect Dilating" or of other words of similar meaning, as purportedly descriptive of its syringe which is not capable of perfectly dilating the vagina in all cases; from stating or representing "may effectively use the syringe in a standing or sitting position" when in fact there are conditions when such use of the syringe would not be effective; from statements or representations which have the capacity or tendency to infer that the La-Dila Method is a cure for or would eventually cure leucorrhea, when such is not the fact. (Dec. 24, 1936).

1906. **False and Misleading Advertising—Burial Vaults.**—Cast Stone Co., Inc., a corporation, engaged in the business of manufacturing concrete vaults for use in encasing coffins and caskets in burial of the dead, and in the sale of same 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.

Cast Stone Co., Inc., in soliciting the sale of and selling its concrete burial vaults in interstate commerce, agreed to cease and desist from stating or representing in its advertisements and advertising matter that said vaults, in all cases, will appreciate with time, harden with

age, and finally become adamant or of impenetrable hardness, or that the said vaults will endure for centuries or for all time, free from the inroads of water or rodents, and assure safe and peaceful rest throughout the coming years; and from the use in said advertising of statements or representations which directly assert or clearly import or imply that the material of which said vaults are constructed is a material and is the only material which, regardless of burial conditions, is strong, durable, and dependable enough to infinitely harness or exclude water, when such is not the fact. (Dec. 28, 1936.)

1907. False and Misleading Brands or Labels—Men's Jewelry.—Morse, Andrews Co., a corporation, engaged in the manufacture of jewelry for men's use, including metal belt buckles, 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.

Morse, Andrews Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Goldray" as a mark, stamp, or brand for any of its products not made or fabricated from gold; and from the use of the word "gold", or of any combination of which the word "gold" forms a part in any way which may import or imply that its products are composed, in whole or in part, of gold, when such is not the fact. (Dec. 28, 1936.)

1908. False and Misleading Brands or Labels—Brass, Bronze, and Nickel Silver.—New England Brass Co., a corporation, engaged in the manufacture of brass, bronze, and nickel silver, 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.

New England Brass Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Goldray" as a mark, stamp, or brand for any of its products not made or fabricated from gold; and from the use of the word "Gold", or of any combination of which the word "Gold" forms a part, in any way which may import or imply that its products are composed, in whole or in part, of gold, when such is not the fact. (Dec. 28, 1936.)

1909. False and Misleading Advertising—Household Remedies.—Munsell's Mineral Products Co., a common law trust, engaged in the compounding of household remedies and in the sale and distribution thereof, under the trade name of "Munsell's Mineralization Tablets" in interstate commerce, in competition with 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 theory that the presence of certain mineral salts is essential to a healthy condition of the human body had as one of its first exponents Dr. Wilhelm Heinrich Schuessler, a German physician who, in 1884, published a book on "The Biochemic System of Medicine." From this beginning, the next step—the belief that all afflictions of the human body are due to a deficiency of cell salts—grew up, and resulted in the adoption of the system known as "Biochemic Therapy" by a few physicians and in the opening of a few establishments for the compounding of remedies for use by such physicians and, in some cases, for self-administration by patients, based upon the "Biochemic" system of diagnosis and medication. Starting with the premise that, from the bodily condition, any deficiencies or weaknesses could be referred to the lack of mineral salts in the cells of the body, a system of diagnosis and prescription was deduced. This school of medical practice has never received general recognition, and the theory that the diseases and weaknesses of the human body can be alleviated or cured by the use of mineral salts alone has never been recognized or received the adherence of the medical fraternity or of scientific men generally.

Munsell's Mineral Products Co., in soliciting the sale of and selling its said products in interstate commerce, agreed to cease and desist from stating or representing, directly or indirectly, that its said products, alone, are a specific or remedy for any human ailment; saving and reserving its right to state and represent that said products are beneficial to the general health in cases where they may supply a deficiency of any mineral salt which may be lacking and which has produced, or is tending to produce, a diseased condition; stating or representing, directly or indirectly, that its said products are safe for self-medication, while the same contain any drug or ingredient, such as fluoride, in such quantity which may prove harmful when taken otherwise than under the direction of a physician. (Dec. 28, 1936.)

1910. **False and Misleading Trade or Corporate Name and Brands or Labels—Extracts.**—Alfredo Wanderlingh, an individual trading as Venus Importing Co., engaged as a jobber and retailer in the sale and distribution of extracts 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.

Alfredo Wanderlingh, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "importing" as part of or in connection with the trade name used by him in offering for sale and selling his products in interstate commerce; and from the use of the word "importing" or the word "importati", or either of them, alone or in connection or conjunction

with any other word or words, on his labels or otherwise, so as to import or imply that the products referred to are imported from Italy or elsewhere, or that the said Alfredo Wanderlingh is an importer, when such is not the fact. The said Alfredo Wanderlingh also agreed to cease and desist from the use on his labels or otherwise of the words "Laboratorio Chimico Italiano" so as to import or imply that the said Alfredo Wanderlingh maintains a chemical laboratory in Italy; and from the use of the word "Laboratorio", either alone or in connection or conjunction with any other word or words, or in any way which tends or may tend to convey the belief by purchasers that the said Alfredo Wanderlingh owns and operates or controls a laboratory or place devoted to experimental study or to the application of scientific principles in testing and analysis or in the preparation of drugs, chemicals, and the like, when such is not the fact. The said Alfredo Wanderlingh further agreed to cease and desist from the use on the labels affixed to his products of pictorial or other representations of medals or crosses which may have the effect of causing or which may tend to cause the belief by purchasers that such medals or crosses were awarded to the said Alfredo Wanderlingh in connection with the exhibition of his products at an exposition or fair or on any other occasion where such awards are customary. (Dec. 28, 1936.)

1911. False and Misleading Brands or Labels and Advertising—Notions.—Joe Goodman, an individual trading under his own name, engaged in the sale and distribution of notions, including thumb tacks and so-called bobby pins or hair grips, in interstate commerce, in competition with other individuals, firms, corporations, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Joe Goodman, in offering for sale and selling his products in interstate commerce, agreed to cease and desist from the use of the letters "U. S. A." as a mark or brand for said products so as to import or imply or to tend to convey the belief that said products are made in the United States of America, when such is not the fact. The said Joe Goodman also agreed to cease and desist, in offering for sale and selling his products of foreign make or manufacture, from the use of any statement or representation, the effect of which is to import or imply that said products are of domestic make or manufacture, when such is not the fact. (Dec. 28, 1936.)

1912. False and Misleading Brands or Labels—Corrugated Fiber Boxes.—Jacob S. Glekel and Jacob Press, copartners trading as Eagle Corrugated Products Co., engaged in the sale and distribution of corrugated fiber boxes 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.

Jacob S. Glekel and Jacob Press, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use as a mark, stamp, or brand for their products sold and shipped in interstate commerce of the word "maker", or of any other word or words of equivalent meaning, either independently or in connection or conjunction with any other word or words, or in any way, the effect or implication of which is to convey or tend to convey to customers or prospective customers the belief that the said co-partners are the makers or manufacturers of said products and/or that they actually own and operate or directly and absolutely control the factory in which said products are made or manufactured, when such is not the fact. (Dec. 29, 1936.)

1913. **Resale Price Maintenance—Orange Juice Concentrate.**—Bireley's Inc., a corporation, engaged in the production, packing, sale, and distribution of an orange juice concentrate under the trade name of "Bireley's Dairy Orange Juice" and "Bireley's Orangeade" 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.

Bireley's, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from seeking or obtaining agreements, promises, or assurances from its distributors that they will cooperate with said corporation in carrying out any system of price maintenance, or of resale price maintenance, established by or for said corporation; directly or indirectly carrying into effect, by cooperative methods, any system whatever for maintenance of prices, or of resale prices, established by said corporation. (Jan. 4, 1937.)

1914. **False and Misleading Advertising—Dental Implements, Nail Files, etc.**—Flexible File Co., a corporation, engaged in the business of manufacturing dental implements, cosmetic-tweezers, nail files, and similar articles, 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.

Flexible File Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "rustless" as descriptive of its products so as to import or imply that said products will resist rust and/or that they are proof against corrosive action to such an extent that they would continue to remain rust-free when subjected to the ordinary uses for which they are

intended. The said corporation also agreed to cease and desist from the use of the word "tempered" as descriptive of its products which are not in fact tempered and/or which are made or fabricated from metal of such low carbon content that they are not capable of being and remaining tempered. (Jan. 5, 1937.)

1915. **False and Misleading Brands or Labels and Advertising—Jewelry.**—Joseph P. Harrison and John R. Harrison, copartners, trading as Harrison Brothers, engaged in the sale and distribution of various items of jewelry, including medals and pins, 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.

Joseph P. Harrison and John R. Harrison, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use in their advertising or printed matter of the word "gold," either alone or in connection with the letters "en" or with any other letters, word, or words, as descriptive of their products, or of any part or parts thereof, which are not composed of gold; and from the use of the word "gold" in any way so as to import or imply that said products are composed of gold, either in whole or in substantial part, when such is not the fact. (Jan. 5, 1937.)

1916. **False and Misleading Trade or Corporate Name and Advertising—Courses of Instruction in Electric Refrigeration and Air Conditioning.**—Refrigeration Engineering Institute, Inc., a corporation engaged in conducting a school for study and training in electric refrigeration and air conditioning, and in the sale of courses, textbooks, and lessons in said branches, 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.

Refrigeration Engineering Institute, Inc., in soliciting the sale of and selling its textbook and courses of instruction in interstate commerce, agreed to cease and desist from the use of the word "Institute" as a part of or in connection with its corporate or trade name; and from the use of the word "Institute" or "Institution" in any way which may import or imply that it is an organization of members of the refrigeration engineering industry for the purpose of considering and solving the problems thereof; advertising its business or courses of study under the classification of "Help Wanted," or "Male Help Wanted"; the use of statements or representations importing or implying that it is in a position to offer its subscribers employment; the use of its advertisements or in talks of its solicitors of words importing or implying that only one subscriber to its textbook and courses

of study is being sought in each community, when such is not the fact; the use of statements or representations that its students are "selected," or that they are a "selected group," when such is not the fact; the use in advertisements or advertising matter, or in sales talks by its agents, of statements or representations importing or implying that it is an organization of members of the refrigeration engineering industry, that such members are cooperating in carrying on the school, or that they are glad to employ its graduates, or otherwise lend such school their aid, support and cooperation in any way contrary to the facts. (Jan. 6, 1937.)

1917. False and Misleading Advertising—Lipstick.—Northam Warren Sales Co., engaged in the business of manufacturing primarily hand and manicure aids and in the sale and distribution of said products in interstate commerce, and also in the sale of an item designated "Cutex Lipstick," 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.

Northam Warren Sales Co., in offering for sale and selling its lipstick product in interstate commerce, agreed to cease and desist from the use of the word "nourishing" either independently or in connection or conjunction with any other word or words so as to import or imply that the aforesaid product nourishes or feeds the lips to which the same is externally applied and/or that the lips to which the said product is so applied are caused to assume a smooth, moist, velvety, non-greasy appearance as the result of nourishment supplied to the lips by such application thereto of said product. (Jan. 7, 1937.)

1918. False and Misleading Brands or Labels and Advertising—Perfumes.—Laure Co., Inc., a corporation, engaged in the sale and distribution of perfumes 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.

Laure Co., Inc., in offering for sale and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Paris" alone or in connection with any other word or words, or with the purported name "Pierre L'Vergne," "Cavelle et Cie," or "Henri" in the form of a signature, on display or shipping cartons or packages containing said products, or in advertising or printed matter relating to said products, so as to import or imply, or in any way which may tend to convey the belief by purchasers, that said products are compounded or manufactured in Paris, France, and/or

that the said Laure Company, Inc. has an office or offices at said place, when such is not the fact. The said corporation also agreed to cease and desist from the use of the purported name "Pierre L'Vergne," "Cavelle et Cie," "Henri," or other name or names typical of France, or of any inscriptions or statements in the French language, in or upon the packages or cartons containing said products, or in advertising or printed matter relating to said products, without conspicuously showing that said products are compounded or manufactured in the United States of America. The said corporation also agreed, in soliciting the sale of and selling its products in interstate commerce, to cease and desist from the use in its literature of whatever character relating to said products of the statement, "made with imported oils," so as to import or imply that all of the oils used in compounding or making said products are imported, when such is not the fact. (Jan. 7, 1937.)

1919. False and Misleading Advertising—Honey Bread.—Capitol Bakers, Inc., a corporation, engaged in the bakery business, and in the sale and distribution of its confections, including a product designated "El Aguinaldo Cuban Honey Bread," which product is produced in the same manner as ordinary bread except for the addition to each loaf of a quantity of flake white and an amount of honey allegedly made by wild bees from the Aguinaldo, Romerilla, and wild Chammonilla flowers growing on the slopes of the Maestra Mountains in Cuba, 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.

Capitol Bakers, Inc., in soliciting the sale of and selling its bread designated "El Aguinaldo Cuban Honey Bread" in commerce, agreed to cease and desist from the use in its advertising matter of whatever character having interstate circulation of statements or representations which import or imply or which may tend to convey the belief by purchasers that said bread possesses such therapeutic value that the eating thereof will result in the restoration of glorious good health to the eater or will produce remarkable results or relief in all forms of stomach ailments, indigestion, coughs, colds, constipation, asthma, sinus affections, and the like, or will produce boundless health-giving benefits; that the eating of such bread, because of its El Aguinaldo Cuban Honey Content, or for other reason, corrects all of the aforesaid human ailments by going direct to the source thereof. The said corporation further agreed to cease and desist from the use of the words "Finest of all health giving breads," or of any other words of similar meaning, as descriptive of the bread product offered for sale and sold by it in interstate commerce when in fact the results and

values obtained from the consumption of such bread product are no different from those obtainable from the consumption of any ordinary or usual type of bread containing any ordinary, good grade of honey. (Jan. 8, 1937.)

1920. **False and Misleading Brands or Labels and Advertising—Wines.**—Eastern Wine Corp., a corporation, engaged in business as a blender and bottler of California wines 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.

Eastern Wine Corp., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on labels or vintage strips of the words "Vintage—1928," or of any other similar or equivalent words importing or implying that the products so marked or designated are of the vintage of 1928, when such is not the fact; and from the use of any labels or vintage slips which do not truthfully and accurately state or represent the age of the products in connection with which the same are used; the use on labels or other advertisements and advertising matter of the words "Highest award wherever exhibited," either alone or accompanied by any pictorial representations simulating medals, or of any other similar or equivalent words or expressions stating or implying that it has exhibited its products at any exposition or fair, and/or that it has been awarded medals for the excellence of said products, when such is not the fact. (Jan. 12, 1937.)

1921. **False and Misleading Brands or Labels and Simulating Trade Name—Radio Sets.**—Frederica K. Frank and Albert M. Frank, copartners, trading under the name and style of Custom-Bilt Radio Co., engaged in the sale and distribution of midget radio sets in commerce between and among various states of the United States and in the District of Columbia, 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.

Gillette Safety Razor Co. was incorporated in 1917 under the laws of Delaware, with a perpetual charter, for the purpose of acquiring—and it did acquire—the business and assets of Gillette Safety Razor Co. of Massachusetts, the latter company having succeeded in 1912 a Maine company of the same name incorporated in 1901. Each of the said companies, during its existence as such, manufactured, and the said Gillette Safety Razor Co. of Delaware now manufactures, safety razors and blades, which products were and are now sold and distributed extensively in the United States of America and in foreign

countries, said products bearing the name "Gillette" printed in script, with the result that the said name "Gillette," so printed and otherwise, has been and is now widely and favorably known and recognized by the consuming public to identify products of quality manufactured and sold by the said Gillette Safety Razor Co.

Frederica K. Frank and Albert M. Frank agreed, and each of them agreed, in offering for sale and selling their radio sets in commerce as defined by the act, to cease and desist from the use, as a mark, brand, or label for their products, of the word "Gillette" printed in script simulating that used by Gillette Safety Razor Co. on products manufactured by it; and from the use of the word "Gillette" in any way which may import or imply, or which tends or may tend to confuse, mislead, or deceive purchasers into the belief, that the radio sets offered for sale and sold by the said copartners are products manufactured by or for the said Gillette Safety Razor Co., or a subsidiary thereof, and/or that the said Gillette Safety Razor Co. is financially or otherwise interested in the production and/or sale of said radio sets. (Jan. 18, 1937.)

1922. False and Misleading Advertising—Baby Chicks.—George F. Pinaire, an individual trading under the name and style of Clover Valley Poultry Farm and Hatchery, engaged in the business of hatching chicks and in the sale 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.

George F. Pinaire, in soliciting the sale of and selling his baby chicks in interstate commerce, agreed to cease and desist from the use, in advertisements or advertising matter circulated in interstate commerce, of any words or phrases, statements or representations, importing or implying that all the baby chicks which he sells are hatched from eggs produced by his own flocks, when such is not the fact; and/or of any words or phrases importing or implying that all the baby chicks which he sells are hatched from eggs produced by blood-tested flocks, when such is not the fact. (Jan. 18, 1937.)

1923. False and Misleading Advertising—Fountain Pens.—Harry A. Rippner, an individual trading as John Hancock Pen Co., engaged in the business of selling and distributing fountain pens 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.

Harry A. Rippner, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the

statement or representation, "A \$5.00 Value," as descriptive of said products, or of any other statement or representation concerning the alleged value of said products, so as to import or imply that said products actually have the value indicated when such is not the fact; of the statement, "This certificate is worth \$4.40 to you," or of any printed or other certificate purporting to have a value which said certificate does not possess; of the statement "For a Limited Time Only," or of any other statement of similar meaning, so as to import or imply that the offer to sell said products at a designated price actually is limited as to the time within which said offer must be accepted, when, in fact, no such time limit exists; of the statement, "This pen holds 200% more ink than any ordinary fountain pen on the market," when, in fact, said pen does not have such ink-holding capacity; of the statements, "selling direct" and "direct to you," or of either of them, alone or in connection or conjunction with any other word or words, so as to import or imply or to tend to convey the belief by purchasers that the said Harry A. Rippner makes or manufactures the pens offered for sale by him and sells the same direct to the purchaser, and that there is no middleman between the manufacturer and the purchaser. (Jan. 21, 1937.)

1924. **False and Misleading Brands or Labels—Beer.**—Red Top Brewing Co., a corporation, engaged in the manufacture and brewing of beer and ale 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.

Red Top Brewing Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on its brands or labels of the words "Double Brew" as descriptive of said products which are not in fact double brewed; and from the use of the words "Double Brew," either alone or in connection or conjunction with the word "Special," or with any other word or words, or in any way, so as to import or imply that the products to which they refer have been double brewed, or brewed twice, when such is not the fact. (Jan. 22, 1937.)

1925. **False and Misleading Advertising—Hair Remover.**—Clarence N. Debaugh, an individual trading under the name and style of C. D. Electric Co., engaged in the assembling of an electrical apparatus for the removal of surplus hair from the skin of human beings, and in the sale and distribution thereof under the trade name of "Monolux Hair Remover," 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.

Clarence N. Debaugh, in soliciting the sale of and selling his said device in interstate commerce, agreed to cease and desist from the use of the words "safe," "painless," and/or "permanent," in describing the same, without at the same time qualifying such statements and representations in accordance with the facts and the necessary care and skill required to be used in its application. (Jan. 26, 1937.)

1926. **False and Misleading Advertising—Dry Goods Remnants.**—James D. Boulger, an individual trading as Eastern Textile Co., engaged in the sale and distribution of dry-goods remnants for us by dress-makers, housewives, and others, 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.

James D. Boulger, in offering for sale and selling his bundles of dry-goods remnants in interstate commerce, agreed to cease and desist from the use in his advertising of the words "dress remnants" as descriptive of the remnants of which said bundles are composed so as to import or imply that the said bundles are composed wholly of remnants of dress materials. If the said bundles are composed in substantial part of remnants of dress materials and the words "dress remnants" are used to describe such dress materials, then, in that event, the words "dress remnants" shall be prominently accompanied by some other word or words printed in type equally as conspicuous as that in which the words "dress remnants" are printed, so as to indicate clearly that said bundles are not composed wholly of remnants of dress materials and/or otherwise to indicate clearly that said bundles are composed in part of remnants other than dress materials. The said James D. Boulger also agreed to cease and desist from the use in his advertising matter, or otherwise, of the statement, "Satisfaction guaranteed or money back," or of any other statement of similar meaning, so as to import or imply that, in all instances of expressed dissatisfaction by purchasers, the full amount of money, including both the purchase price and postage paid by such dissatisfied purchasers, will be returned by the said James D. Boulger to such purchasers, when such is not the fact. (Jan. 26, 1937.)

1927. **False and Misleading Representations—Motion Picture Advertising Films.**—L. H. Hyde and W. C. Hyde, copartners trading under the name and style of Royal Film Studios, Royal Revues, Inc., a corporation, and West Coast Discount Corporation, a corporation, engaged in the production of entertainment-advertising films for display in motion picture theaters, such films consisting of short acts with merchants' advertisements displayed across the

lower part, and known as "Royal Revues." The films which were the subject of these contracts were shipped in interstate commerce. In the collection of purchasers' notes representing the unpaid installments, said L. H. Hyde and W. C. Hyde, and said Royal Revues, Inc. acted through said West Coast Discount Corporation, Ltd. L. H. Hyde, W. C. Hyde and Royal Revues, Inc., 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.

L. H. Hyde and W. C. Hyde and Royal Revues, Inc. and West Coast Discount Corporation, Ltd., in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from stating and representing, directly or through their authorized agents or solicitors, that the films to be furnished will be equal in quality to the samples exhibited, unless the said films are in fact equal to such samples; that the films to be furnished will be of the same length as the samples exhibited, unless such films are in fact equal in length to the samples; that the contracts which customers are asked to sign can be canceled after two months, unless such a provision is included in the contract or the privilege of cancellation is granted as represented; that no other merchant engaged in the same line of business as the customer will be placed on the same film with him, unless the restriction referred to is observed; that any given number of subscribers to the service has been secured, or that the contract will be returned to the signer if a certain number is not secured, when such is not the fact; that films will be shown or displayed daily, or every week, when in truth and in fact no provisions have been made for having them shown as stated; that the prices asked and paid for the films represent the entire cost of the service to the subscriber, without informing him that additional sums are required to be paid to the local motion picture exhibitor; that the West Coast Discount Corporation, Ltd. is an innocent purchaser for value of the promissory note and securities given by subscribers to said Royal Film Studios or Royal Revues, Inc. (Jan. 28, 1937.)

1928. **False and Misleading Brands or Labels—Absorbent Cotton.**—The Bay Co., a corporation, engaged in the manufacture of surgical dressings, including absorbent cotton, gauze, and bandages, 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.

The Bay Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Sterilized" as a mark, stamp, or brand for its absorbent cotton

which has not been rendered free from bacteria after being packaged, or in the packing of which the best accepted sanitary precautions have not been taken and followed for the removal and exclusion of all bacteria after packaging; and from the use of the word "Sterilized" in any way which may import or imply that said products have been sterilized and are sanitary, when such is not the fact. (Feb. 10, 1937.)

1929. **Lottery Schemes—Sandwiches, etc.**—Hiram E. Vickers and Lottie Vickers, copartners trading under the name and style "Dub's Sandwich Company," engaged in the business of manufacturing peanut-butter and cheese sandwiches, candies, and the like, and in the sale and distribution of said products in interstate commerce, in competition with other partnerships, firms, corporations, and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Hiram E. Vickers and Lottie Vickers, in soliciting the sale of and selling their products in interstate commerce, agreed, and each of them agreed to cease and desist from using, and from placing in the hands of others to use, any scheme, plan, or method of selling or of promoting the sale of their products which involves the use of any gift enterprise, lottery, or scheme of chance whereby a sum of money or any article is given as a prize or premium for or in consideration of the purchase of any other article. (Feb. 10, 1937.)

1930. **False and Misleading Brands or Labels and Advertising—Women's Coats.**—Fred P. Weissman, Inc., a corporation, engaged in the sale and distribution of women's dress and sport coats 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.

Fred P. Weissman, Inc. agreed, in offering for sale and selling its products in interstate commerce, to cease and desist from the use of the words and figures "100% Camel's Hair" as descriptive of those of its said products which are not composed of camel's hair, and from the use of the words "Camel's Hair," either alone or in connection or conjunction with "100%," or in any other way, so as to import or imply that the products to which said words apply are composed wholly of camel's hair, when such is not the fact; provided that, if said products are composed in substantial part of camel's hair and the said words are used as descriptive of the Camel's hair content, then, in that case, the words "camel's hair" shall be prominently accompanied by some other word or words, printed in type equally as conspicuous as that in which the words "camel's hair" are printed, so as to indicate clearly that said products are not composed wholly

of camel's hair but are composed in part of a material or materials other than camel's hair. (Feb. 12, 1937.)

1931. **False and Misleading Advertising and Disparaging Competitors' Products—Kitchen Utensils.**—Century Metalcraft Corp., engaged in the sale and distribution of cast kitchen utensils, under the trade name "Silver-Seal," 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.

Century Metalcraft Corp. agreed to cease and desist from the use in its advertisements and advertising matter, or otherwise, in soliciting the sale of and selling its Silver-Seal products in commerce, of statements or representations to the effect that the waterless method of cooking with Silver-Seal equipment has been endorsed by leading medical authorities and dietitians throughout the country, or that such method of cooking is capable of accomplishment only in Silver-Seal equipment, or that the waterless method of cooking is new, or that cooking foods in water necessarily deprives the consumers of such foods of the mineral salts, vitamins, nourishing elements, and natural flavors of the foods, when such are not the fact; that, in using a gas oven, the gas will affect the food cooked therein and destroy the food flavor, when in fact there is no scientific foundation for such statement or representation; that Silver-Seal is entirely different from any other cooking equipment on the market, when such is not the fact; that Silver-Seal is finished in silver and/or that said products, because of such alleged silver finish, or for other reason, are immune from pitting with a resultant capacity to absorb and retain food elements, when such are not the facts; that the eating of foods cooked in Silver-Seal equipment will positively cause improved health of the consumer in all instances and/or regardless of the nature or cause of the ailment or disease with which such individual may be affected; that nature balances certain designated elements in food perfectly and/or that, where the food is perfectly balanced, the balance is disturbed in every case by improper food preparation, or that the Silver-Seal method is the proper method for all foods, or that the result of improper cooking is in all cases, or even generally, acidosis, constipation, or lowered resistance. The said corporation also agreed to cease and desist from stating or representing by any means whatever that its Silver-Seal equipment can be purchased at a so-called Program-First-Call or Coupon Price, that is to say, at a lower price than the price at which said equipment is sold at retail, when in fact the coupon price actually is the price at which said equipment is regularly sold in the usual course of trade. The said corporation further agreed to cease and desist

from stating that "Dr. Michael Hindhede, as health commissioner of Denmark, made it a national law that all vegetables, fruits and meats had to be cooked without water," when, in truth and in fact, such statement is without substantiation. The said corporation also agreed to cease and desist from stating or representing by any means whatever that the use of Silver-Seal will result in yearly savings of \$79.00, or of any other amount of alleged yearly savings, when in fact such statement or representation is exaggerated. The said corporation also agreed to cease and desist from any and all statements or representations the effect of which imports or implies, or tends to convey the belief by purchasers, that the Silver-Seal equipment is guaranteed for ninety-nine years, or for life; or that Silver-Seal contains no aluminum, or substantially none; or that Dr. Mayo of Rochester, Dr. W. H. Eddy of Columbia University, Dr. E. V. McCollum of Johns Hopkins University, and Dr. Bundesen of Chicago have endorsed Silver-Seal and recommended its use; or that Silver-Seal is being used by Mayo Brothers or generally in hospitals and clinics throughout the United States; or that pressure cookers are dangerous to use and/or necessarily destroy food elements; or that, by buying directly from a Silver-Seal salesman, the customer is purchasing directly from the factory and thereby eliminates the middleman's profit and obtains a cheaper price; or that the use of Silver-Seal has cured many physical disorders in individual cases and will cure particular ailments of some customers; or that the use of aluminum kitchen ware is injurious; or that Club Aluminum Company is practically bankrupt, with the effect of unwarrantably disparaging those engaged in the distribution of Club Aluminum utensils, and/or that Club Aluminum kitchen utensils are inferior products to Silver-Seal equipment because of the lower prices of the former; or that Silver-Seal equipment was used by the United States Army during the World War—when such are not the facts. (Feb. 12, 1937.)

1932. **False and Misleading Advertising—Baby Chicks.**—Allen's Poultry Farms and Hatchery, a corporation, engaged in the business of hatching various breeds and types of baby chicks, 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.

Allen's Poultry Farms and Hatchery, in soliciting the sale of and selling its baby chicks in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter of the statement or representation: "We assure you prompt delivery," or of any other similar statement which may import or imply that its

orders are filled promptly, when such is not the fact; of the statement or representation that its "flocks * * * are rigidly culled in accordance with the requirements of the Iowa Poultry Improvement Association," when such is not the fact; of such statements or representations as "We guarantee them (Blue Diamond chicks) to satisfy you as to quality, ability to mature, health, and type. At the end of 30 days from the date of arrival if any chicks have died, are not true to type or unsatisfactory, we will replace them at one-half price"; and "We guarantee live delivery of the number of (Diamond started) chicks you order"; unless and until such guaranties are fulfilled and claims for losses adjusted promptly as represented. (Feb. 11, 1937.)

1933. False and Misleading Trade Name, Brands or Labels and Advertising—Surgical Dressings, etc.—Ezra Hollander, an individual trading under the various names and styles of Hollander Brothers, Superior Laboratories, and Supreme First Aid Co., engaged in the sale of surgical dressings, including absorbent cotton, gauze, and bandages; 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.

Ezra Hollander, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in advertisements or advertising matter of the word "Laboratories" as a part of or in connection with any trade name under which to carry on his said business; the use of the word "Laboratories" in any way which may import or imply that he owns, controls, or operates any place devoted to experimental study in any branch of natural science or the application of scientific principles in the preparation of surgical dressings, when such is not the fact; the use of "manufacturing" or any other word of similar import importing or implying that he owns, controls, or operates any factory or factories wherein the products which he sells and distributes are made or compounded, when such is not the fact; the use of the words "Sterilized" and/or "Sanitary" in any way which may import or imply that his said products have been rendered free from bacteria after being packaged, or that the best accepted sanitary precautions have been taken and followed for the removal and exclusion of all bacteria after packaging, and/or that said products are sterilized and sanitary, when such is not the fact; the use of the words "Grade A Absorbent Cotton" on the labels affixed to containers in which absorbent cotton which is not of that grade is put up and sold in interstate commerce; and the use of the statement or representation that his gauze bandages are

made from the best bandage cloth obtainable, when such is not the fact. (Feb. 12, 1937.)

1934. **False and Misleading Trade Name, Prices and Advertising—Photographic Enlargements and Frames.**—Joseph Taylor Fleming, an individual trading under the name and style of “Washington Art Association,” engaged in the business of making, or causing to be made, photographic enlargements of his customers and members of their families, and in the sale and distribution of such enlargements and of frames therefor, in interstate commerce. Upon the receipt of orders for such enlargements, said Joseph Taylor Fleming sends the photographs to the Seails Copying Company, at its place of business in Syracuse, N. Y., where the enlargements are made by said Seails Copying Company for said Fleming, which then ships to him the enlargement together with the original photograph and a frame. Upon receipt of such enlargement, original photograph, and frame, said Fleming proceeds to effect the delivery thereof to his customers, as hereinafter described. Said Joseph Taylor Fleming, engaged 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.

Joseph Taylor Fleming, in soliciting the sale of and selling his enlargements and frames in interstate commerce, agreed to cease and desist from using the words “Art Association” as part of his trade name and from stating or representing, directly or through agents or solicitors that the prices at which said enlargements are made are special, or are reduced below the prices regularly charged for such work; that the “Washington Art Association” is an organization of artists for the purpose of making use of the talents of some of America’s foremost portrait artists; that the work is done by America’s foremost portrait artists; that many of the portraits made by the “Washington Art Association” are used for exhibition purposes; that, if the customer’s picture is so used, he or she will be paid by said “Washington Art Association” for the privilege of making such exhibition; that there is such an association of artists known as the “Washington Art Association,” when such is not the fact. (Feb. 12, 1937.)

1935. **False and Misleading Brands or Labels—Luggage.**—Samuel Rodin, an individual, engaged in the business of manufacturing luggage, such as brief cases, Gladstone bags, and the like, and in the sale and distribution thereof in interstate commerce, in competition with other 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 and other than "buffing," that is, a top or grain cut of leather of a weight and thickness less than that generally used for luggage purposes.

Samuel Rodin, in offering for sale and selling his luggage in interstate commerce, agreed to cease and desist from the use of the word "Cowhide," either alone or in connection or conjunction with the word "Warranted," or with any other word or words, or in any way, as a mark, stamp, brand, or label for, or otherwise to describe said luggage which is not composed of leather made from the top or grain cut or layer of the cowhide; provided that, if said luggage is composed of leather made from the inner or flesh cut of the designated 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 disclose clearly that said luggage is not composed of leather made from the top or grain cut or layer of the hide of the cow. (Feb. 15, 1937.)

1936. False and Misleading Brands or Labels and Advertising—Dresses, Luggage, Men's Ties and Coats.—James McCreery & Co., a corporation, engaged in the sale and distribution in interstate commerce of dresses, traveling bags, men's ties, coats, and other merchandise, 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 McCreery & Co., in soliciting the sale of and selling its products in interstate commerce agreed to cease and desist from using in its advertising matter or otherwise the word "Silk" either alone or in connection or conjunction with any other word or words as descriptive of dresses or of the fabric used in the making of dresses when in fact such fabric is not composed of silk, the product of the cocoon of the silk worm, the word "Silk" either alone or in connection with the word "Lined" or with any other word or words as descriptive of the linings of luggage offered for sale and sold by the said corporation, when in fact such linings are not composed of silk, the word "Silk" either alone or in connection with the word "Pure" or with any other word or words as descriptive of men's ties which are not composed of silk; provided that if said ties are com-

posed in substantial part of silk and in part of a material or materials other than silk and the word "Silk" is used to describe such silk content, then in that case the word "Silk" shall be prominently accompanied by some other word or words printed in type equally as conspicuous as the word "Silk" is printed so as to indicate clearly that said ties are not composed wholly of silk; the words "Harris Tweeds" as descriptive of coats or products not made or fabricated from Harris Tweeds, cloth made from pure virgin wool produced on any of the Islands known as the Outer Hebrides; and from the use of the words "Harris Tweeds" in any way so as to import or imply that the products to which such words relate are made or fabricated from Harris Tweeds, when such is not the fact. (Feb. 15, 1937.)

1937. False and Misleading Prices and Advertising—Books.—American Surveys, Inc., a corporation, engaged in the sale and distribution, in interstate commerce of books entitled "Library of Knowledge Encyclopedia," 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 therein.

American Surveys, Inc., in offering for sale and selling its books in interstate commerce, agreed to cease and desist from stating or representing, either directly or by advertisements or advertising matter, or through salesmen, or by any other means, that certain prospective purchasers or subscribers, as a selected or diversified group of business or professional men, are being offered a special price for said books for the purpose of establishing a foundation for future activities or for advertising purposes, when in fact the price asked is not a special price but is the regular price asked for said books in the usual course of business of any and all persons who could be induced to purchase; promoting, offering for sale, or selling its sets of books under the name "Library of Knowledge" without disclosing that said sets of books have previously been sold under the names "Bufton's Universal Encyclopedia" and "The Loose-Leaf Encyclopedia"; using the date "1936" in said sets of books or making statements or representations which import or imply or which may convey the belief to prospective subscribers or purchasers that said sets of books are modern or just out, or that they are up to date, when such is not the fact; representing that a so-called Year Book, "bound to match" the sets, will be furnished the subscriber or purchaser each year for the next ten years, in connection with the "Library of Knowledge Encyclopedia," and/or that the said Year Book may be continued after the ten-year period at a cost of \$7.50 a year, when in fact no so-called Year Book, "bound to match" the sets or one having a cost of \$7.50, has been published and/or furnished subscribers to

date; and representing that the set of books, the so-called Quarterly Loose-Leaf Extension Material, and a Research Service can be obtained through the payment of a flat price by the subscriber or purchaser, when in fact the subscriber or purchaser is required or expected to make an extra payment or payments in order to secure said Loose-Leaf Extension Material. (Feb. 15, 1937.)

1938. False and Misleading Brands or Labels and Advertising—Dresses, etc.—Gimbel Brothers, Inc., a corporation, conducting a mail order department as part of its business and selling and distributing the products handled by its said department 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.

Gimbel Brothers, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising matter or in any other way of the term "Silk Linen" as descriptive of dresses not composed of silk, the product of the cocoon of the silk worm, and of linen, a product spun from the fibers of the flax plant; and from the use of the word "Silk" alone or in connection or conjunction with the word "Linen" or with any other word or words in any way so as to import or imply that said products are made from fabric composed wholly or in substantial part of silk, the product of the cocoon of the silk worm; and from the use of the word "Linen" either alone or in connection or combination with the word "Silk" or with any other word or words or in any way so as to import or imply that said products are made from fabric composed wholly or in substantial part of linen, a product spun from the fibers of the flax plant; of the word "Velvet" in connection or combination with the words "a fine quality with a silk pile" or with any other word or words or in any way as descriptive of products so as to import or imply that the pile of the fabric from which the products are made is composed of silk, the product of the cocoon of the silk worm, when such is not the fact. Provided that if the fabric or the pile thereof is composed of silk in substantial part, and in part of a material or materials other than silk and the word "Silk" or "Velvet" is used to describe such silk content, then in that case the said descriptive word shall be immediately accompanied by some other word or words printed in type equally as conspicuous as the said descriptive word is printed so as to indicate clearly that said fabric or the pile thereof is not composed wholly of silk, the product of the cocoon of the silk worm. (Feb. 17, 1937.)

1939. **False and Misleading Brands or Labels and Advertising—Dresses, Hats and Neckties.**—Frederick Loeser & Co., Inc., a corporation, engaged in the business of conducting a department store and in the sale and distribution of merchandise, including dresses, hats, and neckties, 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.

Frederick Loeser & Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising matter or in any other way of the words "Linen Silks" as descriptive of dresses and hats not composed of silk, the product of the cocoon of the silk worm, and of linen, a product spun from the fibers of the flax plant; and from the use of the word "Silk" alone or in connection or conjunction with the word "Linen" or with any other word or words or in any way so as to import or imply that said products are composed wholly or in substantial part of silk, the product of the cocoon of the silk worm; and from the use of the word "Linen" either alone or in connection or conjunction with the word "Silk" or with any other word or words or in any way so as to import or imply that the said products are composed wholly or in substantial part of linen, a product spun from the fibers of the flax plant; of the words "Silk Jersey" as descriptive of products not composed of silk, the product of the cocoon of the silk worm; and the word "Silk" either alone or in connection with the word "Jersey" or with any other word or words or in any way so as to import or imply that the said products are composed of silk; of the word "Silk" either alone or in connection or conjunction with any other word or words as descriptive of men's neckties which are not composed of silk; provided that if said neckties are composed in substantial part of silk and in part of a material or materials other than silk, and the word "Silk" is used to describe such silk content, then in that case the word "Silk" shall be prominently accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Silk" is printed so as to indicate clearly that said neckties are not composed wholly of silk but are composed in part of a product or products other than silk. (Feb. 18, 1937.)

1940. **False and Misleading Trade Name and Brands or Labels—Radio Sets.**—Trav-Ler Radio & Television Corp., engaged in the business of manufacturing or assembling radio receiving sets and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise en-

gaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition therein.

Trav-Ler Radio & Television Corp., in soliciting the sale of and selling radio receiving sets in interstate commerce, 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 words "Radio Corp.," or with any other word or words, or in any way, so as to import or imply that said sets are made or manufactured by Grigsby-Grunow Company or by its successor in business, Majestic Radio & Television Corp. of Chicago, Ill., when such is not the fact. (Feb. 18, 1937.)

1941. False and Misleading Brands or Labels and Advertising—Dresses, etc.—Hecht Brothers Co., Inc., a corporation, engaged in the business of operating department stores, and in the sale and distribution of a general line of merchandise, including dresses, in interstate commerce and within the District of Columbia, 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.

Hecht Brothers 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 of the word "Silk" or "Satin" as descriptive of its dresses or blouses not composed of silk, the product of the cocoon of the silk worm, and from the use of the word "Silk" or "Satin" in any way so as to import or imply that the products to which the said words or either of them relate are composed of silk, when such is not the fact; provided that if the said products are composed of silk in substantial part, and in part of a material or materials other than silk, and the word "Silk" or "Satin" is used as descriptive of such silk content, then in which case the said descriptive word shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the said descriptive word is printed so as to indicate clearly that said products are not composed wholly of silk, the product of the cocoon of the silk worm, and that also will indicate that said products are composed in part of a material or materials other than silk. (Feb. 24, 1937.)

1942. False and Misleading Brands or Labels—Luggage.—Wohlfeiler & Schlain, Inc., a corporation, engaged in the business of manufacturing luggage, including Gladstone bags, 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 de-

sist 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.

Wohlfeiler & Schlain, Inc., in offering for sale and selling its products in interstate commerce, agreed to cease and desist from the use of the word "cowhide," either alone or in connection or conjunction with the words "warranted genuine," or either of them, or with any other word or words, or in any way, as a mark, stamp, 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 hide of a cow; provided that, if said products are composed of leather made from the inner or flesh cut of the designated 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 disclose clearly that said products are not composed of leather made from the top or grain cut or layer of the hide of a cow. (Feb. 24, 1937.)

1943. **False and Misleading Brands or Labels and Advertising—Women's Garments.**—Roaman's, a corporation, engaged in the business of selling at retail and distributing women's garments 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.

Roaman's, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising matter of the word "silk" as descriptive of said products which in fact contained no silk, the product of the cocoon of the silk worm; and from the use of the words "Silk and wool" in any way as descriptive of its products unless the same actually are composed in substantial part of silk and in substantial part of wool. (Feb. 26, 1937.)

1944. **False and Misleading Brands or Labels and Advertising—Women's Wearing Apparel.**—Lane Bryant, Inc., a corporation, engaged in the business of selling and distributing women's wearing apparel 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.

Lane Bryant, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Silk" as descriptive of dresses or other products 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 combination with any other word or words or in any way so as to import or imply that the products to which the said word or words relate are composed of silk, the product of the cocoon of the silk worm, when such is not the fact. (Feb. 26, 1937.)

1945. False and Misleading Brands or Labels and Advertising—Wearing Apparel.—Phil Bobys Co., Inc., a corporation, engaged as a retailer in the sale and distribution on a credit basis of wearing apparel for men, women, and children 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.

Phil Bobys Co., Inc., in soliciting the sale of and selling its products in 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 to simulate 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 Sealine—Dyed Rabbit, Beaverette—Dyed Rabbit, French Beaver—Dyed Rabbit; the use of the word "Free" as descriptive of alleged gift articles, when in fact such articles are not given free but are given as a consideration to a person or persons for services performed as in bringing in new customers; the use of the word "Free" to describe articles represented to be given without cost with the purchase of other merchandise, when in fact, the cost of said articles is included in the selling price of the merchandise. (Mar. 2, 1937.)

1946. False and Misleading Advertising—Correspondence Courses.—A. B. Thomas, an individual, trading under that name, engaged in the business of conducting a so-called correspondence school, consisting of the sale and distribution of a course entitled "Practical Forestry," 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. B. Thomas, in connection with the advertising, offering for sale, and selling in interstate commerce of his course of instructions by correspondence, agreed to cease and desist from the use of statements or representations the effect of which is to import or imply, or which tend or may tend to convey the belief by students or prospective students having no more than a high-school education, that they, upon completion of the course of instructions given by the said A. B. Thomas, would be eligible to take and able to pass a United States Civil Service examination for a position in the Forest Service, either as a forest ranger, junior forester, junior range examiner, or assistant to technician (forestry), and/or that they would have the necessary education and experience to warrant the acceptance of their applications for such positions by the Civil Service Commission; from the use of statements or representations to the effect that the requirements for positions as forest ranger in the United States Forest Service were the same in 1925 as they were at later dates or in 1930, when the civil service examinations for forest ranger were discontinued, or that examinations for such positions are now being held or are contemplated by the Civil Service Commission, when such is not the fact; from the use of the statement, "For the last few years it has been almost impossible for anyone to get into the U. S. Forest Service because there have been no openings," or of any other statement or representation of similar meaning, when in fact such is not the case; from representing, either in person or through sales agents, or by means of advertising matter distributed in interstate commerce, that the said A. B. Thomas is conducting a so-called school with the knowledge and permission of the United States Forest Service while he is on sick leave, or that the said A. B. Thomas has practiced forestry for eleven years, or that he holds a rating from the Government of excellent as an instructor in forestry, or that he received high commendation from the Forest Service for his work at Chadron, Nebr., or that the course of instruction given by him is one for the training of students to hold a forestry position or to enable them to pass a civil service examination, or that sixty percent to eighty percent of his last class, consisting of one hundred students, who took his course for the position of assistant to technician (forestry), obtained appointment, when such are not the facts; from representing to prospective students that he, the said A. B. Thomas, would come to their towns or cities and take them out on field trips to enable them to get first-hand information about plants, trees, and surveys, unless such representation actually is fulfilled. (Mar. 5, 1937.)

1947. False and Misleading Brands or Labels—Tooth Brushes.—Owens Staple-Tied Brush Co., a corporation, engaged in the manufacture of

tooth brushes, hair brushes, clothes brushes, and finger nail brushes 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.

Owens Staple-Tied Brush Co., in connection with the offering for sale or selling of its tooth brushes in interstate commerce, agreed to cease and desist from representing, through the medium of labeling, stamping, or imprinting upon the handle of the tooth brushes, that said products were or are made wholly in the United States of America, when in fact they are not so made or when in fact the handles of said products have been imported from a foreign country and the name of the country of origin of such handles has been obliterated and obscured; representing or causing to be represented by imprinting upon the brushes, cartons, or other packages wherein tooth brushes are placed prior to the sale or offering for sale of the same, the phrase "Made in U. S. A." or other phrase or words of similar import and meaning that the said brushes were made in the United States of America, when the handles of such brushes have been imported from some foreign country. (Mar. 9, 1937.)

1948. False and Misleading Advertising—Beer, Ale and Stout.—Rainier Brewing Co., Inc., a corporation, engaged in the business of manufacturing beer, ale, and stout and in the sale and distribution of said products in interstate commerce, and in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair method of competition as set forth therein.

Rainier Brewing Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising of whatever character or in any other way of statements or representations the effect of which is to import or imply that lager beer, to be real or true beer, is dependent upon lengthy aging. The said corporation also agreed to cease and desist from stating or representing in its advertising or otherwise that its storage capacity is the largest or is in excess of any other in the West, when such is not the fact. The said corporation further agreed to cease and desist from stating or representing that it has been engaged as a brewer of ale and stout since 1878, when such is not the fact. (Mar. 9, 1937.)

1949. False and Misleading Brands or Labels and Advertising—Furniture.—Maison Blanche Co., a corporation, engaged in the business of operating a general department store including a furniture department, from which it sells and for some time past has sold and distributed furniture 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.

Maison Blanche Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising matter or on labels affixed to its products of the words "Solid Mahogany" or the word "Mahogany" or of any abbreviation or simulation of the word "Mahogany" so as to import or imply that said products to which the said word or words relate are made or manufactured of wood derived from trees of the genus "Swietenia" of the "Meliaceae" family known as mahogany, when such is not the fact. (Mar. 9, 1937.)

1950. False and Misleading Brands or Labels and Advertising—Men's Wear.—Dunham Men's Shop, Inc., a corporation, engaged in the operation of a men's haberdashery store and in the sale and distribution of its 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.

Dunham Men's Shop, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Silk" as descriptive of such of its products as 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 any other way so as to import or imply that the products to which the said word or words relate are composed of silk, when such is not the fact. (Mar. 9, 1937.)

1951. False and Misleading Brands or Labels and Advertising—Suits or Clothing.—Levy Brothers & Adler-Rochester, Inc., a corporation, engaged in the business of manufacturing men's and boy's ready-made suits 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.

A Royal Warrant is a grant given by the Crown or by a member of the British Royal Family to a merchant who sells or has sold his goods to the said Royal Family. The holders of Royal Warrants are permitted to use and do use the British Coat-of-Arms in their advertising and on their stationery. British Royal Warrants have been granted in the past to manufacturers of fabrics, woolen goods, rain-coats, overcoats, hosiery, shirts, and similar products. As a result the words "Royal Warrants" are generally understood to signify, not only to the British public but to a substantial portion of the pur-

chasing public in the United States of America, dealers in fine merchandise who are or have been patronized by one or more members of the British Royal Family.

Levy Brothers & Adler-Rochester, Inc., in soliciting the sale of and selling its suits in interstate commerce, agreed to cease and desist from the use or from furnishing others for their use, of labels or advertising matter bearing the words "Royal Warrant" either alone or in connection or conjunction with a typically English script or phraseology, pictorial representation of or which simulates the British Coat-of-Arms or the British Crown, or in any other way so as to import or imply that said suits or the fabrics from which said suits are made are manufactured in England or by the holder of a British or other Royal Warrant, when such is not the fact. The said Levy Brothers & Adler-Rochester, Inc., also agreed to cease and desist from the use in advertising matter, which it uses in interstate commerce and which it furnishes others for their use in offering for sale and selling products, of statements or representations to the effect that the owners of the mills, producing the worsted designated "Royal Warrant" in the United States of America are lineal descendants of British manufacturers, or that the particular type of worsted designated "Royal Warrant" originated in England or that the superiority of English fabrics is due to the fact that such fabrics have been treated by washing in English or West English streams of water allegedly possessing chemical qualities or properties particularly applicable to the treatment of woolen fabrics, and that the water used by the manufacturer in producing the worsted designated "Royal Warrant" in the United States of America possesses and was chosen because it has the same chemical properties that are found in streams of water in the West of England, when such are not the facts. (Mar. 11, 1937.)

1952. **Lottery Scheme—Carbonated Beverages.**—Seminole Bottling Co., a corporation, engaged in the manufacture and bottling of carbonated 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.

Seminole Bottling Co., in soliciting the sale of and selling its carbonated beverages 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 products which involves the use of any gift enterprise, lottery, or any scheme of chance whereby either cash or any article is given as a prize or premium for or in consideration of the purchase of any other article. (Mar. 11, 1937.)

1953. False and Misleading Advertising—"Pro Tex" Wardrobes.—J. F. Friedel Paper Box Co., a corporation, engaged principally in the business of manufacturing paper boxes and kindred items and in the sale and distribution thereof under its said corporate name or under the trade name "J. F. Friedel Company" 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.

J. F. Friedel Paper Box Co., in soliciting the sale of and selling its Pro Tex Wardrobes in interstate commerce, agreed to cease and desist from the use in its circulars or other advertising matter or in any way of statements or representations, the effect of which is to cause or which may tend to cause purchasers to believe that the method of protecting garments against moth damage as used in said wardrobes has been endorsed or approved by the United States Government or by a department thereof, when such is not the fact. (Mar. 19, 1937.)

1954. False and Misleading Advertising—Tires and Tubes.—Ajax Tire & Rubber Corp., engaged in the business of selling and distributing tires and tubes for use on motor vehicles 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.

Ajax Tire & Rubber Corp., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from stating or representing in its advertisements and advertising matter or in any other way that it was "Founded 1904"; and from the use of the statement "Founded 1904" or the statement "For over 30 Years—The World's Premier Tires" or of any other statement or statements of similar meaning so as to import or imply that the said corporation was in fact founded in 1904 and/or that it had been in business for over thirty years. Said corporation also agreed to cease and desist from the use in its advertising or otherwise of the word "Factory" or "Factories" or the pictorial representation of a factory building or of any other words or representations, the effect of which is to import or imply that the said Ajax Tire & Rubber Corp. manufactures the products which it sells or that it actually owns and operates or directly and absolutely controls factories in which said products are made or manufactured. The said corporation further agreed to cease and desist from the use of such statements as "Ajax Celebrates its Golden Milestone with the New '50th Million Series' and a drive for 1,500 More Ajax Direct Factory Distributors" so

as to import or imply that the said corporation is now engaged in either the manufacture or sale of its 50th million series of tires and tubes and that it has behind it many years of experience in the manufacture of such products. Said corporation also agreed to cease and desist from the use of statements or representations to the effect that it formerly had a stated number of or any factory branches in the United States of America or in foreign countries, or that it had eliminated 400 branch managers and salesmen, or 1,000 warehouse stocks and consigned depots, or that it had any new car equipment business with large automobile manufacturers, or that it ever owned or eliminated any company-owned or subsidized stores, or that it ever was engaged in any national advertising or billboard campaigns, or that it had spent up to one million dollars annually for advertising, when such are not the facts. (Mar. 18, 1937.)

1955. False and Misleading Trade Names and Brands or Labels—Tableware, Novelties, etc.—Webster Co., a corporation, engaged in the manufacture of tableware, toilet ware, and novelties made of sterling silver and in the sale and distribution thereof, as well as other products not made of sterling silver but designed for similar usage, 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.

Webster Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Mir-A-Gold" as a brand name or designation for its products not composed of gold, and from the use of the word "Gold" in connection or conjunction with the letters "Mir-A" or with any other letter or letters, word or words, or in any way in its advertisements and advertising matter or otherwise so as to import or imply that said products are composed of gold, when such is not the fact. The said Webster Co. also agreed to cease and desist from the use as a trade brand or designation for its products, of the word "Syl-van-ite" or of any other word or words simulating the word "Silver" to as to import or imply that said products are composed of silver or that they contain silver either in whole or in part, when such is not the fact. (Mar. 18, 1937.)

1956. False and Misleading Advertising—Tombstones and Monuments.—Asa L. Wooten, an individual trading under the name of United States Marble & Granite Co., engaged in the sale and distribution of tombstones and monuments in interstate commerce, in competition with other individuals, corporations, 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.

Asa L. Wooten, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in his advertising matter of whatever character or in any other way of statements such as "Buy Direct," "Sell direct from factory to you," and the like, or of the pictorial representation of a factory, alone or in connection with the statement "From Stone Quarry To Monument Factory Direct To You" or with any other similar statement or representation so as to import or imply that the said Asa L. Wooten, trading as United States Marble & Granite Co., makes or manufactures the products advertised and/or sold by him, or that the said Asa L. Wooten actually owns and operates or directly and absolutely controls the plant or factory at which said products are made or manufactured. The said individual also agreed to cease and desist from stating or representing that the business conducted by him under the trade name United States Marble & Granite Co. is the "world's largest" when such is not the fact. The said individual further agreed to cease and desist from the use of the statement "30 years experience" so as to import or imply that the so-called United States Marble & Granite Company has been engaged in the business of selling tombstones and monuments for thirty years, when such is not the fact. The said individual also agreed to cease and desist from stating or representing that customers purchasing from him or from the so-called United States Marble & Granite Co., in all instances effect a saving of from 30 to 35%, when such is not the fact. (Mar. 18, 1937.)

1957. **False and Misleading Brands or Labels and Advertising—Jerseys, etc.**—Stern Brothers, a corporation, engaged in the operation of a department store and in the sale and distribution of its 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.

Stern Brothers, in offering for sale and selling its products in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter or otherwise of the words "silk jerseys" or the words "nail head crepes" or "satin-back crepe" as descriptive of products not composed of silk, the product of the cocoon of the silk worm; and from the use of the word "silk" or "satin" or the word "crepe" either alone or in connection or conjunction with any other word or words or in any way so as to import or imply that the products to which the said word or words refer are composed of silk, when such is not the fact. (Mar. 22, 1937.)

1958. **False and Misleading Trade or Corporate Name and Advertising—Knitted Boy's Caps.**—Timm Cap Co., Inc., a corporation, engaged in the

manufacture of knitted goods, including knitted caps for boys' wear, 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.

Tim's Cap Corp., was a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. It was for several years engaged in the manufacture, sale, and distribution in interstate commerce of boys' caps of the knitted muffler type, and was the owner of a patent on the design thereof. Said product was advertised, sold, and distributed under the trade name of "Tim's Cap." It was advertised widely, both through the usual channels and also by means of the portrait of a smiling boy, wearing "Tim's Cap," in one of which pictures the cap was represented with the flaps raised and in another with the flaps down and buttoned under the chin. Said Tim's Cap Corp. also caused to be manufactured and distributed among its retailer customers papier-mache heads of the same boy on which to place the caps for advertising purposes, and on the base of which appeared the words "Tim's Cap." As the result of such advertising and of the excellence of its product, the same became generally known to the trade and the purchasing public under the name of "Tim's Cap," and said corporation acquired a valuable good will in the words "Tim's Cap" as applied to boys' caps. The patent on the product known as "Tims Cap" expired in the year 1930, and in February, 1933, Tim's Cap Corp. was formally dissolved under the laws of the State of New York. Timm Cap Co., Inc., was organized under the laws of the said state and began the business of manufacturing and selling boys' caps in the year 1934.

Timm Cap Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Timm" as part of its corporate or trade name or in any way which may import or imply that it is the successor of Tim's Cap Corp., or that its caps are manufactured by said Tim's Cap Corp.; provided that if and whenever its corporate or trade name containing the word "Timm" is used by the said corporation in its printed or advertising matter, the said corporate or trade name containing the word "Timm" shall be prominently accompanied by the phrase "Established 1934" printed in type equally as conspicuous as that in which the said corporate or trade name is printed so as to indicate clearly that the said Timm Cap Co., Inc., is not the successor of Tim's Cap Corp. or that its caps are not manufactured by said Tim's Cap Corp.; the use of the statement, "The Knitted Muffler Cap Is Back," and of the statement, "Popular demand has brought

this famous cap back," or of either of said statements, or of any other statement of similar meaning or import, in connection with "Manufactured by Timm Cap Company, Inc.," or in any other way which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that its products are manufactured by the original Tim's Cap Corp.; stating or representing, directly or through salesmen or other representatives, that its organization is the same as the old Tim's Cap Corp., or that it has bought out the Tim's Cap Corp., or any other similar statements or representations having the tendency or capacity to mislead or deceive purchasers into the belief that it is the successor of Tim's Cap Corp.; the use of advertisements or advertising matter simulating that used by Tim's Cap Corp. and including pictorial representations of the head of a boy wearing one of its caps, in two positions (one with the flaps turned up and the other with the flaps turned down), in connection with "Manufactured by Timm Cap Company, Inc.," or any other similar collocation of words and pictures simulating those used by said Tim's Cap Corp. and having the tendency or capacity to confuse, mislead, or deceive purchasers respecting the origin of said products. (Mar. 24, 1937.)

1959. False and Misleading Brands or Labels—Radio Sets.—Climax Radio & Television Corp., engaged in the business of manufacturing radio sets and in the sale and distribution of said products in commerce, as defined by the Act, 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.

For more than thirty years prior to his death on October 18, 1931, Thomas A. Edison had been known and recognized throughout the various States of the United States and in foreign countries as the inventor, patentee, owner and manufacturer of numerous electrical devices of various kinds and descriptions and of machines for the reproduction of the human voice, which have acquired a wide and favorable reputation, and are in great demand by the trade and purchasing public who desire Edison products. Among the machines for the reproduction of the human voice manufactured by companies which the said Thomas A. Edison organized and controlled are phonographs, dictaphone and transcribing machines, radios and many other articles of various kind and character such as storage batteries, spark plugs, and the like. Many of the machines and articles referred to bear the name "Edison" as part of their brand names, and such name "Edison" has acquired a valuable good will as identifying the manufacturer of said machines and articles. Among the companies organized and controlled by the said Thomas A. Edison be-

fore his death, is Thomas A. Edison, Inc., which said company is still engaged in the manufacture of many of the machines and articles invented and developed by Thomas A. Edison. Thomas A. Edison, Inc., during the years 1928 to 1930, inclusive, manufactured and sold radio sets valued at many millions of dollars and during the said period spent several millions of dollars in advertising said products. All of the radio sets manufactured and sold by Thomas A. Edison, Inc., featured the name "Edison" as part of their branded name.

Elgin National Watch Co. was incorporated in 1864 under the laws of the State of Illinois. Continuously since the said date, it has manufactured and is now manufacturing watches, watch movements, and other watch parts. It has at all times since its organization caused the word "Elgin" to distinctively appear as a part of the brand name displayed on or about the products of its manufacture and has caused said products so branded to be advertised and sold throughout the United States of America. As a result, said products, bearing the trade name "Elgin," have long been and are now widely and favorably known and recognized by the trade and purchasing public to be products manufactured and sold by the said Elgin National Watch Co.

Hamilton Watch Co. was incorporated under the laws of the State of Pennsylvania in 1892. It has manufactured continuously since said date and is now manufacturing watches to which it has at all times affixed a brand name featuring the word "Hamilton" and which products so branded have found great favor with purchasing public and especially employees of the various railroads.

Waltham Watch Co., a Massachusetts corporation, for many years last past has manufactured watches and watch movements, automobile clocks and other products. It has sold and now sells its said products bearing a brand name featuring the word "Waltham" in various States of the United States of America. And the said products so branded have long since become and are favorably known and recognized by the trade and purchasing public as and to be products manufactured by the said Waltham Watch Co.

Climax Radio & Television Corp., in soliciting the sale of and selling its products in commerce, as defined by the Act, agreed to cease and desist from the use of the word "Edison" as a brand or label for its products which are not Edison products or products manufactured by Thomas A. Edison, Inc., and from the use of the word "Edison" either independently or in connection or conjunction with any other word or words or in any way so as to import or imply that said radio sets are manufactured by or are sold under a license from said Thomas A. Edison, Inc., or a concern or concerns associated therewith, when such is not the fact; of the use of the word "Elgin" or "Hamilton" or "Waltham" as a brand or label for its products or

otherwise in connection with the sale of its products so as to import or imply that said products are, respectively, products manufactured by Elgin National Watch Co. or Hamilton Watch Co. or Waltham Watch Co. or that the said Climax Radio & Television Corp. is authorized by either the said Elgin National Watch Co. or Hamilton Watch Co. or Waltham Watch Co. to use its name as a brand name or otherwise in connection with the sale of radio sets, when such is not the fact. (Mar. 24, 1937.)

1960. **False and Misleading Prices, Brands or Labels and Advertising—Soaps.**—Manhattan Soap Co., Inc., a corporation, engaged both under its corporate name and also under the trade name "Bristol Soap Company," in the manufacture of soaps, which it sells and has sold 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.

Manhattan Soap Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on the cartons or boxes in which said products are packed and on the products themselves, or in any other way, of any false, fictitious, or exaggerated price in excess of the price at which said products are sold or intended to be sold in the usual course of trade. The said corporation also agreed to cease and desist from the use on its products or otherwise of the word "Doctor" or the abbreviation "Dr." either alone or in connection with a name or with any other word or words so as to import or imply that the said products are compounded or made in accordance with the prescription or under the direction of a doctor and/or that said products contain special or scientific features which are the result of medical advice or services. The said corporation further agreed, in connection with the sale of its soap products in interstate commerce, to cease and desist from the use of the word "Medicated" as descriptive of said products so as to import or imply that said products have been treated or impregnated with medicine or anything medicinal, when such is not the fact. The said corporation also agreed to cease and desist from the use of the word "Health" as descriptive of its soap products so as to import or imply that said products contain an ingredient or ingredients which confer on the user of said products a benefit or benefits beyond that obtained from the use of any toilet soap, when such is not the fact. The said corporation still further agreed to cease and desist from the use in its advertising matter or in any way of statements or representations to the effect that its product is of dollar quality, or contains no cocoanut oil, or has extra beneficial qualities to the skin, cleans blemishes from the skin, nourishes the skin, wards off lines and wrinkles, prevents chapping, penetrates the

pores, or is recommended by obstetricians for bathing babies, when such statements and representations are not warranted by the facts. (Mar. 24, 1937.)

1961. **False and Misleading Brands or Labels—Sweaters.**—Union Knitting Mills, a corporation, engaged in the business of manufacturing sweaters and in the sale and distribution thereof under its said corporate name or under the trade name “Home Knitting Mills” 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 Knitting Mills, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words, “ALL WOOL” or “ALL WOOL 100%” as a mark, stamp, brand or label for its products which are not composed of wool, and from the use of the word “wool” either alone or in connection or conjunction with the word “all” or with “100%” or with any other word or words or in any way so as to import or imply that said products are composed of wool; provided, that if said products are composed in a substantial part of wool, and the word “wool” is used to describe 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 that will otherwise indicate clearly that said products are composed in part of a material or materials other than wool. (Mar. 25, 1937.)

1962. **False and Misleading Advertising—Jewelry.**—Lawson Jaffe, an individual trading as Capitol Jewelers, engaged as a wholesale jeweler in the business of selling and distributing birth stones and birth stone rings 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.

Lawson Jaffe, in offering for sale and selling his products in interstate commerce, agreed to cease and desist from the use in his advertisements and advertising matter featuring the language “Send 10¢ to cover handling—mailing” and the pictorial representation of a ring set with a stone, of the words “Free Offer” or “Absolutely Free” so as to import or imply that, by paying ten cents only, a customer or prospective customer will be given free or without further cost to the customer a ring set with the customers’ birth stone, when such is not the fact; the said Lawson Jaffe, also agreed to cease and desist from the use in the said advertising of the words “Special”

and "Limited" or either of them as descriptive of his offer of products, when in fact such offer is not limited or special but the usual and customary offer made without limitation of any kind by the said Lawson Jaffe in the ordinary course of his business; the said Lawson Jaffe further agreed to cease and desist from the use in said advertising of the word "Cameo" or "Ruby" or "Onyx" as descriptive of the mountings of the rings offered for sale and sold by him in interstate commerce, when in fact said rings are not set, respectively, with cameo, ruby, or onyx; the said Lawson Jaffe also agreed to cease and desist from the use of the word "Platinum" either alone or in connection with the word "Rhodium" or with any other word or words as descriptive of the finish of rings when in fact, such finish has no platinum content. (Mar. 26, 1937.)

1963. False and Misleading Brands or Labels and Advertising—Cream Products.—Chicago Mail Order Co., a corporation, engaged as a mail order house, in the sale and distribution of a large variety 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.

Chicago Mail Order Co., in soliciting the sale of and selling its cream products in interstate commerce, agreed to cease and desist from the use of the words "Turtle Oil" as descriptive of said product, the oil content of which is not composed of turtle oil; and from the use of the words "Turtle Oil" in any way so as to import or imply that the oil content of said product is composed wholly of turtle oil, when such is not the fact; provided that when the oil content of said product is composed in substantial part of turtle oil and the words "Turtle Oil" are used as descriptive of such turtle oil content, then in that case the said words "Turtle Oil" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the words "Turtle Oil" are printed so as to indicate clearly that the oil content of said product is not composed wholly of turtle oil and that otherwise will indicate clearly that the oil content of said product is composed in part of an oil or oils other than turtle oil. (Apr. 6, 1937.)

1964. False and Misleading Brands or Labels and Advertising—Cosmetics.—Benjamin Ansehl Co., a corporation, engaged in the business of manufacturing cosmetics and in the sale and distribution of such toilet preparations under the various trade names "Vivani," "Ame-thyst," and "Lavender and Old Lace" 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.

Benjamin Ansehl Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Turtle Oil" as descriptive of those of its products, the oil content of which is not composed of turtle oil; and from the use of the words "Turtle Oil" in any way so as to import or imply that the oil content of such product is composed wholly of turtle oil, when such is not the fact; provided that when the oil content of said product is composed in substantial part of turtle oil and the words "Turtle Oil" are used as descriptive of such turtle oil content, then in that case the said words "Turtle Oil" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the words "Turtle Oil" are printed so as to indicate clearly that the oil content of said product is not composed wholly of turtle oil and that otherwise will indicate clearly that the oil content of said product is composed in part of an oil or oils other than turtle oil. The said corporation also agreed to cease and desist from the use on its labels, advertising matter or in any other way of statements or representations to the effect that the so-called tissue cream offered for sale and sold by it in interstate commerce, when applied externally to the skin will penetrate or be absorbed by the skin so as to nourish or revitalize impoverished tissues and thereby prevent cracking, fine lines and wrinkles or fill in hollows of neck and arms, when such are not the facts. (Apr. 6, 1937.)

1965. **False and Misleading Brands or Labels and Advertising—Razor Blades.**—Graef & Schmidt, Inc., a corporation, engaged in the sale and distribution of razor blades, among other things, 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.

Graef & Schmidt, Inc., in offering for sale and selling its products in interstate commerce, agreed to cease and desist from the use of the words "English Razor Steel" as descriptive of said products which are not made from English steel, and from the use of the said words "English Razor Steel" in any way so as to import or imply that the products to which said words refer are made from English razor steel or that said products are manufactured in England from English razor steel, when such is not the fact. (Apr. 6, 1937.)

1966. **False and Misleading Brands or Labels and Advertising—Razor Blades.**—Utility Blade & Razor Corporation, engaged in the manufacture of razor blades 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.

Utility Blade & Razor Corporation, in offering for sale and selling its products in interstate commerce, agreed to cease and desist from the use of the words "English Razor Steel" as descriptive of said products which are not made from English steel, and from the use of the said words "English Razor Steel" in any way so as to import or imply that the products to which said words refer are made from English razor steel or that said products are made in England from English razor steel, when such are not the facts. (Apr. 6, 1937.)

1967. False and Misleading Prices and Advertising—Silk Treatment.—E. A. Morgan, an individual trading as Runsafe Sales Co. and as E. A. Morgan & Co., engaged in the business of packaging two preparations, one designated "Run-Safe" and the other "Runless," both of which products are used as a treatment for silk hosiery and lingerie and are and have been sold by the said E. A. Morgan 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. A. Morgan, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from stating or representing in his advertising matter or in any way that runs, snags, and breaks in silk hosiery and/or lingerie are prevented by the use of said products, or either of them. The said individual also agreed to cease and desist from the use in his advertising matter of pictorial representations purporting to show, in the form of "Before" and "After" treatments or in any way, the effects of the use of said products, or either of them, on fabrics but which pictorial representations are merely the reproduction of incorrect drawings. The said individual further agreed to cease and desist from marking or in any way advertising his product with what purports to be the selling price of said product but which price is false, fictitious, and much in excess of the price at which said product is sold or intended to be sold in the usual course of trade. (Apr. 8, 1937.)

1968. False and Misleading Brands or Labels and Advertising—Calendar Pads and Stands.—Stark Calendars, Inc., a corporation, engaged in the business of selling and distributing calendar pads and stands therefor 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.

Stark Calendars, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its catalogs or on its letterheads or other printed matter of the words "Manufactured By" or the word "Manufacture" or "Manufac-

turers" either alone or in connection with any other word or words or in any way so as to import or imply that the said corporation makes or manufactures the products offered for sale and sold by it in interstate commerce, or that it actually owns and operates or directly and absolutely controls the factory in which said products are made or manufactured. The said corporation also agreed to cease and desist from the use of the phrase "Pat. appl'd. for" or of any other similar phrase or representation as a stamp or marking for its products, or any of them, when in fact no application for a patent on said product has been applied for. (Apr. 9, 1937.)

1969. False and Misleading Brands or Labels—Hosiery.—Henry F. Martinat, an individual trading as Martinat Hosiery Mills, engaged in the business of manufacturing hosiery 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.

Henry F. Martinat, in soliciting the sale of and selling his hosiery in interstate commerce, agreed to cease and desist from the use of the words "Pure Thread Silk Reinforced with Art Silk" as a mark, stamp, or brand for said hosiery which is not composed of silk, the product of the cocoon of the silkworm, and from the use of the word "silk" either alone or in connection or conjunction with any other word or words or any way so as to import or imply that the products to which said word or words refer are composed of silk; provided, that if said products are composed, in substantial part, of silk and in part, of a material or materials other than silk, and the word "silk" is used to describe such silk content, then in that case the word "silk" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "silk" is printed so as to indicate clearly that said products are not composed wholly of silk but are composed in part of a material or materials other than silk. (Apr. 9, 1937.)

1970. False and Misleading Trade Name and Brands or Labels—Radio Dials.—Eddie Manufacturing Co., a corporation, engaged in the manufacture of radio dials 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.

Eddie Manufacturing Co., in soliciting the sale of and selling its radio dials in interstate commerce, agreed to cease and desist from the use as a trade name or brand for said dials of the word "Majestic" either alone or in connection or conjunction with the

words "Radio Corporation" or with any other word or words or in any way so as to import or imply that said dials or the radio sets to which said dials are attached are products made or manufactured by Grigsby-Grunow Co. or its successor in business, Majestic Radio and Television Corp. of Chicago, Ill., when such is not the fact. (Apr. 12, 1937.)

1971. **False and Misleading Advertising—Correspondence Course.**—Percy S. Lucas and Gerald A. Rice, copartners, trading under the firm name and style of Edison Electrical Schools, engaged in the preparation of a course of lessons in Diesel Engineering and Radio Engineering and in the sale and distribution of said course of instruction 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.

Percy S. Lucas and Gerald A. Rice, in soliciting the sale of and selling their courses of instruction in interstate commerce, agreed to cease and desist from the use of statements and representations, either in the head or in the body of their advertisements and their advertising matter importing or implying or which tend or may tend to confuse, mislead or deceive applicants for employment into the erroneous belief that the said copartners are in a position to offer employment or positions to men mechanically inclined; advertising their said business under the classification heading "Help Wanted—Men" or "Reliable Men Wanted" so as to import or imply that said copartners have positions open and available, when in fact the purpose of said advertising is not to obtain "Men Help" but is for the purpose of enrolling students for a course of instruction. The said copartners also agreed to cease and desist from using any method to obtain students by means of any other similar or misleading representations. (Apr. 13, 1937.)

1972. **False and Misleading Advertising—Hats and Caps.**—M. Epstein & Sons Co., Inc., a corporation, engaged in the sale and distribution of hats and caps 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.

M. Epstein & Sons Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of its printed matter or in any other way of the word "Manufacturers" either alone or in connection or conjunction with any other word or words or in any way so as to import or imply that it makes or manufactures the products offered for sale and sold by it in interstate commerce or that it actually owns and operates or directly and

absolutely controls the plant or factory wherein said products are made or manufactured. (Apr. 15, 1937.)

1973. **False and Misleading Advertising—Hosiery Preparation.**—G. M. Plate and R. J. Plate, copartners trading as The Plate Manufacturing Co., engaged in the business of manufacturing a powdered ammonia alum product and in the sale and distribution thereof, originally under the trade name "Kant-Run" but more recently and at present as "HoSaver," 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.

G. M. Plate and R. J. Plate, agreed, and each of them agreed, in soliciting the sale of and selling their product in interstate commerce, to cease and desist from the use of their advertisements and advertising matter or in any way, of the statement or representation "Protects lingerie and silk and rayon hose against runs, rips, snags, and breaks" or of any other statement or representation of similar meaning so as to import or imply that the use of said product, as a treatment for lingerie and hose will protect the same, that is to say will prevent runs, rips, snags, and/or breaks therein, when such is not the fact. (Apr. 15, 1937.)

1974. **False and Misleading Trade or Corporate Name and Advertising—Telephone Cabinets.**—H. O. Schmidt and R. C. Kruger, copartners trading under the firm names "Delta Manufacturing Company" and "Delta Furniture Company," engaged in the business of selling and distributing telephone cabinets 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.

H. O. Schmidt and R. C. Kruger, agreed and each of them agreed to cease and desist from the use of the word "Manufacturing" as part of their trade name in connection with the offering for sale and selling their products in interstate commerce; and from the use of the words "Manufacturing" or "Factory" or "Manufacturer" or of the statement "We are specialists in building cabinets" or of any other word or words or statement of similar meaning, or of the pictorial representation of a factory building or a part thereof so as to import or imply that the said H. O. Schmidt and R. C. Kruger make or manufacture the products which they sell, or that they actually own and operate or directly and absolutely control the plant or factory in which said products are made or manufactured. The said copartners also agreed to cease and desist from stating or representing that their products are made of "only the finest woods" or are made in their entirety of quartered oak, when such are not the facts. The

said copartners further agreed to cease and desist from the use in their printed or advertising matter of whatever character of what purport to be quoted representations from commendatory or testimonial letters, when in fact said representations are not in all respects true and/or are not an exact repetition of the words as used in such letters. (Apr. 15, 1937.)

1975. False and Misleading Advertising—Farm Machinery.—Dunham Co., a corporation, engaged in the business of manufacturing farm machinery 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.

Dunham Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising matter of whatever character of statements or representations to the effect that there are 450,000 Dunham machines in use throughout the world at the present time and/or that the said machines work and rework 110,000,000 acres every year, when in fact said statements and representations are not properly based on accurately compiled facts. (Apr. 15, 1937.)

1976. False and Misleading Trade Name and Brands or Labels—Shoes.—J. P. Smith Shoe 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, 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.

J. P. Smith Shoe Co., in soliciting the sale of and selling its shoes in interstate commerce, agreed to cease and desist from the use of the words "British Walkers" so as to import or imply that said shoes are of British origin or are made or manufactured in Great Britain. If the words "British Walkers" are used as a trade name, brand, or label for said shoes, then in that case the said words, wherever appearing, shall be immediately accompanied by some other word or words printed in type equally conspicuous as that in which the words "British Walkers" are printed so as to indicate clearly that said shoes are not of British origin or made or manufactured in Great Britain. (Apr. 15, 1937.)

1977. False and Misleading Advertising—Battery Solution.—Herbert R. Johnson, an individual trading as Johnson's Battery Process Co., engaged in the business of manufacturing or compounding a battery solution and in the sale and distribution thereof under the trade designation "Johnson's Battery Process" or "Johnson's More

Power" 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.

Herbert R. Johnson, in offering for sale and selling his product designated "Johnson's Battery Process" or "Johnson's More-Power" in interstate commerce, agreed to cease and desist from the use in his advertisements and advertising matter or in any way of statements or representations to the effect that his product will counteract or defeat the corrosive elements of storage battery electrolyte, or will greatly prolong the useful life of new batteries by neutralizing the sulphuric acid in the solution, or will restore the efficiency of used batteries, or will remove sulphate from the plates, or will make batteries treated with the Process take a full charge in less time than before treatment, or will give batteries longer life and superior performance, when such are not the facts. The said Herbert R. Johnson also agreed to cease and desist from the use of the words "Automotive Test Laboratories of America" either alone or in conjunction with any other word or words on his so-called Certificates of Merit relating to his product so as to import or imply that the said Automotive Test Laboratories of America is an accredited testing laboratory and/or that his product has been tested by such accredited laboratory or in fact by any accredited testing laboratory, when such is not the fact. (Apr. 16, 1937.)

1978. **False and Misleading Brands or Labels—Rug and Carpet Cleaning Product.**—Vapoo Products Co., Inc., a corporation, engaged in the business of manufacturing a product for use in cleaning of rugs and carpets and in the sale and distribution of said product under the trade designation "VAROO" 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.

Vapoo Products Co., Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use on the labels affixed to the containers of its product of the phrase "highest award 1934" or "Gold Seal Award Chicago 1934" in connection or conjunction with the words "Century of Progress International Exposition" so as to import or imply that the said product had received an award by the said Century of Progress International Exposition, when such is not the fact. (Apr. 26, 1937.)

1979. **False and Misleading Trade or Corporate Name and Advertising—Table Pads, Hot Dish Pads, etc.**—United Asbestos Pad Corp., a corporation, engaged in the manufacture of table pads, iron stands, stove

and hot dish pads, and the like 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.

United Asbestos Pad Corp., in offering for sale and selling its table pads in interstate commerce, agreed to cease and desist from the use in its advertising matter or otherwise of the words "Special sale" or the words "Half Price Sale" either independently or in connection or conjunction with the words "For three days only" or with any other word or words or in any way so as to import or imply that the price at which said products are offered for sale is other than the regular price at which said products are sold without limitation as to time in the usual course of trade. The said corporation also agreed, in soliciting the sale of and selling its said products in interstate commerce, to cease and desist from the use of the word "Asbestos" as part of its corporate or trade name, and from the use of the word "Asbestos" in any way as descriptive of those of its products not composed of or made with asbestos; provided that if any of its products are made in substantial part with asbestos, and the word "Asbestos" is used as descriptive of such substantial part, then in that case the word "Asbestos" shall be prominently accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Asbestos" is printed so as to indicate clearly that said products are not composed wholly of asbestos but are composed of a material or materials other than asbestos. Said corporation further agreed to cease and desist from the use of the word "Leather" either alone or in connection with "Art" or with any other word or words so as to import or imply that the pads to which said word or words refer are covered with leather, when such is not the fact. Said corporation also agreed to cease and desist from the use of the word "Reversible" as descriptive of its products which are not constructed and treated on both sides thereof so as properly to perform the requirements of a table pad regardless of which side of said pad is exposed. Said corporation still further agreed to cease and desist from the use of the words "Heat Proof," "Liquid Proof," "Warp Proof" as descriptive of its table pads which are not in fact proof against heat, liquids, and warping. (Apr. 26, 1937.)

1980. False and Misleading Advertising—Radios, etc.—Metropolitan Radio Co., Inc., a corporation, engaged in the business of selling radio receiving sets and supplies at retail in commerce, as defined by the Federal Trade Commission 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 soliciting the sale of and selling its radio receiving sets in commerce, agreed to cease and desist from stating or representing in its advertising matter or in any other way that its radio sets have or had a designated "Regular Price" or "Former Price" or "Former List Price" when in fact the designated price is fictitious, much in excess of and/or other than the price at which said sets are or have been regularly or formerly sold in the usual course of trade. Said corporation also agreed to cease and desist from the use in its advertising or otherwise of the words "Half-Price Sale" or of any other words of similar meaning so as to import or imply that the products to which said words refer are offered for sale at a price which is but one-half the price at which said products are sold in the usual course of trade, when such is not the fact. (Apr. 26, 1937.)

1981. False and Misleading Advertising—Bed Quilt Pieces and Designs.—Karl W. Lambooy is an individual, engaged in the business, under the name Robert Frank Needlework Supply Co., of manufacturing quilting pieces or patches and designs for making bed quilts 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 therein.

Karl W. Lambooy, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in his advertising matter of whatever character of statements in the form of testimonials or endorsements purportedly referring to his products, when in fact, such statements or purported testimonials or endorsements were not written or prepared by users of the products sold by the said Karl W. Lambooy and do not refer to the products of the said individual. The said Karl W. Lambooy also agreed to cease and desist from the use of the words "old, established firm" or of any other words of similar import as descriptive of the business conducted by him, when in fact such business is not an old established one. (Apr. 29, 1937.)

1982. False and Misleading Advertising—Women's Wearing Apparel.—Tailored Woman, Inc., a corporation, engaged in the sale and distribution of wearing apparel for women 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.

Tailored Woman, Inc., 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 otherwise of the words "silk jersey" as descriptive of products not composed of silk, the product of the cocoon of the silkworm; and from the use of the word "silk" either alone or in connection or conjunction with any other word or words or in any way so as to import or imply that the products to which the said word or words refer are composed of silk, when such is not the fact. (Apr. 30, 1937.)

1983. False and Misleading Advertising—Rings, etc.—Bradley Boston, Inc., a corporation, engaged in the business of selling and distributing rings and other jewelry 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.

Bradley Boston, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising of whatever character of the words "Facsimile Diamond" as descriptive of products made of glass, and from the use of the word "Diamond" whether alone or in connection or conjunction with the word "Facsimile" or the words "Blue-white" or with any other word or words so as to import or imply that the products to which said word or words refer are other than imitations of diamonds. The said corporation also agreed to cease and desist from the use in its advertising matter of the word "Free" in connection with its offer of products so as to import or imply that said products actually are given free or as a gratuity, when, in fact, said products are purchased and paid for. Said corporation further agreed to cease and desist from the use, in advertising or offering for sale and selling its products in interstate commerce, of prices purporting to be the customary prices at which its products are sold, but which are, in fact, fictitious and or in excess of the prices for which said products are sold and intended to be sold in the usual course of trade. (May 3, 1937.)

1984. False and Misleading Brands or Labels and Advertising Canned Dog and Cat Foods.—Boyd W. Doyle, an individual trading as Doyle Packing Co., engaged in the manufacture of canned dog and cat food 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.

Boyd W. Doyle, in offering for sale and selling his Dog Food in interstate commerce, agreed to cease and desist from the use in his

advertising matter or on the labels affixed to said dog food of statements or representations to the effect that said dog food is a balanced diet or is all of one quality and is the highest-grade possible or that said product could not be improved upon even if double the price was charged or that said product is a result of 5 years of experience and hundreds of feeding tests or has been recommended or endorsed by leading veterinarians all over the country, or that it contains 75% protein and is fresh and wholesome, is not artificially colored, or that his said product is a scientific ration or a beef ration or is made of beef by-products or that it does not contain horse meat when such are not the facts. The said Boyd W. Doyle also agreed to cease and desist from the use on the labels affixed to his products, or any of them, of the replica of what purports to be an award in recognition of the quality or merit of said product, when in fact no such award has been made said product by any competent authority. (May 3, 1937.)

1985. **False and Misleading Advertising—Taffeta Products.**—Arnold, Constable & Co., Inc., a corporation, engaged in the business of operating a department store and in the sale and distribution of its 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.

Arnold, Constable & 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 or otherwise of the words "Pure Dye Taffeta" as descriptive of those of its products which are not composed of silk, the product of the cocoon of the silk worm, and from the use of the words "Pure Dye" and of the word "Taffeta" or of either of the said word or words alone or in connection or conjunction with any other word or words or in any way so as to import or imply that the products to which the said word or words refer are composed of silk, when such is not the fact. (May 6, 1937.)

1986. **False and Misleading Brands or Labels and Advertising—Spectacle Frames.**—John David Brock, an individual, trading under the names "Specialty Optical Company," "Superior Optical Company" and "Kansas City Wholesale Optical Company," engaged in the sale and distribution of spectacle frames, mountings and the like, 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.

John David Brock, in soliciting the sale of and selling his spectacle frames in interstate commerce, agreed to cease and desist from the use in his advertising or as a stamp or marking for said frames of the term "1₁₀-12K." either alone or in connection with the initials

"G. F." or in any way, when in fact the gold content of said frames is other than $\frac{1}{10}$ -12K and/or assays other than $\frac{45}{1000}$ fine gold or better; provided, if the gold content of but a part of said frames assays $\frac{45}{1000}$ fine gold or better, and the term " $\frac{1}{10}$ -12K" is used to describe such part, then in that case it shall be made clearly to appear that such term refers only to that part of said frames which assays as represented and that the remaining part or parts of said frames is not or are not referred to by said term. (May 10, 1937.)

1987. **False and Misleading Brands or Labels—Wax Crayons.**—Joseph Dixon Crucible Co., a corporation, engaged in the manufacture of pencils, pressed crayons, penholders and pencil leads, and also engaged in the sale and distribution of wax crayons under the trade name "Gem" and "Educator" 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.

Joseph Dixon Crucible Co., in soliciting the sale of and selling its wax crayons in interstate commerce, agreed to cease and desist from the use of the statement "Made in U. S. A. by Joseph Dixon Crucible Company of Jersey City, New Jersey" as a mark or brand for its said products when in fact the said Joseph Dixon Crucible Co. does not make said products; and from the use of the said statement or of any other statement of similar meaning so as to import or imply that the said Joseph Dixon Crucible Co. actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured. (May 10, 1937.)

1988. **False and Misleading Advertising—Wearing Apparel.**—A. De Pinna Co., Inc., a corporation, engaged in the business of selling and distributing wearing apparel 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. De Pinna 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 or otherwise of the words "Silk Jersey" as descriptive of dresses which are not composed of silk, the product of the cocoon of the silkworm, and from the use of the word "Silk," either alone or in connection or conjunction with any other word or words or in any way which directly asserts or imports or implies that the products to which said word or words refer are composed of silk, when such is not the fact. (May 10, 1937.)

1989. **Lottery Scheme—Candies.**—Illinois Nut Products Co., a corporation, engaged in the business of manufacturing candies, and in the sale and distribution thereof in interstate commerce, in competi-

tion 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.

Illinois Nut Products Co., 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 the use of any gift enterprise, lottery or any scheme of chance whereby an article is given as a prize or premium for or in consideration of the purchase of any other article. (May 11, 1937.)

1990. False and Misleading Advertising—Dresses.—Aywon Dress Co., Inc., a corporation, engaged in the business of manufacturing garments including ladies' dresses, 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.

Aywon Dress Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its printed matter or in any other way of the word "Silk" either alone or in connection or conjunction with the word "jersey" or with any other word or words as descriptive of products not composed of silk, the product of the cocoon of the silkworm and from the use of the word "silk" in any way so as to import or imply that the products to which the said word or words refer are composed of silk, when such is not the fact. (May 12, 1937.)

1991. False and Misleading Advertising—Wearing Apparel.—Bonwit Teller, Inc., a corporation, engaged in the business of conducting a department store from which it sells and distributes merchandise in interstate commerce, in competition with other corporations, 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.

Bonwit Teller, Inc., in offering for sale and selling its products in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter or otherwise of the word "silk" or "Satin" either alone or in connection or conjunction with the word "jersey" as descriptive of products not composed of silk, the product of the cocoon of the silkworm and from the use of the word "silk" or "crepe" or "satin" in any way so as to import or imply that the products to which the said word or words refer are composed of silk, when such is not the fact. (May 12, 1937.)

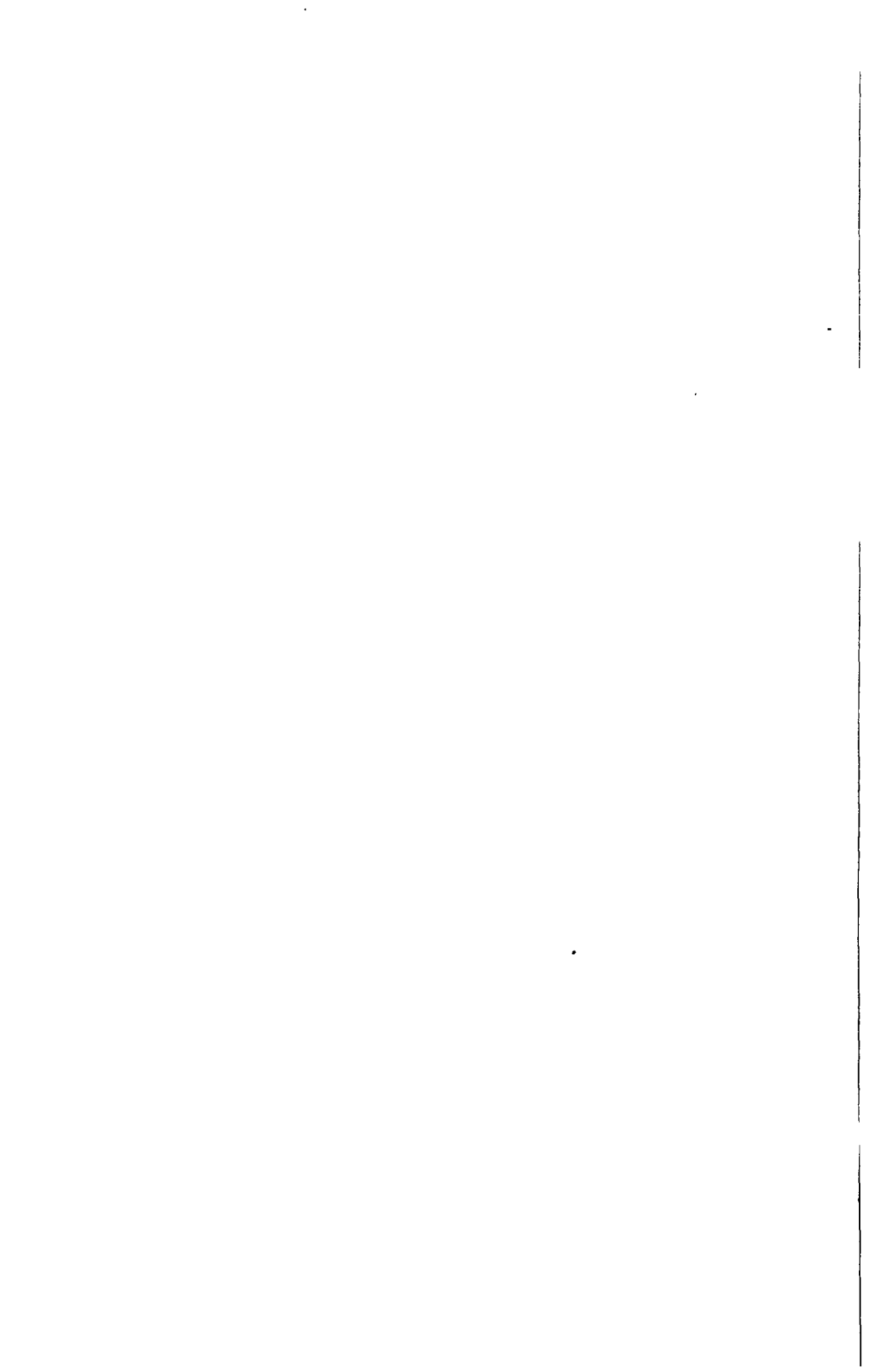
1992. False and Misleading Advertising—Dresses and Umbrellas.—Franklin Shops, Inc., a corporation, engaged in the business of oper-

ating a department store and in the sale and distribution of merchandise 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 set forth therein.

Franklin Shops, Inc., in offering for sale and selling its products in interstate commerce, agreed to cease and desist from the use in its advertising matter or otherwise of the words "Luxable Silk" as descriptive of dresses and of the words "Art Silk" as descriptive of the fabric of its umbrellas, when in fact said products are not composed of silk, the product of the cocoon of the silk worm. Said Franklin Shops, Inc. also agreed to cease and desist from the use of the word "Silk" either alone or in connection or conjunction with any other word or words or in any way so as to import or imply that the products to which said word or words refer are composed of silk, when such is not the fact. (May 13, 1937.)

1993. False and Misleading Trade Name, Brands or Labels and Advertising—Hair Preparation.—Paul Thomas Schweyer, an individual trading as Naturol Laboratories, engaged in the sale and distribution of a preparation to be used on the hair, 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.

Paul Thomas Schweyer, in soliciting the sale of and selling his preparation in interstate commerce, agreed to cease and desist from use of any and all statements and representations on the labels affixed to said preparation or in advertisements or advertising matter distributed in interstate commerce, so as to import or imply that the said preparation, when used upon the hair, will restore such hair which has become gray, faded or streaked to its original or natural color whatever may have been its previous shade or color, or that the said product is not a dye and/or will not have harmful effects to the user thereof. The said Paul Thomas Schweyer also agreed to cease and desist from the use of the words "Naturol Laboratories" as and for a trade name, when in fact there are no such laboratories; and from the use of the word "laboratories" as part of or in connection with his trade name or in any other way so as to import or imply that the said individual actually owns and operates or directly and absolutely controls a place devoted to experimental study in a branch or branches of natural science or the application of scientific principles in the preparation of his product or of any drugs and chemicals, when such is not the fact. (May 17, 1937.)



DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS ¹

01573. Vendor-Advertisers—Medicinal Preparation.—Mrs. Mercy A. Summers and Mrs. Alice Ayling, copartners, doing business under the trade name of Summers Medical Co., South Bend, Ind., vendor-advertisers, were engaged in selling a preparation designated, Mrs. Summers' Home Treatment, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing, directly or otherwise:

(a) That Mrs. Summers' Home Treatment has brought joyous new health to thousands suffering bearing-down pains, headaches, dizziness, backaches, ovarian pains, pains in the adomen, 'whites', painful or irregular periods;

(b) That Mrs. Summers' Opaline Suppositories—

1. Are unusually successful in reducing inflammation and congestion;
2. Provide the desired relief to women who feel unfit for home duties and responsibilities, social pleasure, or daily employment;
3. Are productive of satisfactory results in cases of leucorrhoeal discharges resulting from inflamed or catarrhal conditions;
4. Are beneficial in cases of pregnancy;
5. Are helpful when used after childbirth; or
6. Have proved useful in aiding women to pass through the change of life;

(c) That Mrs. Summers' W. O. K. Tablets—

1. Are helpful to young women during the transition stage from girlhood to womanhood;
2. Improve the general health;
3. Relieve nervousness; or
4. Aid nature to establish the menstrual function;

(d) That Mrs. Summers' W. O. K. Tablets—

1. Are beneficial during pregnancy or in restoring strength afterward; or
2. Relieve painful and nervous symptoms common to the menopause or change of life;

(e) That the use of Mrs. Summers' Home Treatment will prevent an operation or save life;

(f) That \$4.00 worth of Mrs. Summers' Opaline Treatment will make, and keep, well a woman who had been an invalid for fifteen years, and spent many dollars for operations, and had abandoned hope of ever being well. (Dec. 1, 1936.)

¹ Of the special board of investigation, with publishers, advertising agencies, broadcasters, and vendor-advertisers. Period covered is that of this volume, namely, Dec. 1, 1936, to May 31, 1937, inclusive. For digests of previous stipulations, see vols. 14 to 23 of Commission's Decisions.

For description of the creation and work of the special board, see vol. 14, p. 602, et seq.

01574. **Vendor-Advertiser—Medicinal Preparation.**—R. E. Overell, an individual, doing business under the trade name of Copinol Co., Los Angeles, Calif., vendor-advertiser, was engaged in selling a preparation designated, Copinol, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing, directly or otherwise:—

(a) That Copinol

1. "Heals" catarrh, sinus or colds;
2. Quickly dissolves and eliminates mucous;
3. Clears the nasal passages;
4. Reduces inflammation;
5. Normalizes the entire respiratory tract;
6. Will "stop" catarrh or sinus trouble;
7. Reduces enlarged tonsils; or
8. Gives positive results;

(b) That Copinol is an absolutely new medical discovery that creates magical results (Dec. 1, 1936.)

01575. **Vendor-Advertiser—Stationery.**—Arrow Press, Inc., a corporation, Minneapolis, Minn., vendor-advertiser, was engaged in selling a preparation designated, Printed Stationery, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing, directly or otherwise:

That it furnishes Hammermill Bond paper in orders for printed stationery at the same price as it does its cheaper grade of paper known as Arrow Bond paper.

The respondent further agreed:

(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 of 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 plans under normal conditions in the due course of business. (Dec. 1, 1936.)

01576. **Vendor-Advertisers — Medicinal Preparation.** — George W. Thompson and Sherman H. Thompson, copartners, doing business under the firm name of The Redwood Perfume and Chemical Co., Eureka, Calif., vendor-advertisers, were engaged in selling a preparation designated, Redwood Inhalant, and agreed in soliciting the sale of and selling said product in interstate commerce, to cease and desist from representing, directly or otherwise:

(a) That REDWOOD INHALANT constitutes a competent treatment or an effective remedy for—

- | | |
|------------------------|----------------------|
| 1. Asthma, | 12. Cancer, |
| 2. Hay fever, | 13. Croup, |
| 3. Sinus trouble, | 14. Coughs, |
| 4. Bronchial diseases, | 15. Hiccups, |
| 5. Ringworm, | 16. Ulcers, |
| 6. Poison Oak, | 17. Stomach trouble, |
| 7. Poison Ivy, | 18. Scrofula, |
| 8. Running sores, | 19. Eczema, |
| 9. Burns, | 20. Catarrh, |
| 10. Itch, | 21. Old sores, |
| 11. Tuberculosis, | 22. Deafness; |

(b) That Redwood Inhalant will destroy all disease germs, or that it will constitute a competent treatment for, or prevent, practically every form of disease;

(c) That this preparation works like magic;

(d) That the discovery of the merits of redwood chlorophyll is the greatest discovery of the scientific world;

(e) That redwood chlorophyll is the main ingredient of Redwood Inhalant;

(f) That Redwood Inhalant will free the bronchial and nasal passages of germs;

(g) That this preparation will prevent or remedy all infectious diseases;

(h) That Redwood Inhalant is a sure remedy or treatment for asthma;

(i) That this product proves successful in every kind of bronchial trouble;

(j) That this preparation will keep the system free from disease;

(k) That respondent's preparation constitutes a competent treatment or an effective remedy for every skin disease;

(l) That Redwood Inhalant has a phenol coefficient of 4.25;

(m) That Redwood Inhalant is the master remedy of the age;

(n) That this preparation is a competent treatment or an effective remedy for influenza or colds, or that it never fails to protect one against the germs of these diseases;

(o) That if one has a soreness in the throat, it is a certain indication that either a flu germ, or a cold germ, is working there, or that if allowed to remain one is sure to come down with a serious complication;

(p) That Redwood Inhalant prevents infection of wounds;

(q) That Redwood Inhalant will free the head of sinus germs;

(r) That no remedy has ever been discovered that is anywhere nearly as effective in relieving a cough as Redwood Inhalant;

(s) That this preparation will destroy the germs causing stomach ulcers, or that it will heal the ulcers;

(t) That Redwood Inhalant will be effective in the treatment of all forms of stomach trouble;

(u) That this preparation is an effective remedy, or a competent treatment, for any kind of a sore, no matter how chronic;

(v) That this product is a competent treatment, or an effective remedy, for Pyorrhoea, or that it will prevent such condition;

(w) That Redwood Inhalant will rid one of asthma, sinus trouble, or any other condition or disease;

(x) That this product will restore nasal tissue to normal condition;

(y) That Redwood Inhalant will heal skin tissue;

(z) That a drop of Redwood Inhalant in each nostril will promptly stop sneezing;

(aa) That Redwood Inhalant removes the cause of sinus trouble;

(bb) That this preparation is now the only remedy known which will successfully relieve sinus trouble;

(cc) That this product will stop a cough instantly, or at all;

(dd) That Redwood Inhalant is highly recommended by famous physicians in the successful treatment of bronchial diseases;

(ee) That the germs of asthma and sinus trouble are beyond the reach of every kind of medicinal treatment;

(ff) That all diseases are caused by germs;

(gg) That this preparation will stop the most chronic case of hiccups;

(hh) That Redwood Inhalant would have saved the lives of hundreds of thousands of American Boys who died of influenza after the World War;

(ii) That Redwood Inhalant will remove or prevent catarrh. (Dec. 2, 1936.)

01577. **Vendor-Advertiser—Artificial Teeth.**—Dr. J. Hod Williams, an individual doing business under the trade name of the Hod Laboratories, Tampa, Fla., vendor-advertiser, was engaged in selling artificial teeth and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That artificial teeth purchased by mail are better or are the only means to get your real individuality or to procure teeth exactly the way you want them;

(b) That use of the 3 Point Suction Roofless Plate permits a correct sense of taste as exists when in possession of natural teeth;

(c) That respondent's plates are constructed in a better way;

(d) That youthful expression can be restored by the use of artificial teeth purchased through the mails. (Dec. 2, 1936.)

01578. **Vendor-Advertiser—Skin Preparation.**—S. Almklov, an individual doing business under the trade name of Almklov's Pharmacy, Cooperstown, N. Dak., vendor-advertiser, was engaged in selling Almklov's X. E. M. Salve and Almklov's Itch Specific and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That X. E. M. is a competent treatment for eczema;

(b) That Itch Specific is an effective treatment for itching, unless said representation be limited to indicate itching commonly known as scabies;

(c) That Itch Specific and X. E. M. have succeeded in thousands of cases where every other treatment had failed after years of trial;

(d) That X. E. M. Salve is the very best remedy for skin irritations, eruptions and sores.

The respondent further agreed in soliciting the sale of his product in interstate commerce, to cease and desist from—

Representing, designating or labeling any of said products as "ITCH SPECIFIC", unless said representation, designation or label contains words immediately following the words "ITCH SPECIFIC" in equally discernible

type to indicate that the therapeutic properties of said preparation are limited to "itch" commonly known as scabies. (Dec. 3, 1936.)

01579. **Vendor-Advertiser—Beverage.**—Jay Clifford and Leonard Praeger, co-partners, operating under the firm name of North American Mate Co., New York, N. Y., vendor-advertiser, was engaged in selling Angela Mate and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Mate is a "Health" Tea;
- (b) That Angela Mate is endorsed by the Women's Health Federation of America;
- (c) That the North American Mate Company is an importer, or imports this tea, or is a "distributor" thereof, until such time as they do in fact import this Mate and/or are in fact "distributors";
- (d) That this tea will make one a new person;
- (e) That Angela Mate has "vitalizing" qualities, or increases vital powers;
- (f) That the tea has brought happiness to thousands of nervous, run-down people;
- (g) That the French Society of Hygiene of Paris says that Mate "sustains" the nervous and muscular system, and augments the system;
- (h) That Angela Mate will correct the cause of unhealthy nerves;
- (i) That Angela Mate is a laxative;
- (j) That this tea has food value;
- (k) That this product is a digestive; or that it will promote or increase assimilation;
- (l) That Angela Mate is a preventive of rheumatism or that it combats obesity, except by satisfying hunger;
- (m) That Angela Mate "Cures" rheumatism, or any other disease;
- (n) That this product constitutes a competent treatment or an effective remedy for—

1. Anemia,	7. Insomnia,
2. Rickets,	8. Aches and pains,
3. Malnutrition,	9. Neurasthenia,
4. Rheumatism,	10. Indigestion, or
5. Stomach trouble.	11. Eye trouble;
6. Nervous disorders,	
- (o) That this tea is a solvent of uric acid, or that it eradicates uric acid from the system;
- (p) That the use of Angela Mate will make one a "rejuvenated" person;
- (q) That Angela Mate stimulates "all" bodily functions;
- (r) That the President of the United States endorses the use of Mate;
- (s) That the use of Angela Mate will "banish" fatigue;
- (t) That Angela Mate—

1. Enriches the blood, or
2. Favors the formation of haemoglobin. (Dec. 3, 1936.)

01580. **Vendor-Advertisers—Hair Tonic.**—James C. Marasco and Samuel R. Marasco, copartners, doing business as the Fertile Co., Washington, Pa., vendor-advertisers, were engaged in selling a preparation designated Fertile Scalp Tonic, and agreed in soliciting the

sale of and selling said product in interstate commerce, to cease and desist from representing, directly or otherwise:

(a) That Fertile Scalp Tonic will give permanent relief for dryness and brittleness of the hair or that it will preserve permanent waves;

(b) That Fertile Scalp Tonic will act as a competent treatment or effective remedy for hair troubles, itching scalp or falling hair, unless limited to its cleansing agent;

(c) That Fertile Scalp Tonic can be used as a dry shampoo;

(d) That Fertile Scalp Tonic can be recommended for any type of alopecia;

(e) That Fertile Scalp Tonic will

1. Stop hair loss;
2. Stimulate new hair growth;
3. Retard grayness;
4. Preserve a wave;
5. Normalize excess dryness or oiliness;
6. Neutralize alkaline deposits remaining on the scalp after the usual soap and water shampoo. (Dec. 3, 1936.)

01581. Vendor-Advertiser—Washing Fluid.—Suntex Chemical Co., a corporation, Philadelphia, Pa., vendor-advertiser, was engaged in selling a sodium hypochlorite designated Suntex, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Suntex sterilizes;

(b) That Suntex disinfects, unless limited to indicate that said product is a disinfecting agent when used as directed;

(c) That the use of Suntex for laundering purposes obviates the necessity for rubbing the clothes laundered. (Dec. 3, 1936.)

01582. Vendor-Advertiser — Medicinal Preparation. — Aschenbach & Miller, Inc., a corporation, Philadelphia, Pa., vendor-advertiser, was engaged in selling Mason's Cream of Olives Ointment, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Mason's Cream of Olives is an effective treatment for head, chest, and throat colds;

(b) That Mason's Cream of Olives penetrates or strikes at the seat of chest or head colds;

(c) That Mason's Cream of Olives has proven effective in combating colds;

(d) That Mason's Cream of Olives has been proven effective in cold protection;

(e) That Mason's Cream of Olives is sure to combat colds;

(f) That Mason's Cream of Olives is an effective treatment for catarrh, head colds, and skin diseases. (Dec. 7, 1936.)

01583. Vendor-Advertiser—Medicinal Preparation.—J. F. Hightower, an individual, trading as The Shumake Co., Forth Worth, Tex., vendor-advertiser, was engaged in selling a preparation designated Liquid Shumake, and agreed in soliciting the sale of and selling 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 backache, dizziness, general broken down feeling, unless limited to the temporary relief of such conditions when due to incontinence;

(b) That the product provides anything more than temporary relief from overactive kidneys;

(c) That the product will "correct" or "offset" kidney "troubles" or kidney "disorders";

(d) Inferentially or otherwise that the preparation will prevent any kidney ailment. (Dec. 7, 1936.)

01584. Vendor-Advertiser—Cosmetics.—D. W. Chapman, an individual doing business under the trade name of The Eptol Co., Chicago, Ill., vendor-advertiser, was engaged in selling Eptol Beauty Cream, Eptol Hand Cream, Eptol Cleansing Cream, Maxwell's Hair Tonic, Maxwell's Skin Tone Lotion and Maxwell's Almond Lotion, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

EPTOL BEAUTY CREAM

(a) That Eptol Beauty Cream will remove or prevent wrinkles, lines or crowsfeet;

(b) That Eptol Beauty Cream provides a new way to remove wrinkles.

(c) That Eptol Beauty Cream lifts wrinkles right out leaving the skin smooth and lovely;

(d) That Eptol Beauty Cream clears the complexion and makes radiant beauty;

(e) That Eptol Beauty Cream is a skin food and tissue builder;

(f) That Eptol Beauty Cream will supply the skin tissue cells with the same basic elements as were formerly supplied by the body;

(g) That Eptol Beauty Cream develops a firm, sound, healthy skin so that wrinkles and fine lines cannot appear;

(h) That Eptol Beauty Cream will cause wrinkles to disappear within two weeks, or within any other specified period of time, or at all;

(i) That Eptol Beauty Cream has no equal for removing wrinkles or that its use will enable a woman 67 years of age to have her face entirely free from wrinkles;

(j) That Eptol Beauty Cream is "so healing";

(k) That Eptol Beauty Cream will remove pimples;

(l) That Eptol Beauty Cream is an effective treatment for Eczema;

(m) That Eptol Beauty Cream is an effective treatment for a "broken-out complexion";

(n) That Eptol Beauty Cream goes deep into the tissues;

(o) That only Eptol restores the appearance of youth to aged-looking skin;

(p) That the use of Eptol Cleansing Cream will enable Eptol Beauty Cream to go deep into the tissues and make skin beauty;

(q) That Eptol Beauty Cream corrects blemishes and does not merely white-wash the skin and hide them, like so many other creams;

(r) That Eptol Beauty Cream is quite superior to French or other imported creams;

- (s) That Eptol Beauty Cream is more than just a foundation cream;
- (t) That Eptol Beauty Cream is a natural beautifier, positively unsurpassed as a skin cleanser and for restoring the youthful tint and loveliness to faded "muddy," prematurely-aged, powder-ruined skin;

EPTOL HAND CREAM

- (a) That Eptol Hand Cream is healing or contains healing oils;
- (b) That Eptol Hand Cream leaves a thin, greaseless coating on the hands;
- (c) That Eptol Hand Cream is not sticky or greasy;
- (d) That Eptol Hand Cream will make dry, red, rough and chapped hands satin smooth;

EPTOL CLEANSING CREAM

- (a) That Eptol Cleansing Cream goes deep into the skin, tissues or pores, to remove dirt;
- (b) That Eptol Cleansing Cream thoroughly cleans out the pores;

MAXWELL HAIR TONIC

That Maxwell Hair Tonic will prevent the loss of hair, cure dandruff regardless of the cause, stimulate hair growth, or act as a tonic to the hair;

MAXWELL SKIN TONE LOTION

- (a) That Maxwell Skin Tone Lotion is unequalled for whitening the skin and removing blemishes;
- (b) That Maxwell Skin Tone Lotion will cause tired, worn and lifeless complexions to vanish like magic;

MAXWELL ALMOND LOTION

- (a) That Maxwell Almond Lotion heals inflamed, sore, chapped and cracked skin;
- (b) That Maxwell Almond Lotion makes and keeps the skin as smooth as velvet;
- (c) That Maxwell Almond Lotion will keep the skin in perfect condition.

The respondent further agreed in soliciting the sale of his product Maxwell Hair Tonic in interstate commerce to cease and desist from the use of the word Tonic as a part of the trade name of said product.

The respondent hereby further agreed in soliciting the sale of his product Maxwell Skin Tone Lotion in interstate commerce to cease and desist from the use of the word Tone as a part of the trade name of said product.

The respondent hereby further agreed in soliciting the sale of any and all of his cosmetics preparations in interstate commerce to cease and desist from representing that he has in his employ a beauty adviser or consultant by the name of Mary Maxwell, or any other person, for the purpose of advising his patrons and the public in the matters pertaining to beauty culture, unless and until such a person be so employed by him in truth and in fact.

The respondent further agreed.

(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 plans under normal conditions in the due course of business;

(b) Not to make unmodified representations or claims of earnings in excess of the average earnings of persons following respondent's plans 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 plans under normal conditions in the due course of business. (Dec. 8, 1936.)

01585. **Vendor-Advertiser—Refrigerators.**—Borg-Warner Corporation, a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling a product designated Norge Rollator Refrigerator and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the tests of Norge refrigerators, conducted by Norge dealers, were all under the supervision of public officials;

(b) That the benefits and savings of a Norge refrigerator are as great during cold winter months as in summer;

(c) That the mechanism of the Norge Refrigerator has but three moving parts or improves with use unless such representations are limited to the moving parts of the Rollator alone. (Dec. 10, 1936.)

01586. **Vendor-Advertiser—Crucifix Ring.**—David R. Siegel, an individual trading as Bedevere Products Co., New York, N. Y., vendor-advertiser, was engaged in selling a Crucifix Ring, and agreed 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 Crucifix ring is the world's most wondrous treasure guard ring;

(b) That respondent's Crucifix ring was created by a Spanish goldsmith;

(c) That respondent's Crucifix ring is guaranteed 14-K gold shell unless said ring is composed of 14-K gold shell;

(d) That respondent's ring is responsible for the "good luck," happiness, health or wellbeing of the purchaser. (Dec. 10, 1936.)

01587. **Vendor-Advertiser—Watches.**—Earl Hall, an individual, doing business under the trade name of United Watch Co., Minneapolis, Minn., vendor-advertiser, was engaged in selling Watches, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) Using the word "railroad" to advertise or describe certain of his watches which are not of the type possessing the accuracy and durability generally required of watches used by railroad workers;

(b) Using the word "Jeweled" or any similar designation to indicate that certain watches advertised or described possess jewels or any given number of jewels when said watches do not contain jewels or the number of jewels indicated;

(c) Representing that he gives a belt chain with each watch or leather strap bracelet with each wrist watch free as a special offer for 10 days or makes any special offer for any limited period of time or as a special inducement when such offers are not special offers nor limited to a particular period of time, but are available to all customers and at all times;

(d) Using the words "gold plated" or "gold plate" or any similar designation or description to advertise or describe watches which have a plating of gold less than three one-thousandths of an inch in thickness on the outside, and one one-thousandth of an inch in thickness on the inside;

(e) Representing that certain of his watches have gold numerals when said numerals are not composed of genuine gold;

(f) Representing that certain of his watches have numerals "etched" thereon when said numerals are affixed thereto by a process other than "etching";

(g) Representing that certain of his watches have pictures of locomotives "engraved" on the back of their cases when said pictures are merely stamped thereon;

(h) Representing that his three-piece set consisting of a key case, cigarette case, and billfold are made of "genuine" leather, when they are composed of materials other than genuine leather and from making any other claims or assertions of like import.

The respondent further agreed to cease and desist from—

Offering for sale or selling in interstate commerce used, second-hand, rebuilt or reconditioned watches as and for new watches without distinctly, definitely, and clearly stating, setting out and informing customers and prospective customers, that such watches are used, second-hand, rebuilt, or reconditioned watches. (Dec. 10, 1936.)

01588. Vendor-Advertiser—Cough Drops.—F & F Laboratories, a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling F & F Cough Lozenges, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That F & F Cough Lozenges will rid, foil, banish, ward off, or arrest coughs, cause coughs to "scram", quickly stop coughs, or constitute other than a palliative treatment for coughs;

(b) That F & F Cough Lozenges will protect children from coughs;

(c) That F & F Cough Lozenges are a competent treatment for colds or will "knock colds cold", or ward off throat colds;

(d) That F & F Cough Lozenges are a competent treatment for or will give real relief from sore throat;

(e) That F & F Cough Lozenges act instantly. (Dec. 10, 1936.)

01589. Vendor-Advertiser—Medicinal Preparation.—F. A. Stuart Co., a corporation, Marshall, Mich., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Calcium Wafers, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Calcium Wafers, or Stuart's Laxative Compound, is a "treatment" for constipation;

(b) That Calcium Wafers, or Stuart's Laxative Compound, is a relief for constipation, unless constipation qualified by the word "temporary";

(c) That Calcium Wafers, or Stuart's Laxative Compound, stimulates secretions which promote peristalsis;

(d) That the use of Calcium Wafers, or Stuart's Laxative Compound—

1. Clears the skin;
2. Brightens the eyes;
3. Renews old-time energy;
4. Keeps the system in better shape;
5. Produces fine-textured skin; or
6. Causes eyes to regain their sparkle;

(e) That Calcium Wafers, or Stuart's Laxative Compound, helps correct "faulty elimination";

(f) That Calcium Wafers, or Stuart's Laxative Compound, taken internally, easily and effectively helps a sallow, blotchy, pimply complexion.

Respondent further agreed in soliciting the sale of its product in interstate commerce, to cease and desist from—

Using the names "Calcium Wafers" or "Calcium Wafer Compound" to designate its product until such time as there may be sufficient calcium content, according to medical standards, to justify the designation. (Dec. 10, 1936.)

01590. Vendor-Advertiser—Washing Fluid.—Luigi Rosati, an individual, doing business under the trade name of Wonder Chemical Co., Bethlehem, Pa., vendor-advertiser, was engaged in selling a sodium hypochlorite bleaching and washing solution designated Bleach-Ox, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Bleach-Ox is a sterilizer or that it sterilizes;

(b) That Bleach-Ox is a germicide;

(c) That Bleach-Ox is a disinfectant unless specific instructions are given to indicate that the places or objects to be disinfected are previously cleansed before application of the solution;

(d) That Bleach-Ox is harmless. (Dec. 10, 1936.)

01591. Vendor-Advertiser—Medicinal Preparations.—I, Ralph Weinstock, an individual, doing business under the trade name of The Thyrole Chemical Co., Philadelphia, Pa., vendor-advertiser, was engaged in selling certain medicinal preparations designated O. B. C. Capsules, "Amps" for cramps, and Thyrole Douche Powder, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of O. B. C. Capsules will—

- (1) Cause the user to "lose fat like magic";
- (2) Restore youth;
- (3) Preserve health; or
- (4) Cause the user to lose any definite number of pounds;

(b) That O. B. C. Capsules is the sure, safe, pleasant, easy, modern method of slenderizing without exercise;

(c) That Amps for Cramps is a new prescription formula, or is beneficial in painful menstruation, headache, toothache, backache, rheumatic and neuralgic pains, muscular and chest pains, etc., without regard to the cause of these conditions;

(d) That Thyrole Douche Powder—

(1) Promotes health; or

(2) Is of great beneficial value to tender aching feet, insect bites, ivy poison, bumps, bruises, cuts, halitosis, bleeding gums, tooth extraction, dandruff, etc.

The respondent further agreed in soliciting the sale of his product in interstate commerce to cease and desist from using the word "Chemical" as a part of his trade name, or holding out the idea that he operates a Chemical Company until such time as the respondent actually operates a Chemical Company.

The respondent further agreed in soliciting the sale of his product in interstate commerce, to cease and desist representing directly or otherwise that he or his company, is the "Manufacturer" of Proprietaries and Fine Pharmaceuticals until such time as he actually manufactures such Proprietaries and Fine Pharmaceuticals. (Dec. 10, 1936.)

01592. Vendor-Advertiser—Mechanical Device.—Home Diathermy Co., Inc., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a mechanical device designated Home Diathermy Instrument, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the instrument will "eliminate" pain;

(b) That by use of the instrument, one can have "lasting" relief;

(c) That the instrument will "free" one of the "ravages" of neuritis, sciatica, arthritis, lumbago or rheumatism;

(d) That poisons or the improper elimination thereof are the basic cause of "most" disorders;

(e) That the instrument will "arrest", "control", or "prevent advancement" of ailments caused by improper elimination;

(f) That the blood "lubricates" nerves, tissues, muscles or joints;

(g) That the instrument "burns up" body poisons;

(h) That the instrument is effective for low blood pressure;

(i) Inferentially or otherwise that the instrument will cure or heal or "free" one from any ailment;

(j) That the instrument will "rid" one of any ailment;

(k) That the instrument will "restore" one to a normal or vigorous life;

(l) That the instrument will "give you back your lost health";

(m) That the instrument increases:

1. Oxidation,

2. Elimination of waste,

3. Elimination of toxic poisons,

4. Nutrition;

(n) That the instrument, alone or in itself, affords a competent treatment or an effective remedy for arthritis, lumbago, bursitis, rheumatism, neuritis, sciatica, neuralgia, pneumonia or bronchitis unless limited to the relief of pain due to such conditions, or as an aid in the treatment thereof;

(o) That the instrument in itself affords a competent treatment or an effective remedy for asthma or hay-fever. (Dec. 11, 1936.)

01593. **Vendor-Advertiser—Breakfast Food.**—Uncle Sam Breakfast Food Co., a corporation, Omaha, Nebr., vendor-advertiser, was engaged in selling Uncle Sam Laxative Breakfast Food, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Uncle Sam Breakfast Food is

1. The modern way of keeping regular;
2. Rich in vitamins A or B;
3. The natural enemy of constipation;
4. Better than a medicine; or is not a medicine;
5. Everything that's said about it;
6. Good for a poor complexion caused by a sluggish system;

(b) That Uncle Sam Breakfast Food

1. Induces regularity;
2. Keeps illness away or promotes health;
3. Builds or sustains the body or builds strength;
4. Gives internal lubrication or promotes well being;
5. Promotes digestion or adequate elimination of indigestible food;
6. Works naturally and effectively;

(c) Generally that Uncle Sam Breakfast Food relieves a constipated condition, or does so without weakening the digestive organ or causing dangerous after effects;

(d) That Uncle Sam Breakfast Food eaten regularly once or twice a day will relieve constipation in all cases;

(e) That the use of Uncle Sam Breakfast Food would be of any material benefit when one feels

1. Run down;
2. No account;
3. Pepless;
4. Groggy;
5. Prone to suffer from indigestion;

(f) That Uncle Sam Breakfast Food combines two necessary foods namely whole wheat and flaxseed, for toning up the system or keeping one fit or alert;

(g) Generally that one's system needs roughage or lubricant in order to function properly;

(h) That the use of Uncle Sam Breakfast Food without medicines or diet will keep one fit;

(i) Inferentially that other laxative foods are habit forming or that Uncle Sam Breakfast Food is not so. (Dec. 11, 1936)

01594. **Vendor-Advertiser—Exerciser.**—The American Athletic Appliance Co., Inc., a corporation, Philadelphia, Pa., a vendor-advertiser, was engaged in selling an Iron Shoe Strength Builder, and agreed

in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the "German Iron Shoe Muscle Builder" is:

1. The greatest exerciser made;
2. The choice of champions;
3. A smashing success;
4. The emblem of power;
5. The most novel, original or fascinating to strength or muscular development;
6. A marvelous strength builder;

(b) That the users of the Iron Shoe have trebled their strength, added muscle to their arms, increased chest circumference, or broadened their shoulders to any specified extent within a specified time; or that there is no other muscle builder that can give half the results at so low a cost;

(c) That said device:

1. Quickly stimulates natural muscular growth;
2. Packs each and every muscle with dynamic aggressive power;
3. Makes a man as strong or stronger or more popular than the rest;
4. Cannot be equaled;
5. Equals the "block" system as used by famous European strong men;
6. Does what other forms of exercise cannot do;
7. Puts power, steel and endurance into the muscles;
8. Makes no feat of strength impossible;

(d) That by the use of said device one would be enabled to:

1. See his muscles grow;
2. Pack a 16-inch arm in his sleeves;
3. Get a 44-inch chest;
4. Watch his wrist thicken with steel-like sinew;
5. Get the grip of a steel vise in each fist;
6. Fill himself with dynamic energy;
7. Put the magic of muscle under the skin;
8. Duplicate the chain breaking or iron bending feats of Breitbart, Marx, Sandow, Moerkel, Travis or Nordquist;
9. Get a pair of arms that will make him capable of red blooded deeds of man power;
10. Have a 14-inch forearm or 16-inch bicep.

(e) That by the use of said device any one has:

1. Increased his bodily weight any definite number of pounds;
2. Added any definite number of inches to his chest or biceps;
3. Added any specific number of inches to his arms, chest or thighs;

(f) That said device is made to build:

1. Giant-like arms;
2. Wide powerful shoulders;
3. Brawny back;
4. Tremendous chest;

(g) That the use of said device compels:

1. Those stubborn muscles to grow that other methods cannot touch;
2. The waist to acquire a muscular appearance or the chest to deepen;
3. One's legs to become muscularly symmetrical;

(h) That by the use of said device one can get muscle or strength that will make it possible for him to:

1. Burst apart a chain fastened around the muscle of the arm;
2. Tear a deck of cards into quarters;
3. Rip into pieces a telephone book;
4. Break into halves an iron horseshoe;
5. Wrap an iron bar around the arm;
6. Resist the pull of six men to break his grip;
7. Drive a spike through a board with a blow of the fist;
8. Lift a man over his head with one hand;
9. Break apart a chain fastened around the chest with his chest expansion;
10. Smash a rock with a blow of the fist;

(i) That said device has new features not found on any other outfit;

(j) That the use of said device will enable one to:

1. Treble his strength;
2. Pack inches of powerful muscle all over his body;
3. Build his arms to Herculean proportions;
4. Get the shoulder spread of a Guardsman;
5. Be strong from head to heels;

(k) That any special offer is good for a limited time only unless withdrawn at the expiration of the time specified;

(l) That said device will develop new muscles to retain every atom of strength or give him power or endurance to spare. (Dec. 14, 1936.)

01595. Vendor-Advertiser—Mineral Water Crystals.—Loye Distributing Co., a corporation, Wheeling, W. Va., vendor-advertiser, was engaged in selling Mineral Water Crystals designated Blue Bonnet Texas Crystals, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Blue Bonnet Texas Crystals are the finest crystals ever produced in the State of Texas;

(b) That Blue Bonnet Texas Crystals open up the gates to a happier, gayer life;

(c) That Blue Bonnet Texas Crystals tone up the body;

(d) That Blue Bonnet Texas Crystals are a competent treatment for ailments due to faulty elimination or a sluggish system;

(e) That Blue Bonnet Texas Crystals will rid the body of poisons and impurities due to faulty elimination or a sluggish system that cause serious ailments;

(f) That Blue Bonnet Texas Crystals are a competent treatment for:

Chronic Constipation,	Nervous indigestion,
Rheumatism,	Dyspepsia,
Lumbago,	Gastritis,
Chronic Gall Bladder Disturbances,	Sick headache,
Arthritis,	Sleepless nights,
Colitis,	That tired run-down feeling;
High or low blood pressure,	

caused by faulty elimination or a sluggish system or otherwise;

(g) That doctors recommend Blue Bonnet Texas Crystals for sick and well, young and old;

(h) That Blue Bonnet Texas Crystals will fortify a well person's system against serious ailments due to faulty elimination;

(i) That Blue Bonnet Texas Crystals are one of the greatest aids to nature ever discovered;

(j) That Blue Bonnet Texas Crystals are safe and harmless;

(k) That Blue Bonnet Texas Crystals will keep the system free from poisons and impurities;

(l) That Blue Bonnet Texas Crystals obviate the necessity and expense of going to the State of Texas to partake of the natural mineral water;

(m) That Blue Bonnet Texas Crystals will bring back good health to the sufferer without waiting weeks to note an improvement in his condition;

(n) That the addition of Blue Bonnet Texas Crystals to drinking water will make the water pure;

(o) That Blue Bonnet Texas Crystals contain all the necessary minerals required to aid nature in thoroughly cleansing the system and washing it clean of poisons;

(p) That Blue Bonnet Texas Crystals contain eleven of the sixteen known minerals contained in the human body;

(q) That Blue Bonnet Texas Crystals provide in the home the same natural mineral water as if taken direct from the well in Texas:

(r) That Blue Bonnet Texas Crystals get rid of the cause of any ailment and get the system into normal condition.

(s) That Blue Bonnet Texas Crystals supply the system with minerals necessary to build up resistance and ward off attacks of serious ailments. (Dec. 14, 1936.)

01596. Vendor-Advertiser—Medicinal Preparation.—John B. Armstrong, M. D., an individual, operating under the trade name of Pink Ointment Co., Topeka, Kans., vendor-advertiser, was engaged in selling a certain product designated "Pink Ointment", and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Pink Ointment constitutes a competent treatment or an effective remedy for:

- | | |
|----------------------|-------------------------|
| 1. Itching, | 12. Ringworm. |
| 2. Skin irritations, | 13. Bolls, |
| 3. Pimples, | 14. Carbuncles, |
| 4. Eczema, | 15. Rosacea, |
| 5. Rash, | 16. Poison oak, |
| 6. Skin Troubles. | 17. Ivy, |
| 7. Athlete's foot, | 18. Varicose ulcers, |
| 8. Skin disease, | 19. Gauding, |
| 9. Scabies. | 20. Ugly blemishes, |
| 10. Itch. | 21. Skin infections, |
| 11. Soft Corn, | 22. Germ-infected skin, |

unless specifically limited to its value in relieving such of them as are minor skin irritations or minor skin ailments, and then only when due to external causes;

(b) That this product will "rid," "cure," or "stop" any disease condition;

(c) That Pink Ointment is a competent treatment or an effective remedy for ingrown fingernails or toenails;

(d) That this ointment is "healing." (Dec. 15, 1936.)

01597. **Vendor-Advertisers—Medicinal Preparation.**—Jacob C. Germand and Stephen J. Barzso, co-partners trading as Myona Salve Co., Elmhurst, Ill., vendor-advertisers, were engaged in selling a medicinal preparation designated Myona Salve, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Myona Salve is a competent remedy in the treatment of eczema, acne, psoriasis, boils, carbuncles, poison ivy, barber's itch or pimples;

(b) That Myona Salve starts at the bottom or heals the sore outward;

(c) That Myona Salve will give "complete" relief;

(d) That by the use of Myona Salve the respondents heal every case of skin disease they undertake; or that any skin disease can be healed no matter how old, how bad or what one has tried before;

(e) That Myona Salve relieves where other preparations have failed;

(f) That Myona Salve has healed thousands;

(g) That the use of Myona Salve has relieved, healed, or cured eczema, psoriasis or other skin diseases of long standing or which had existed for any definite or specified period of time, or at all;

(h) That Myona Pile Salve is a competent remedy in the treatment of piles or that it has healed many sufferers of piles. (Dec. 18, 1936.)

01598. **Vendor-Advertiser—Cosmetic.**—Oakland Chemical Co., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a certain cosmetic designated Dioxogen Cream, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Dioxogen Cream will "quickly" refine open pores, prevent sallow or muddy complexion, or give natural color to sallow or muddy complexions;

(b) That Oxygen gives life to mankind, gives color to the rose, or is nature's beautifier;

(c) That thousands of women who formerly suffered with muddy complexions rave about Dioxogen Cream;

(d) That Dioxogen Cream "purifies" the pores so that they can close to normal size;

(e) That Dioxogen Cream will make any kind of facial sags, except muscular sags less noticeable;

(f) That Dioxogen Cream will prevent wrinkles or blotches, unless limited to superficial wrinkles and blotches, or that Dioxogen Cream will prevent blemishes and discolorations unless limited to transitory blemishes and discolorations due to external causes;

(g) That dread blemishes may be avoided by the use of Dioxogen Cream, or that such cream provides the way to radiant skin health;

(h) That Dioxogen Cream will give dead looking skin fresh vitality;

(i) That Dioxogen Cream will cause the complexion to "clear up wonderfully," or take on a soft, smooth radiance that is "definitely youthful" and "irresistibly lovely." (Dec. 17, 1936.)

01599. **Vendor-Advertiser—Medicinal Preparation.**—Camphorole, Inc., a corporation, Atlantic City, N. J., vendor-advertiser, was engaged in selling a certain medicinal preparation designated, Camphorole, and agreed in soliciting the sale of and selling its said product, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That Camphorole—

- (1) Is the best remedy for all foot troubles;
- (2) Draws out pain; or
- (3) Reduces swelling;

(b) That Camphorole—

- (1) Is a valuable remedy for spasmodic croup;
- (2) Cleanses out the breathing tubes; or
- (3) Enables the sufferer from croup to breathe easily;

(c) That Camphorole is a competent remedy in the treatment of asthma, tonsillitis, sinus trouble, catarrh or bronchitis;

(d) That Camphorole—

- (1) Is a valuable aid to ease a cold in the head or a chest cold;
- (2) May prevent serious illness;
- (3) Penetrates the air passages of the nose and throat;
- (4) Relieves and soothes the inflamed lining of the nose and throat; or
- (5) Quickly, loosens up that sticky clinging phlegm;

(e) That Camphorole brings comforting relief from rheumatic aches and pains, stiff joints or neuritis;

(f) That Camphorole—

- (1) Is "deep penetrating";
- (2) Helps inflammation;
- (3) Is a powerful analgesic;
- (4) Eases pain "as if by magic"; or
- (5) Is an ideal treatment for muscular soreness, sprains and bruises;

(g) That its soothing and penetrating benefits seem to "melt the trouble away." (Dec. 17, 1936.)

01600. **Vendor-Advertiser—Medicinal Preparation.**—Aurine Co., Inc., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling a preparation designated, Ourine, and agreed in soliciting the sale of and selling its said product, in interstate commerce, to cease and desist from representing, directly or otherwise:

(a) That Ourine is a competent treatment or effective remedy for actual or progressive deafness;

(b) That Ourine can be relied upon to relieve head noises, earaches, ringing or buzzing in the ears, unless these conditions are due to coagulated wax or some temporary septic condition;

(c) That Ourine is a truly remarkable scientific remedy;

(d) That Ourine is a competent treatment or effective remedy for sensitive and tender ears and catarrh;

(e) That through the use of any given amount of Ourine or by any method of use or application, a person who, previous to its use could not hear, has, subsequent to using Ourine, recovered the sense of hearing. (Dec. 17, 1936.)

01601. Vendor-Advertiser—Medicinal Preparation.—Kremola Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling a certain preparation designated, Freckle Ointment, and agreed in soliciting the sale of and selling its said product in interstate commerce, to cease and desist from representing, directly or otherwise:

(a) That Freckle Ointment will penetrate the surface skin, reaching that pigmentation known as freckles, and with daily application cause them to be dispersed;

(b) That Freckle Ointment will rejuvenate the skin;

(c) That Freckle Ointment is a "safe" freckle remover;

(d) That Freckle Ointment is an effective treatment for skin blemishes or skin problems;

(e) That Freckle Ointment is an effective treatment for pimples unless such representations are limited to pimples confined to the outer layer of the skin;

(f) That the effects produced by Freckle Ointment are permanent, by use of such terms as "banish" or otherwise. (Dec. 17, 1936.)

01602. Vendor-Advertisers—Household Products.—Charles W. Furst and Fred G. Thomas, copartners, doing business under the trade name of Furst & Thomas, Freeport, Ill., vendor-advertisers, were engaged in selling household products, and agreed in soliciting the sale of and selling their products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That exceptional men have made \$75.00 and more a week;

(b) That when one started in with the idea that he would work hard and give the business all he had in him for six to twelve months, that he will make over \$10 to \$15 a day profit by the end of the first year; or any other amount in excess of that actually earned by one of respondents' agents under similar circumstances;

(c) That the McNess Fly Killer was superior to any similar article at the time it was first added to the McNess Line, and that Mr. McNess discovered a manufacturing secret that made it possible to make a Fly Killer have 25—more fly killing power than most other kinds. (Dec. 22, 1936.)

01603. Vendor-Advertisers—Publications.—E. H. Brown and Harry Schneiderman, copartners, doing business under the trade name of American Book Mart, Chicago, Ill., vendor-advertisers, were engaged in selling two publications, designated "Illustrated Price Catalog of Old Books Wanted" and "American Book Mart's Latest Price List of Old Books Wanted" and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) By pictorial representation or otherwise that their catalog is huge, has other than a limp paper binding, or is profusely illustrated, until as a matter of fact their catalog is printed in such manner as to justify such description;

(b) That the price list selling for ten cents is a "big" list;

(c) That a "fortune" or any considerable sum of money will be paid for books published as late as 1927;

(d) That all kinds of old books are bought and big cash prices paid for them, inasmuch as only books of interest to collectors are bought;

(e) By direct statement or implication that the number of books which are regarded by it or collectors as having more than a nominal value, or for which more than a nominal amount is offered, are unlimited in number;

(f) By direct statement or implication that the respondents have paid any sum for a book which would be regarded as a "fortune" until such time as such a sum has actually been paid;

(g) That the respondents' company is the largest of its kind in the United States. (Dec. 22, 1936.)

01604. Vendor-Advertiser—Medicinal Preparation.—J. M. Naylor, an individual, operating under the trade names of Slendabalm Laboratories, and S. B. L. Laboratories, Salina, Kans., vendor-advertiser, was engaged in selling a preparation designated "Slendabalm," and agreed 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 will enable one to "reduce just the part of the body that needs reducing;"

(b) That the preparation will "rid" one of double chins, large or fat ankles, fat hips, fat abdomen;

(c) That the preparation will "reduce any part of the body which you desire reduced;"

(d) That the preparation will give one a slim or youthful figure;

(e) That the preparation is the "correct" way to reduce;

(f) That the preparation will "prevent" wrinkles;

(g) That the preparation will "dissolve" fat;

(h) That use of the preparation will enable you to reduce to normal size;

(i) That the preparation will cause fat to "melt away";

(j) That use of the preparation will enable one to "Keep that trim youthful figure";

(k) That the preparation is a competent treatment or an effective remedy in effecting a reduction in weight;

(l) That use of the preparation or any definite amount thereof will enable one to reduce any definite number of pounds or any definite measurement within any definite period of time;

(m) That the preparation will bring one's figure "back to the pleasing proper portions nature intended;"

(n) That use of the preparation will enable one to reduce "where you want to". (Dec. 22, 1936.)

01605. Vendor-Advertiser—Skin Preparations.—Hinze Ambrosia, Inc., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling preparations designated Hinze Ambrosia Cleaner, Hinze Ambrosia Cream and Hinze Ambrosia Tightener, and agreed 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 Ambrosia Cleanser alone or in combination with a diet constitutes a competent remedy in the treatment of pimples, blackheads or acne;

(b) That Ambrosia Cleanser—

1. Alone prevents blackheads or blemishes;
2. "Ends" blackheads, pimples or other skin problems or makes pores noticeably finer;
3. Alone prevents infection or prevents the return or spread of pimples;

(c) That Ambrosia Cleanser is a pore-deep solvent;

(d) That Ambrosia Cleanser will bring oily skin eruptions and imbedded impurities to the surface, or cause them to disappear;

(e) That Ambrosia Colloidal Cream penetrates the skin or prevents wrinkles, unless limited expressly and directly to tiny wrinkles due alone to dry skin;

(f) That Ambrosia Tightener "closes" large pores, makes oily skin "normal";

(g) That the use of Ambrosia Tightener alone or in combination with Ambrosia Cleanser will enable one to get "rid" of large nose pores or blackheads;

(h) That examinations made by a New York doctor prove that Ambrosia treatments prevent blackheads or pimples, unless revised to indicate that such examinations are merely some evidence that such treatments help to prevent such conditions. (Dec. 28, 1936.)

01606. **Vendor-Advertiser—Washing Solution.**—The Hilex Co., a corporation, St. Paul, Minn., vendor-advertiser, was engaged in selling a sodium hypochlorite washing and bleaching solution designated Hi-Lex, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Hi-Lex

1. Disinfects, unless directions are given the user to first cleanse the surface to be disinfected;
2. Remove 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 Hi-Lex is materially helpful in removing organic matter;

(c) That Hi-Lex solves the modern housewife's housekeeping problems;

(d) That Hi-Lex will cleanse woodwork instantly or restore enamel lustre without "rubbing", as distinguished from "scrubbing". (Dec. 29, 1936.)

01607. **Vendor-Advertiser—Medicinal Preparation.**—G. W. Jones, doing business as The G. W. Jones Rattler Liniment Co., Sumner, Wash., vendor-advertiser, was engaged in selling a medicinal preparation designated Jones' Rattler Liniment and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Jones' Rattler Liniment is a competent treatment or effective remedy for simple headache, children's minor bumps and bruises, insect bites, poison ivy, tired or aching feet, earache, or muscular aches and pains (unless qualified and limited to conditions arising from over use);

(b) That Jones' Rattler Liniment "antiseptically" cleanses or is a competent treatment or effective remedy for any condition where the skin is broken;

(c) That the use of Jones' Rattler Liniment will:

1. Keep little ills from becoming serious ills;
2. Reduce swelling;
3. Go right to the sore spot;
4. "Kill" pain;
5. Effect "double action";
6. "Strike at your muscular pains". (Dec. 29, 1936.)

01608. **Vendor-Advertiser—Medicinal Preparation.**—Mrs. E. M. Dyck, an individual doing business under the trade name of Amoid Laboratories, Glendale, Calif., vendor-advertiser, was engaged in selling Amoid Tablets and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Amoid Tablets provide a competent or effective treatment for sinusitis;

(b) Amoid Tablets are produced from a specialist's prescription developed by him in his own personal practice in treating sinusitis;

(c) Amoid Tablets are developed as a result of a new understanding of medical science;

(d) Said ailment should be treated internally with Amoid Tablets;

(e) Treatment of sinusitis should be directed to the Reticulo Endothelium instead of the mucous membrane;

(f) Amoid Tablets restore health and vigor to the Reticulo Endothelium and permanently relieve or cure sinusitis;

(g) Amoid Tablets get at the underlying basic cause of sinusitis;

(h) Amoid Tablets are the first and only home treatment designed to get at the basic underlying causes of sinusitis;

(i) Science has developed no treatment for sinusitis superior to Amoid Tablets;

(j) The use of Amoid Tablets will avoid the necessity for sinusitis operations;

(k) A six weeks treatment with Amoid Tablets will end the most obstinate case of sinusitis;

(l) Amoid Tablets provide a home treatment for sinusitis comparable to the service of a specialist in his office. (Dec. 30, 1936.)

01609. **Vendor-Advertiser—Washing Fluid.**—William R. Dewhurst and Mary L. Dewhurst are copartners operating under the firm name of The Double DD Products Co., Wesleyville, Pa., vendor-advertiser, was engaged in selling a washing fluid designated Snowwhite and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That when Snowwhite is used stains are no longer stains, unless limited to removable stains and applied only to cotton and linen fabrics.

(b) That Snowwhite contains no harmful ingredients;

(c) That Snowwhite is effective when used for hygienic purposes on nursery utensils, general household ware, refrigerators, toys, tile and enamel ware, furniture, linoleum, woodwork, etc., unless directions are given for first cleansing the surface of the article. (Dec. 30, 1936.)

01610. Vendor-Advertiser—Medicinal Preparation.—R. J. Kleeves, D. M. Fletcher, and P. S. Heeres are copartners operating under the firm name of Herington Co., Arlington, Calif., vendor-advertisers, were engaged in selling Herington Tablets and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the use of Herington Tablets will relieve stubborn or chronic constipation or constipation in any form, unless the same is qualified and limited to its laxative or cathartic action;

(b) That Herington Tablets offer "amazing" relief or are a splendid remedy;

(c) That the use of Herington Tablets will "rid" the body of poisonous waste material:

(d) That Herington Tablets are a competent treatment or effective remedy for backache, toning up the system, aiding digestion, kidney disorders, rheumatism, stomach attacks, headaches, neuritis, gas pains, lack of appetite, dizzy spells, sciatca, biliousness, head pains, inflamed stomach or bloated condition.
Dec. 30, 1936.

01611. Vendor-Advertiser—Food Products.—Atlantic Macaroni Co., Inc., a corporation, Long Island City, N. Y., vendor-advertiser, was engaged in selling Caruso Spaghetti, Caruso Noodles and Pastina Caruso and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Caruso Spaghetti or Caruso Noodles contain Vitamins A, B, G, or E in sufficient quantities to be of substantial benefit;

(b) That Vitamin E is rare;

(c) By inference or direct statement that Vitamin E is essential to normal nutrition;

(d) That Pastina Caruso is of benefit to persons who have weak stomachs or indigestion;

(e) That Caruso Spaghetti contains the vitamins necessary to a balanced diet.
Dec. 31, 1936.

01612. Vendor-Advertisers—Chinese Herb Tea.—Wong Sun and Louie Sun, copartners, operating under the firm name of Wong Sun Chinese Herb Co., Billings, Mont., vendor-advertisers, were engaged in selling Chinese Herb Tea, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Chinese Herbs have been used for centuries in curing ailments and promoting health;

(b) That herbs are the remedies of nature and science;

(c) That science proves herbs are rich in vitamins and organic minerals so necessary to health;

(d) That Wong Sun has thousands of satisfied patrons who have received permanent relief from their ills by the Wong Sun method;

(e) That Wong Sun has herbs for the relief of practically every known illness;

(f) That thousands of sufferers are being helped by Wong Sun's health restoring herbs;

(g) That "our medicines are safe and reliable";

(h) That Chinese Herb Medicines have helped thousands to regain their health and "will do the same for you";

(i) That hundreds of people who have given up hope and as a last resort "took my medicines," are now enjoying good health;

(j) That a sufferer from weeping eczema, who has taken medicine from several different doctors and used many salves and lotions with no results, has entirely recovered after taking Wong Sun's Chinese Herb Medicines only a short time;

(k) That "Wong Sun's Medicines brought me good health";

(l) That "Wong Sun's Chinese Herb Medicines" have brought good health to one whose ailments have been diagnosed by several different doctors as bowel trouble, stomach trouble, ulcers, and heart trouble, and who has been operated on for appendicitis and bladder trouble—without relief;

(m) That Chinese Herb Medicines have brought health to many thousands of people for over 2,500 years;

(n) That herbs have made it possible for many who were ill and not able to conduct their business to regain, not only their health, but their business as well;

(o) That Wong Sun's Chinese Herb Medicines are a competent remedy in the treatment of skin diseases, liver, kidney, stomach, bladder, bowel, heart or female trouble, rheumatism, nervous disorders, influenza, pleurisy, weeping eczema, or bronchitis. (Jan. 4, 1937.)

01613. Vendor-Advertiser—Medicinal Preparation.—C. W. Allen, an individual operating under the trade name of J. P. Allen Medicine Co., St. Paul, Minn., vendor-advertiser, was engaged in selling Ulcerine (Ullerine) Salve, and agreed, in soliciting the sale of and selling said product in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That Ulcerine (Ullerine) Salve, since 1869, has healed more old sores than all other salves combined;

(b) That Ulcerine (Ullerine) Salve will cleanse more thoroughly than soap and water and will keep down bad odor;

(c) That Ulcerine (Ullerine) Salve

1. Is the most powerful salve known;

2. Heals sores from the bottom up;

3. Draws out the poisons from sores; or

4. Is a protective, antipruritic ointment. (Jan. 4, 1937.)

01614. Vendor-Advertiser—Medicinal Preparations.—James E. Johnson, an individual trading as Johnson Bros. Medicine and Chemical Co., Chicago, Ill., vendor-advertiser, was engaged in selling certain medicinal preparations designated Johnson's Herb Medicines, and agreed, in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Johnson's Herb of Everlasting is a competent treatment or effective remedy for rheumatism and swollen aching joints;

(b) That Johnson's 8-in-1 Cough Syrup is a competent treatment or effective remedy for bronchial coughs, colds, weak lungs and hay fever;

(c) That Johnson's Sasparilla Fall and Spring Tonic is a competent treatment or effective remedy for weak men and women, bad nerves, dyspepsia, purifying the blood and building all run down conditions of the body;

(d) That Johnson's Polk Root Medicine Compound is a general medicine or a competent treatment or effective remedy for such forms of rheumatism and chronic ailments as arise from an impoverished condition of the blood, or for bad kidneys, bladder strain or "weakness";

(e) That Johnson's Herb Remedy No. 649 gives vim and vigor to weak men and women; or is a competent treatment or effective remedy for weak back, kidney and liver complaints, tired and run down feelings, biliousness, indigestion, headache, nervousness, lost vitality or constipation;

(f) That Johnson's Polk Root Tonic is a competent treatment and effective remedy for blood, liver, kidney, or "weakness";

(g) That Johnson's Stomach Remedy is a competent treatment and effective remedy for indigestion, gastritis, dyspepsia, constipation, bad nerves or "Weakness";

(h) That Johnson's Medicine Company's medicines are homeopathic;

(i) That Johnson's Medicine Company offers Nature's remedy for human ills and never fails to cure;

(j) That Johnson's Herb Remedy No. 654 is a competent treatment or effective remedy for strains;

(k) That Johnson's Polk Root Tonic No. 553 is a competent treatment or effective remedy for diseases of the blood, liver, kidney or "weakness";

(l) That Johnson's Black Root Tonic for Women, No. 226, is a competent treatment or effective remedy for bad stomach or "weakness";

(m) That Johnson's No. 1105 is a competent treatment or effective remedy for rheumatism, swollen aching joints or skin diseases;

(n) That Johnson's No. 139 is a competent treatment or effective remedy for asthma, shortness of breath or diseases of the lungs;

(o) That Johnson's No. 1 is a competent treatment or effective remedy for indigestion, gastritis or constipation;

(p) That Johnson's Remedy No. 3 is a competent treatment or effective remedy for sore and weak eyes;

(q) That Johnson's Remedy No. 116 is a competent treatment or effective remedy for high blood pressure or weak heart;

(r) That Johnson's Remedy No. 2 is a competent treatment or effective remedy for sore feet and weak limbs, or a pain killer for swollen, aching joints, neuralgia and headaches;

(s) That Johnson's Remedy No. 666 is a competent treatment or effective remedy for bad nerves, pains, cramps or bad heart, pyorrhea, bad tonsils, or throat trouble;

(t) That Johnson's Remedy No. 333 is a competent treatment or effective remedy for piles, bad stomach, gall stones or tape worm;

(u) That Johnson's Wild Cherry Tonic No. 446 is a competent treatment or effective remedy for whooping coughs, colds, bronchial cough or asthma;

(v) That Johnson's Remedy No. 649 is a competent treatment or effective remedy for weak men and women or lost vitality. (Jan. 4, 1937.)

01615. Vendor-Advertisers—Skin Powder.—Eva Hopkins and F. F. Hopkins, copartners, trading as The House of Hopkins, Shenandoah,

Ia., vendors-advertisers, were engaged in selling Eva Hopkins Marvel Creme Powder and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Eva Hopkins Marvel Creme Powder will protect the skin from the effects of sun, wind, dust, and weathering, or give absolute protection to the skin, or offers a guarantee against cold, heat, and wind;

(b) That Eva Hopkins Marvel Creme Powder gives greater protection to the skin than any other similar product;

(c) That Eva Hopkins Marvel Creme Powder:

1. Refines the pores;
2. Brings youth to the skin;
3. Heals. (Jan. 5, 1937.)

01616. Vendor-Advertiser—Medicinal Preparation.—General Drug Co., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a preparation designated Midol and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Midol offers lasting relief or freedom from regular pains or that it will afford more than temporary relief in such conditions;

(b) That Midol is a special medicine or that it is recommended for menstrual pains by specialists;

(c) That Midol is safe;

(d) That the results produced by Midol are permanent or lasting. (Jan. 7, 1937.)

01617. Vendor-Advertiser—Medicinal Preparation.—Melodine Products Corp., a corporation, Los Angeles, Calif., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Sino-Dine and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Sino-Dine drains sinuses;

(b) That Sino-Dine—

1. Will end agony of infected sinuses, mucous discharges, or nasal irritations;
2. Will sterilize infected areas;
3. Will drain clogged passages; or
4. Will shrink inflamed tissues;

(c) That Sino-Dine—

1. Releases powerful, antiseptic, soothing oils and vapors; or
2. Gives quick comfort and lasting relief;

(d) That Sino-Dine's germ-destroying, healing ingredients penetrate infected parts;

(e) That Sino-Dine—

1. Is a scientific product of the highest order; or
2. Will accomplish lasting results;

(f) That Sino-Dine—

1. Contains the best soothing, healing ingredients, recognized by leading medical authorities and effective in the treatment of nasal and sinial disturbances;
2. Is a truly great remedy, capable of getting results far beyond expectations; or
3. Gets at the root of the trouble and really goes to work;

(g) That Sino-Dine brings relief after all hope has been given up;

(h) That Sino-Dine—

1. Attacks infection;
2. Reduces inflamed condition; or
3. Penetrates toward the seat of the trouble;

(i) That Sino-Dine is beneficial in relieving the spasms caused by hay fever;

(j) That Sino-Dine gives quick relief to irritations from catarrh;

(k) That, in distress caused by head colds, the application of Sino-Dine in each nostril means striking straight at the heart of the germ army;

(l) That Sino-Dine releases one of the most effective germ-destroying agents known to medical science;

(m) That Sino-Dine will, if used early enough, ward off attack from head cold. (Jan. 7, 1937.)

01618. Vendor-Advertiser—Feminine Hygiene Preparations.—C. B. Jordan, an individual operating under the trade names of The Jordan Co. and The Q. T. Products Co., Los Angeles, Calif., vendor-advertiser, was engaged in selling various feminine hygiene preparations designated Q. T. Antiseptic Powder, Q. T. Douche Powder, Q. T. Jelly, Q. T. Vaginal Cones, and Q. T. Diaphragm, and agreed 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, implication or suggestion, that any one of the respondent's products or any combination of them will act as a contraceptive, unless such representations are qualified so as to explain fully that said product or products may be ineffective because of the difficulty in application, the improbability of properly adjusting the diaphragm or rubber cap without the aid of a physician, the uncertainty in obstructing the opening through the cervix and of covering the entire surface of the vaginal tract;

(b) That the respondent's products have replaced ineffective or dangerous methods of feminine hygiene with scientific methods;

(c) That any of said products or any combination thereof—

1. Is recommended, tested or proven by thousands of women everywhere;
2. Solves personal hygiene problems;
3. Is efficient, or powerful;
4. Is the most modern or most scientific method of vaginal cleanliness known to medical science;
5. Will penetrate deep into the many folds and crevices of the vaginal tract;
6. Will prevent disastrous errors;
7. Is a secret from Germany;
8. Was revealed to America by the highest medical authorities;
9. Is internationally recognized by pharmaceutical laboratories;

10. Is the standard of the world;
11. Is the original preparation for feminine hygiene;
12. Is dependable;

(d) That women depend upon Q. T. Vaginal Jelly for the ultimate in feminine hygiene, or that it is used by millions of women;

(e) That respondent's Q. T. measuring applicator eliminates guesswork or is a necessary requisite for feminine hygiene accuracy or efficiency;

(f) That the Q. T. Diaphragm and Jelly method is "the correct method";

(g) That if used before retiring the action of Q. T. Products continues for hours or all night;

(h) That the use of said products will result in joy or peace of mind;

(i) That there is no possibility of respondent's diaphragm not fitting properly;

(j) That the use of respondent's products will—

1. Enable a woman to live a full normal life; or
2. Dispel fear, reluctance or irritability;

(k) That feminine hygiene methods practiced in the past have wrecked the health or nerves of women. (Jan. 11, 1937.)

01619. Vendor-Advertisers—Medicinal Preparation.—R. C. McBride, an individual doing business as The K-O-Kol Co., Glendale, Calif.; F. T. Stevenson, an individual doing business as the East K-O-Kol Co., West Chester, Pa., vendor-advertisers, were engaged in selling a product designated Kolokay Powder, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Kolokay is a competent remedy in the treatment of colitis or that it constitutes more than palliative relief for colitis due to faulty diet, over-acidity or constipation;

(b) That Kolokay is a competent remedy in the treatment of any of the following conditions:

1. Intestinal fermentation or excess acidity, unless limited to gastric or intestinal hyperacidity;
2. Constipation unless limited to temporary relief;
3. Diarrhoea;
4. Ptosis;
5. Spasticity of the intestines;
6. Sea sickness;
7. Colitis;
8. Nausea;
9. Billiousness;
10. Gastric ulcers, unless limited to palliative relief;
11. Arthritis;
12. Stomach disorders, unless limited to temporary relief from sour stomach;
13. Intestinal disorders or colon trouble, unless limited to constipation or to hyperacidity;

(c) That any definite or specified percentage of human ills may be traced to improper functioning of the stomach, intestines or colon;

(d) That Kolokay is a scientifically compounded formula or that it will cleanse the stomach of poisonous waste matter or bacteria;

(e) That thousands (or any specified number) of people have found Kolokay to be an effective treatment for the diseases mentioned;

(f) That Kolokay or any of its ingredients has been used by specialists or physicians in the treatment of colitis, stomach or intestinal disorders;

(g) By inference or direct statement that Kolokay does not contain a cathartic;

(h) That any benefits resulting from the use of Kolokay will be permanent or lasting;

(i) That Kolokay

1. Reaches the roots of any trouble;
2. Neutralizes mucous;
3. Restores organs to their normal state;
4. Restores normal movements of the colon;
5. Will eliminate gas from the stomach;
6. Will heal the linings of the stomach, intestines or colon;
7. Checks absorption of poison by the blood stream;
8. Will restore tone or vigor to the bowel walls;

(j) That the constituents of Kolokay have been used in India or in Asiatic Cholera cases;

(k) That Kolokay is more efficient than sodium bicarbonate. (Jan. 11, 1937.)

01620. Vendor-Advertiser—Grape Juice.—Welch Grape Juice Co., a corporation, Westfield, N. Y., vendor-advertiser, was engaged in selling Welch's Grape Juice, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Inferentially or otherwise that respondent's product is a "cure" for excess weight;

(b) That the product alone or in connection with any system of exercises and diet will enable one to "control" one's weight;

(c) That excess poundage "melts away" by use of the product;

(d) That the product will "correct" acidosis;

(e) That use of the product will enable one to "regain" one's "youthful figure";

(f) That use of the product will "keep fatigue or fat away";

(g) That the product "restores" natural color to one's cheeks;

(h) That the sugar in the product "burns up" fat;

(i) That the product "protects against" anemia;

(j) That the product is "the only" grape juice that is "certified" pure and pasteurized;

(k) That the product acts as "a remarkably effective builder of red blood pigment";

(l) That use of the product will enable one to reduce "the right amount";

(m) That the product will "banish" excess weight;

(n) That the use of the product will enable one to "say goodbye to fat forever";

(o) That by use of the product alone or in connection with a diet one will "get rid" of fat;

(p) That use of the product will enable one to reduce to normal weight or that use of the product or any definite amount thereof will enable one to reduce any definite number of pounds within any definite period of time. (Jan. 11, 1937.)

01621. Vendor-Advertiser—Hair Dye.—Anna L. Austin, an individual doing business under the trade name of Prof. John H. Austin, Los Angeles, Calif., vendor-advertiser, was engaged in selling an application for the hair designated Co-Lo, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Co-Lo

1. It is a scientific preparation;
2. Was "discovered" by Prof. John H. Austin;
3. Will restore gray hair to lustrous shades of blonde, brown or black; or
4. Will restore gray hair to its natural color;

(b) That Co-Lo is not "just another preparation" but a scientific discovery;

(c) That Co-Lo positively restores gray hair to its original color;

(d) That Co-Lo involves a new process and is a modern scientific advance over chemical dyes and henna mixtures;

(e) That Co-Lo develops again the original shade, whether black, blonde or auburn;

(f) That Co-Lo

1. Is a "hair restorer"; or
2. Is a "hair color restorer". (Jan. 11, 1937.)

01622. Vendor-Advertiser—Medicinal Preparation.—J. C. Kenyon, an individual, doing business as J. C. Kenyon, Druggist, Owego, N. Y., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Kenyon's Tablets, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Kenyon's Tablets—

- (1) Are a remedy for rheumatism, arthritis, or neuritis,
- (2) Will relieve lameness or severe pain,
- (3) Will give glorious relief from pain and lameness,
- (4) Are relieving thousands of people from pain and lameness;

(b) That one need not suffer any longer, or can be cured;

(c) That Kenyon's Laxative Pills are sent free with a purchase of Kenyon's Tablets, when in fact a price therefor is included in the charge for Kenyon's Tablets. (Jan. 11, 1937.)

01623. Vendor-Advertiser—Food Product.—J. T.'s Flat Wheat Co., a corporation, trading as, Dr. Tuliglowicz & Sons, Flat Wheat Co., and Joseph Tuliglowicz & Sons, Newark, N. J., vendor-advertiser, was engaged in selling J. T.'s Flat Wheat and agreed 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 vitamin or combination of vitamins is more important or more essential to the diet or for "good health" than any other vitamin or combination of vitamins when such statement is not supported by scientific facts;

(b) That any certain vitamin is essential or necessary to the human diet when such statement is not supported by scientific facts;

(c) Inferentially or otherwise that the Product contains all of the minerals or vitamins for "building sound teeth and bones" or for "normal" growth;

(d) That the product is "unequaled" for "building energy and health;"

(e) That the product is a competent treatment or an effective remedy for indigestion or constipation;

(f) That the product is "body building" or "pep giving" (Jan. 12, 1937.)

01624. Vendor-Advertiser—Novelties, etc.—Fireside Industries, Inc., a corporation, Adrian, Mich., vendor-advertiser, was engaged in selling Novelties and Home Study Course in the Decoration of Novelties, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That a customer "has at his command all of Fireside's tremendous resources for his or her benefit";

(b) That respondent has agents or counsellors in Europe, unless and until such is a fact;

(c) That respondent's plan "assures your success" or that "you cannot fail";

(d) That respondent gives a Warranty backed by a "gold" bond;

(e) That respondent is a "Guild", or that it is an "Association" of persons;

(f) Inferentially or otherwise, that respondent purchases articles from its customers, or that it acts as their sales agent;

(g) That respondent guarantees "everything" or "success". (Jan. 12, 1937.)

01625. Vendor-Advertiser—Medicinal Preparation.—B. M. Keene and B. M. Keene, Jr., copartners, doing business under the trade names of The Keene Drug Co., The Keene Pharmacal Co., and the B. M. Keene Co., Indianapolis, Ind., vendor-advertisers, were engaged in selling Keene's Wintergreen Tablets and Bilezyme Tablets, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

Keene's Wintergreen Tablets:

(a) Using the word Wintergreen to describe or designate any tablet in which wintergreen is not the dominant ingredient;

(b) Representing that the wintergreen in Keene's Wintergreen Tablets will afford relief from the pain and discomfort due to Rheumatic Pains, Muscular Lumbago and kindred ailments;

(c) Representing that there is sufficient wintergreen in Keene's Wintergreen Tablets to be highly efficacious or active as a highly valuable analgesic to produce therapeutic action for the relief of pain either alone or in combination with other drugs;

(d) Representing that Keene's Wintergreen Tablets will give "positive" relief from rheumatic pains and muscular lumbago;

(e) Representing that Keene's Wintergreen Tablets are "absolutely guaranteed" or are a guaranteed remedy for the relief or cure of any ailment;

(f) Representing that Keene's Wintergreen Tablets are "guaranteed" to give positive relief from rheumatism, neuritis, aches and pains;

(g) Representing that Keene's Wintergreen Tablets will quickly relieve muscular lumbago;

- (h) Representing that rheumatism and neuritis respond quickly to Keene's Wintergreen Tablets;
- (i) Representing that rheumatism and neuritis are "permanently" relieved by Keene's Wintergreen Tablets;
- (j) Representing that Keene's Wintergreen Tablets will provide freedom from rheumatism, neuritis, pains and aches;
- (k) Representing that medical authorities for many years have recognized wintergreen as a remedy for rheumatism, neuritis, neuralgia, muscular aches and pains and other similar ailments;
- (l) Representing that Keene's Wintergreen Tablets act directly through the blood, stimulating circulation and relieving congestion;
- (m) Representing that thousands have regained health through Keene's Wintergreen Tablets;

Bilezyme Tablets:

- (a) Using the word Bilezyme or any other word containing the word Bile as a component part thereof to describe or designate a tablet the ingredients of which will not serve as a competent treatment for liver and bile disorders;
- (b) Representing that Bilezyme Tablets will afford relief from liver and bile disorders and other common conditions, caused by defective elimination due to shortage of bile;
- (c) Representing that Bilezyme Tablets are a fine tonic laxative, an antacid and a stimulant diuretic to the kidneys;
- (d) Representing that Bilezyme Tablets are beneficial for urinary disorders due to bladder irritations;
- (e) Representing that Bilezyme Tablets are effective antacid with the distinct advantage of neutralizing acids and checking fermentation;
- (f) Representing that Bilezyme Tablets will provide "guaranteed relief" from any ailment, or that Bilezyme Tablets are guaranteed to aid one in ridding himself of any ailment;
- (g) Representing that Bilezyme Tablets are a competent treatment for liver, kidney or gall-bladder disorders;
- (h) Representing that Bilezyme Tablets will cause one who wakes up in the morning with that tired, worn-out feeling, with a dizzy headache, wishing the alarm clock had allowed him more hours for sleep, to feel like his old self again—full of pep and ready to go;
- (i) Representing that Bilezyme Tablets aid in the reestablishment of normal liver, kidney and gall-bladder functions;
- (j) Representing that Bilezyme Tablets produce a healthy flow of nature's own remedy, bile, that aids healthy elimination, neutralizes acid and controls intestinal bacteria;
- (k) Representing that Bilezyme Tablets are an effective treatment for gall-bladder and bile duct irritations due to lack of bile;
- (l) Representing that Bilezyme Tablets are an effective treatment for dyspepsia generally.
- (m) Designating or describing Bilezyme Tablets as a compound "gland" product;
- (n) Representing that Bilezyme Tablets help to purify the system;
- (o) Representing that Bilezyme Tablets alone are effective in producing normal bowel movements. (Jan. 12, 1937.)

01026. Vendor-Advertiser — Complexion Cream. — Myl Laboratories, Inc., a corporation, New York, N. Y., vendor-advertiser, was engaged

in selling Myl Complexion Treatment, and agreed 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 Myl leaves the face soft, smooth or fine;
- (b) That Myl is a perfect facial or cleans the pores;
- (c) That by the use of Myl the user is enabled in nine minutes or any other like period of time to get rid of coarse pores, blackheads, spots, wrinkles or sallow skin;
- (d) That no cream in the world can do what Myl does;
- (e) That through the use of Myl blackheads come out, wrinkles are smoothed, coarse, muddy skin is made clear and alive. (Jan. 12, 1937.)

01627. **Vendor-Advertiser—Medicinal Preparation.**—Dr. W. D. Stokes, an individual, Baton Rouge, La., vendor-advertiser, was engaged in selling a proprietary remedy designated Lon-Gre-Mo and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Lon-Gre-Mo is a competent treatment for bronchial congestion or stubborn colds;
- (b) That Lon-Gre-Mo is a competent treatment for colds or bronchial coughs that "hang-on";
- (c) That Lon-Gre-Mo is a competent treatment for coughs or colds that "refuse to give in";
- (d) That Lon-Gre-Mo is absolutely safe and harmless;
- (e) That Lon-Gre-Mo will protect one from the more dangerous or serious ailments and hazards resulting from stubborn colds or bronchial congestion. (Jan. 14, 1937.)

01628. **Vendor-Advertiser—Medicated Cream and Soap.**—The Mercirex Co., a corporation, Milford, Del., vendor-advertiser, was engaged in selling Mercirex Cream and Mercirex Soap and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (e) That the Mercirex Treatment will relieve eczema, pimples, barber's itch, acne, external rashes, unsightly skin, skin blemishes, skin eruptions, and athlete's foot;
- (b) That the Mercirex Treatment will get rid of psoriasis;
- (c) That the Mercirex Treatment will cause psoriasis to disappear;
- (d) That the Mercirex Treatment is a competent treatment for "stubborn" eczema;
- (e) That the Mercirex Treatment will relieve eczema, pimples, barber's itch, rash and impetigo in three days, or get rid of said skin disorders within a reasonable period of time;
- (f) That the Mercirex Treatment is a competent treatment for sore, "sick", itching skin, generally;
- (g) That the Mercirex Treatment is an effective home treatment for common skin disorders;
- (h) That the Mercirex Treatment is a tried, proven treatment for the skin and will help restore the skin to a normal, healthy condition;
- (i) That the use of the Mercirex Treatment at the first sign of an external skin eruption will counteract such a condition;

(j) That the Mercirex Treatment will "clear up" the skin no matter how badly blemished it may be;

(k) That the Mercirex Treatment is a scientifically compounded treatment for all common skin disorders;

(l) That the Mercirex Treatment is the most marvelous "stuff" in the world for anything wrong with the skin;

(m) That the Mercirex Treatment is the most marvelous remedy for athlete's foot;

(n) That the use of the Mercirex Treatment at night will cause pimples to disappear by morning;

(o) That the Mercirex Treatment soothes and relieves irritated tissues, unless limited to skin tissue;

(p) That the Mercirex Treatment is a physician's discovery for psoriasis. (Jan. 14, 1937.)

01629. Vendor-Advertiser—Washing Fluids.—Frank A. Todd and Roger D. Brown, co-partners, doing business under the firm name of Pillsbury Chemical Co., Pittsburgh, Pa., vendor-advertisers, were engaged in selling Pillsbury's Original Washing Fluid, XLNT Washing Fluid, and Brown's Best Washing Fluid, and agreed 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 Pillsbury's Original Washing Fluid, or XLNT Washing Fluid, or Brown's Best Washing Fluid is "beneficial to the hands";

(b) That either Pillsbury's Original Washing Fluid, or XLNT Washing Fluid, or Brown's Best Washing Fluid "removes stains" unless specifically limited to most stains or certain indicated stains, or words of similar limiting import;

(c) That either Pillsbury's Original Washing Fluid, or XLNT Washing Fluid, or Brown's Best Washing Fluid can be depended upon as a disinfectant for personal uses;

(d) That either Pillsbury's Original Washing Fluid, or XLNT Washing Fluid, or Brown's Best Washing Fluid "heals" chapped hands;

(e) That either Pillsbury's Original Washing Fluid or XLNT Washing Fluid, or Brown's Best Washing Fluid "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. (Jan. 14, 1937.)

01630. Vendor-Advertiser—Lubricant.—Impoil Co., Inc., a corporation, Denville, N. J., vendor-advertiser, was engaged in selling a graphite lubricant designated, Impoil, and agreed 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 graphite particles in Impoil are ultra-microscopic in size and will pass through the smallest cracks and crevices without difficulty;

(b) That Impoil insures the elimination of carbon from motor parts;

(c) That Impoil will cause motor parts to be self-lubricated;

(d) That Impoil will cause automobiles to start instantly at sub-zero temperatures. (Jan. 16, 1937.)

01631. Vendor-Advertiser—Medicinal Preparations.—Schoonmaker Laboratories, Inc., a corporation, Caldwell, N. J., vendor-advertiser,

was engaged in selling certain nasal ointments designated, V-E-M and ZYL, and agreed in soliciting the sale of and selling its said products, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That V-E-M or ZYL is a competent treatment for colds, catarrh and sinus trouble;

(b) That V-E-M or ZYL reaches the sore "cold spot," or the post-nasal cavity;

(c) That V-E-M or ZYL reaches and heals and soothes the sore spot or post-nasal cavity where colds, catarrh, sinus trouble and throat irritations start;

(d) That V-E-M or ZYL gets to the cold spot instantly;

(e) That V-E-M or ZYL propelled by the breathing process spreads a healing and soothing thin film of lasting relief directly on the roof and walls of the cold, itself, covering the actual seat of head cold inflammation;

(f) That medication of the stomach or internal medicine is not essential or helpful in treating colds;

(g) That 70,000 doctors requested V-E-M or ZYL for their own use;

(h) That the self-measuring applicator attached to tube containing V-E-M or ZYL allows one to "snap" just the right amount up the nostril;

(i) That the applicator when attached to a tube of V-E-M or ZYL sends it right to the trouble spot where it gives instant and lasting relief;

(j) That V-E-M or ZYL is a competent treatment for hay fever;

(k) That with V-E-M or ZYL one can have lasting medication and lasting relief where lighter fluids would run down and out;

(l) That V-E-M or ZYL will afford relief in "most" cases of hay fever;

(m) That V-E-M or ZYL will get to the post-nasal or rear orifices and form a protective film of lasting therapeutic effect;

(n) That V-E-M or ZYL either alone or used alternately is more effective than either a watery solution or oily spray. (Jan. 16, 1937.)

01632. Vendor-Advertiser—Medicinal Preparations.—R. O. Murphy, an individual doing business under the trade name of The Stillwater Co., Stillwater, Minn., vendor-advertiser, was engaged in selling various medicinal preparations designated Hay Fever Treatment and agreed 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 one of the respondent's products or any combination of them is a competent remedy in the treatment of asthma, bronchitis, colds, coughs, or catarrh;

(b) That any one of said products or any combination of them is a competent remedy in the treatment of hay fever unless limited to the relief of acute symptoms of hay fever;

(c) That hay fever is the result of a run down condition of the membranes of the nose;

(d) That the use of any of respondent's products or any combination thereof will

1. Build up, strengthen or heal the membranes;
2. Enable the membranes to throw off pollens;
3. Restore the membranes to normal;

4. Produce a healthy condition in the nose or throat;
5. Prevent hay fever;
6. Produce permanent or lasting results;
7. Render the membrane less sensitive;
8. Fortify one against hay fever;

(e) That respondent's preparations will be effective where other preparations have failed;

(f) That respondent's medicine is not compounded in oil unless such representation clearly excludes any preparation containing oil;

(g) That all of the ingredients of respondent's preparation will be entirely absorbed;

(h) That hay fever can be avoided or relieved by building up the membranes;

(i) That the use of any of respondent's products will free one from the suffering of hay fever;

(j) That the respondent's treatments are scientific or have been thoroughly tested or proven;

(k) That respondent's treatments constitute a relief for the entire season;

(l) That the respondent's medicines will heal or build tissue;

(m) That the respondent's eye medicine prevents itching of the eyes, or allays the secretions of the eyes to carry off the pollen;

(n) That any of respondent's products or any combination of them is a specific for hay fever, or will completely relieve hay fever;

(o) That any reduction in the price of respondent's products is for a limited time unless a definite time is fixed and the regular price charged at the expiration of such time. (Jan. 18, 1937.)

01633. **Vendor-Advertiser—Medicinal Preparation.**—Van Patten Pharmaceutical Co., a corporation, also doing business as Drugless Products, Chicago, Ill., vendor-advertiser, was engaged in selling a preparation designated Allimin Essence of Garlic-Parsley Tablets, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Allimin Essence of Garlic-Parsley Tablets are a competent treatment or an effective remedy for arteriosclerosis or "hardening of the arteries" or the other conditions which may cause high blood pressure;

(b) That the use of Allimin Essence of Garlic-Parsley Tablets will afford relief to the sufferer from high blood pressure; unless used continuously and in specified doses at prescribed intervals;

(c) "That various pathological conditions" are successfully treated with garlic;

(d) That extract of garlic will prevent calcification of the arterial walls;

(e) That Allimin Essence of Garlic-Parsley Tablets are guaranteed effective;

(f) That Allimin Essence of Garlic-Parsley Tablets are valuable for reducing high blood pressure except when taken in continuous doses at prescribed intervals;

(g) That the benefits to be derived from the use of Allimin Essence of Garlic-Parsley Tablets are lasting or will endure after the effects of the medication wear off;

(h) That the use of Allimin Essence of Garlic-Parsley Tablets will reduce high blood pressure by any specified number of points; excepting the publication of authentic reports of clinical treatments.

The respondent further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement; that if and when individual results are published notice in immediate connection therewith and in equally conspicuous terms shall be given to the effect that results with different persons vary so much that no person can rely upon securing the same results as another. (Jan. 18, 1937.)

01634. **Vendor-Advertiser—Medicinal Preparations.**—H. Voightlander, an individual doing business under the trade name of Educational Products Co., Chicago, Ill., vendor-advertiser, was engaged in selling certain medicinal preparations designated Educators No. 777, and Educators No. 225, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing, directly or otherwise:—

(a) That Educators No. 777 will give safe and quick relief to women suffering from delayed or overdue menstruation;

(b) That Educators No. 777 can be used by women suffering from delayed or overdue menstruation, without danger and will give "glorious relief" overnight;

(c) That weak, pepleless men can "quickly build sturdy vigor" by using Educators No. 225;

(d) That Educators No. 225 are "safe" or quick-acting for new pep or manly vigor. (Jan. 19, 1937.)

01635. **Vendor-Advertiser—Locating Device.**—Mrs. T. D. Robinson, an individual doing business under the trade name of T. D. Robinson, Elgin, Tex., vendor-advertiser, was engaged in selling a certain Locating Device for the purpose of locating metals and minerals, and agreed 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 said instruments would enable one to locate gold, silver, lead, zinc, copper, coal, mica, iron, aluminum, or metals and minerals of any sort whatsoever;

(b) That said instruments will respond to strong attractions of 1,000 yards, of 2,000 yards, or that they will respond to any metal or mineral attractions whatsoever;

(c) That respondent supplies a map of "Hidden Treasures" to her customers;

(d) That respondent's instruments will enable one to locate underground wealth such as mines and hidden treasure;

(e) That respondent's instruments are heavily charged with the proper things that make them real mineral rods;

(f) That respondent's instruments will catch metal or mineral attractions irrespective of the depth at which the metal or mineral may be located in the earth;

(g) That respondent's instruments never need recharging. (Jan. 21, 1937.)

01636. **Vendor-Advertiser—Medicinal Preparation.**—Lacene Laboratories, Inc., a corporation, Omaha, Nebr., vendor-advertiser, was en-

gaged in selling a preparation recommended for the treatment of Sinus, Head Colds, Asthma, Catarrh, Hay Fever, Etc., known as Lacene, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Lacene

1. Is something brand new to medicine; or
2. May well be considered one of the important recent discoveries in medicine;

(b) That Lacene

1. Has caused splitting sinus headaches to fade away as if by magic; or
2. Brought relief in chronic cases of long standing that had defied the old methods of treatment for years;

(c) That in most Hay Fever cases considerable relief is noticeable in a few minutes and complete comfort comes to a majority of cases in an hour or two;

(d) That Lacene has given almost spectacular relief to sinus sufferers;

(e) That Lacene will overcome any case of Hay Fever in two days and keep it under control for the remainder of the season;

(f) That Lacene

1. Relieves and clears up Atrophic Rhinitis and chronic nasal catarrh cases in which foul odors (Halitosis) are present as well as crusty scabs in the nasal passages;
2. Will clear up the source of bad breath and foul scabs and will restore the mucous membrane to a normal state of action;
3. Will prevent acute attacks of head colds;
4. Clears the nose and takes away the pain;

(g) That the first \$2 package of Lacene did what all other things had failed to do;

(h) That Lacene is a medication to be applied directly to the seat of the trouble;

(i) That you can actually feel Lacene penetrate or dislodge congestion;

(j) That Lacene seems to kill the cold germs and clears up the head;

(k) That Lacene

1. Is a doctor's prescription;
2. Is almost magic;
3. Will restore hearing; or
4. Will break colds;

(l) That Lacene gives permanent relief in the treatment of coughs, sore throat, laryngitis, chest colds, inflamed and irritated throat and bronchial passages, sinus, hay fever, head colds, chronic nasal catarrh, atrophic rhinitis or halitosis. (Jan. 21, 1937.)

01637. Vendor-Advertiser—Clothing.—Fairbanks Tailoring Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling men's clothing, and agreed in soliciting the sale of and selling its said product, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) Designating or representing its garments or the cloth from which they are made as "Wool" or any terms indicating or implying wool, when such garments or cloth (excepting linings or trimmings) are not wholly wool; provided however that garments or cloth made chiefly of wool and partly of silk, linen, cotton or other material may be designated and represented as "wool and silk," "wool and linen," "cotton," "rayon," or whatever the same may be; and provided further that where threads other than wool are added to the fabric as decorative threads that are not essential threads in the woven fabric, it may be designated as "wool with silk, rayon, linen, or cotton thread decorations," as the case may be;

(b) Representing that salesmen make up to \$10 in one day "without canvassing";

(c) Representing that suits or topcoats are given salesmen or agents free when such purported gifts are in fact bought and paid for by the services performed by said salesmen or agents in the sale of merchandise for the respondent. (Jan. 21, 1937.)

01638. **Vendor-Advertiser—Medicinal Preparation.**—G. S. McDonald is an individual doing business under the trade name of O-Poi-Zo Laboratories, Paragould, Ark., vendor-advertiser, was engaged in selling an ointment designated O-Poi-Zo and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Using the word "laboratory" or "laboratories" as part of his trade name until such time as he shall maintain an establishment where scientific experiments are conducted;

(b) Representing that O-Poi-Zo is a competent treatment for Boils, Blood Poison, Bone Felons, Carbuncles, Old Sores, Itching Piles, Erysipelas, Eczema, Itch, Ringworm, Athlete's Foot, or any infection or disease of the skin;

(c) Representing that O-Poi-Zo is a competent treatment for cuts and burns, unless limited to conditions where it would be antiseptic under the conditions of use;

(d) Representing that O-Poi-Zo will bring quick relief from any skin ailment;

(e) Representing that O-Poi-Zo is a "new" remedy for blood poisoning, boils and other similar ailments. (Jan. 21, 1937.)

01639. **Vendor-Advertiser—Medicinal Preparations.**—Western Refining Co., Inc., is a corporation trading as Le Du Sales Company, (trading formerly as The Cote Laboratories), Lowell, Mass., vendor-advertiser, was engaged in selling medicinal preparations, and agreed in soliciting the sale of and selling its said products, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That Cote French Tonic Tablets are a "potent" tonic or nerve stimulant;

(b) That the use of Cote French Tonic Tablets will enable the user to keep fit or to enjoy normal life;

(c) That the longer Cote French Tonic Tablets are taken the better the results will be, or the better the user will feel;

(d) That the ingredients in Cote French Tonic Tablets are selected from an approved formula;

(e) That Cote French Tonic Tablets if taken for a sufficient length of time will make one completely normal;

(f) That Cote French Tonic Tablets are Doubly Phosphated, or contain phosphorus in other form than that of phosphate.

The respondent further agreed to cease and desist from representing directly or otherwise that it is a manufacturing pharmacist or chemist, or manufactures Cote French Tonic Tablets until such statements are in fact true.

The respondent further agreed to cease and desist from representing directly or otherwise that it owns or operates a laboratory in connection with the conduct of its business until such be the case according to accepted standards and definitions.

The respondent further agreed to cease and desist from using the word "French" or other words in the trade name of its preparation that might imply that such product or its ingredients are imported from France, or that such product is compounded in accordance with a French formula. (Jan. 22, 1937.)

01640. Vendor-Advertiser—Correspondence Course.—Adolph F. Lonk, an individual operating under the trade name of Lonk Institute of Hypnotism, Palatine, Ill., vendor-advertiser, was engaged in selling a certain course of instruction designated as Lonk Course in Hypnotism, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing, directly or otherwise:

(a) That the science of hypnotism can be taught successfully by correspondence;

(b) That by study of respondent's course any person will become able to hypnotize instantaneously, or at all;

(c) That the power to hypnotize is within all persons;

(d) That the science of hypnotism—

1. Will lead to success, or health, or fortune, or happiness;
2. Is an opportunity to enter a new world, or to enter a new world of magic, or of splendor, or of power, or of wealth, or of fame, or of esteem, or of happiness;
3. Will enhance the respect and gratitude of others;
4. Will open the way to marvelous opportunities for doing good;

(e) That a hypnotist can—

1. Help others out of their "blues", or of their bad habits, or of an alcohol habit, or of a tobacco habit, or of a narcotic habit;
2. Cure children of bed-wetting, or of harmful and distressing habits;
3. Cure any habit permanently;

(f) That everyone can be hypnotized, "even against their wills" or otherwise;

(g) That the science of hypnotism is easily mastered;

(h) That there is any system or method of hypnotism used or applied that is unfailing regardless of the attitude of the subject;

(i) That hypnotism provides wonderful aids to win one's heart's desires;

(f) That it is possible with one hour's study of the science of hypnotism, or within any other specified time, to successfully hypnotize a person;

(k) That hypnotism is a "God-given" power, or in any other manner lead the reader to believe it is a divine or spiritual power;

(l) That the respondent has made himself famous, influential or a blessing to mankind through the practice of hypnotism; or that he has actually healed the physical ills of patients through hypnotic treatments;

(m) That the respondent "unselfishly" reveals all the secrets of hypnotism or any of such secrets;

(n) That respondent's course of instruction is "the cream of all hypnotic knowledge";

(o) That for 25 cents respondent teaches one to hypnotize instantaneously, or at all.

The respondent further agreed to cease and desist from using the title "Dr." or "Doctor" in his advertising until he can show that he has received such a degree from some educational institution authorized to confer such a degree or has acquired the right to use such title through some other legally prescribed method. (Jan. 25, 1937.)

01641. Vendor-Advertiser—Medicinal Preparation.—Allen & Co., Inc., a corporation, Lynn, Mass., vendor-advertiser, was engaged in selling a certain medicinal preparation designated, Mulsicof, and agreed 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 suffering from any cough or cold will be relieved by using Allen's Mulsicof, unless limited to coughs due to colds;

(b) That the use of Allen's Mulsicof will:

1. Break up obstinate coughs;
2. Break up a hard cough;

(c) That respondent's product is nature's own remedy;

(d) That said preparation is a competent or an effective remedy for a cough on lungs, or in cases of symptoms indicative of approaching pneumonia;

(e) That said preparation will reduce a cough on the lungs, sore lungs or difficult breathing promptly, or at all; or will avert the danger of pneumonia;

(f) That said preparation is a competent treatment for a stubborn cough, a tough old cough, or will break its vise-like grip;

(g) That said preparation will build up your system;

(h) That said preparation is the most effective remedy for whooping cough, or that it is effective at all for whooping cough;

(i) That the use of said preparation will usually check coughs and colds entirely so that other complications will not follow;

(j) That the use of said preparation is a complete treatment for a slight cough;

(k) That the use of said preparation will "check a cough";

(l) That the use of said preparation is especially effective, or effective at all for catarrh, bronchial cough, tubercular cough, asthma, etc. (Jan. 27, 1937.)

01642. Vendor-Advertiser—Tooth Cleanser.—The Tartaroff Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling a

product designated Tartaroff, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Tartaroff—

1. Is a new amazing liquid discovery that whitens teeth instantly;
2. Is a new secret formula that makes teeth pearly white and sparkling instantly;
3. Is an astounding new discovery that banishes unsightly stains;
4. Is a sensationally new liquid discovery that turns clouded teeth to sparkling white;
5. Is just a liquid that accomplishes things no toothpaste can;
6. Keep the teeth "pearly" white;
7. Banishes all stains;
8. Removes all disfiguring blemishes in the magic of a moment; or
9. Removes all blemishes and turns cloudy teeth to sparkling white within a minute;

(b) That a little Tartaroff on the toothbrush will cause all yellowness to vanish and the teeth to have that pearly whiteness which everyone admires, even before the cork is replaced in the bottle;

(c) That pearly white teeth can now be yours instantly. (Feb. 2, 1937.)

01643. Vendor-Advertiser—Coin Book.—Bob Cohen, an individual, trading as M. Arcy Coin & Stamp Co., and as American Coin Co., Cleveland Heights, Ohio, vendor-advertiser, was engaged in selling the Bob Cohen Coin Book, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That he will purchase and pay any sums for nonexistent or nonavailable coins:

(b) That by the use of respondent's coin book a person may keep posted on rare coins and their values unless distinctly qualified to include only the rare coins listed therein;

(c) That respondent will pay any stated or approximate amount for any coin or coins unless it is further stated in direct connection therewith that only coins of a certain date and in specified condition will be purchased at the prices noted. (Feb. 2, 1937.)

01644. Vendor-Advertiser—Carpet Washer.—Von Schrader Manufacturing Co., a corporation, Racine, Wis., vendor-advertiser, was engaged in selling a machine designated Von Schrader Portable Carpet Washer and agreed 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 Von Schrader Portable Carpet Washer restores colors or shades to carpets or rugs;

(b) That said machine removes microbes or germs from carpets or rugs;

(c) That by owning and operating said Carpet Washer one's success is assured.

The respondent further agreed to cease and desist from using the word "Manufacturing" as a part of its corporate name until such time

as the respondent shall become engaged in the manufacturing business to a substantial extent. (Feb. 2, 1937.)

01645. Vendor-Advertiser—Casting Forms.—Henry Sacks and Sigmund Sacks, copartners, operating under the firm name of Metal Cast Products Co., New York, N. Y., vendor-advertisers, were engaged in selling Moulds—to be used in the Manufacture of Novelties, and Metal Heaters, and agreed 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 respondents are the only dealers in casting forms for manufacturers;

(b) That the respondents' customers are their "branch manufacturers";

(c) That respondents' system is that of "cooperative manufacturing";

(d) That they sell the moulds on a "50-50" or "half-cost" basis, or otherwise representing that the moulds are sold for any amount less than the regular price, unless such is a fact;

(e) By use of such statements as "you take no risk" or otherwise, that the respondents remunerate a customer for any financial loss that may be incurred;

(f) By means of reprinted news articles or otherwise, that the conditions in the industry at a previous period are indicative of conditions at the time the reprint is published, unless supported by authentic evidence;

(g) That the demand in the industry exceeds the supply;

(h) That any article is sold at cost when the price thereof is greater than the price paid by the respondents for the same article;

(i) That the respondents furnish a "complete" manufacturing outfit or otherwise representing or implying that all equipment necessary to the manufacture of the articles is furnished with the moulds;

(j) By the use of the word "our" or any other possessive expression, or otherwise, that the respondents are the sole users in the United States of this particular method of business.

The respondents further agreed:

(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 of their customers, under normal conditions in the due course of business. (Feb. 2, 1937.)

01646. Vendor-Advertiser—Hand Cream.—Luxor, Ltd., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling Luxor Hand Cream and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Luxor Hand Cream is a new, different type of hand cream;

(b) That Luxor Hand Cream absorbs "completely" into the skin;

(c) That just a touch of Luxor Hand Cream will cause the natural charm of the hands to return no matter how hard they may be affected by exposure or housework;

(d) That Luxor Hand Cream definitely aids in soothing and healing inflamed hand "tissues";

(e) That Luxor Hand Cream will "end" redness, "constant" roughness or any irritation of the skin of the hand;

(f) That the "film" left on the hands by Luxor Hand Cream serves as a "protection" to the skin from the ravages of severe cold, blistering wind and dry artificial heat;

(g) That Luxor Hand Cream is an important aid in the treatment of cracked nails, unless limited to cracked nails due to brittleness or dryness. (Feb. 2, 1937.)

101647. **Vendor-Advertiser—Correspondence Lessons.**—William Jonason, an individual, trading as Bill's Music Shop, Clay Center, Nebr., vendor-advertiser, was engaged in selling Home Study Courses in Piano, Violin, etc., and Song Books, and agreed in soliciting the sale of and selling his said Home Study Courses in Piano, Violin, etc., in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That any of the courses will enable one to play any musical instrument within any definite period of time;

(b) That any article is offered free to the purchaser of any of the courses when the value of the former is included in the purchase price of the latter. (Feb. 2, 1937.)

101648. **Vendor-Advertiser—Washing Fluid.**—Popular Brands, Inc., a corporation, Cleveland, Ohio, vendor-advertiser, was engaged in selling a washing fluid designated Sani-Clor, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing, directly or otherwise:—

(a) That Sani-Clor—

1. Destroys germs;
2. Is a "sterilizer"; or
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 Sani-Clor is a disinfectant, unless directions are given for first cleansing the surface or area to be disinfected, and then thoroughly wetting all surface with a proper solution of the product. (Feb. 8, 1937.)

101649. **Vendor-Advertiser—Book.**—Jessie F. Springer, an individual trading as Harmony Centre, New York, N. Y., vendor-advertiser, was engaged in selling a book designated "The Grape Cure," which contains a description of a method for the treatment of various physical conditions, which method is also designated as "The Grape Cure", and agreed in soliciting the sale of and selling its said product, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That "most" diseases originate in the intestines or are caused by poisons due to uneliminated waste;

(b) That the method is a competent treatment or an effective remedy for constipation, cancer, diabetes, heart trouble, high blood pressure, kidney trouble,

liver trouble, bladder trouble, bronchitis, angina pectoris, paralysis, pneumonia, colds, tonsillitis, throat trouble, sinus trouble, diabetes, goiter, stomach ulcers, rheumatism, asthma, gall stones;

(c) That the method will "cure" or "rid" one of, or enable one to "overcome" constipation, cancer, diabetes, heart trouble, high blood pressure, kidney trouble, liver trouble, bladder trouble, bronchitis, angina pectoris, paralysis, pneumonia, colds, tonsillitis, throat trouble, sinus trouble, diabetes, goiter, stomach ulcers, rheumatism, asthma, gall stones;

(d) That grapes dissolve or are a solvent of mucus;

(e) That those who develop malignant growths "in most cases" have suffered from constipation;

(f) That salt, drugs, or medicines cause cancer;

(g) That poisons result from using aluminum vessels;

(h) That the method will "restore" one's health. (Feb. 8, 1937.)

01650. **Vendor-Advertiser—Radios.**—The Sparks-Withington Co., a corporation, Jackson, Mich., vendor-advertiser, was engaged in selling Sparton Radios, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Sparton Radio Tone Control makes reception possible "under any condition";

(b) That Sparton has "all world reception" on all wave or "puts the universe at your finger tips";

(c) That by the use of the Sparton, programs come in clear and distinct from all American stations, or from various foreign countries or from outpost stations in remote parts of the globe;

(d) That the "presence" reproduction or any other feature of the Sparton makes radio reception from all parts of the world so real, natural or life-like as to make the listener feel the presence of the artist;

(e) That the Sparton brings in with fidelity or clearness "everything on the air", either from Berlin, London, Madrid, Rome, Barranquilla or Sydney, or from far-away foreign countries, or from any other place. (Feb. 8, 1937.)

01651. **Vendor-Advertiser—Medicinal Preparation.**—Dermalab, Inc., a corporation, Winnetka, Ill., vendor-advertiser, was engaged in selling a preparation designated Nac and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Nac combines an effective treatment for acne, pimples and kindred skin ailments unless limited to acne or pimples due to external causes;

(b) That Nac will "cure" acne, pimples, oily and blotchy skin;

(c) That Nac aids in preventing boils;

(d) That pimples are ended by 60-second Nac treatments or that Nac ends pimples;

(e) Generally that skin eruptions are caused by germs imbedded in the pores or that such claim is made by skin doctors;

(f) That Nac is recommended by skin doctors;

(g) That Nac kills the pimple or acne germ, "clears up" pimples or "prevents" infection;

(h) That Nac kills the germs that cause skin irritation;

(i) That Nac destroys the pimple germ for all time;

(f) That Nac "normalizes" faulty pore action, oily skin, the action of sebaceous oil glands or stimulates "normal" skin glandular activity;

(k) That Nac is a prescription prescribed or perfected by leading American and French doctors now practicing, is the proven formula of or is recommended by leading skin specialists, contains all the essential medical properties recommended by leading skin doctors or its use is advised by leading skin specialists in their private practice, unless limited to the statement that the ingredients of Nac are sometimes used by doctors for the same purpose;

(l) That Nac clears up pimples safely and scientifically unless limited to pimples due to external causes;

(m) That Nac face powder literally powders away pimples;

(n) That Nac ends periodic pimples in 72 hours or any other definite period of time;

(o) That Nac is 6 times as active and penetrating as the ordinary germicide;

(p) That the efficacy of Nac or the results claimed for it are "guaranteed";

(q) That when you wash Nac off the skin enough remains in the pores to sterilize them for 12 to 16 hours more and prevents reinfection;

(r) That through the use of Nac you can get "rid" of ugly pimples;

(s) That through the use of Nac pimples are gone forever;

(t) That the Nac formula is responsible for curing 70 percent or any definite percentage of the cases treated;

(u) That Nac is germicidal. (Feb. 8, 1937.)

01652. Vendor-Advertiser—Medicinal Preparation.—The Vitacine Co., Inc., a corporation, Detroit, Mich., vendor-advertiser, was engaged in selling a certain medicinal preparation designated, Vitacine, and agreed 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 results claimed from the use of Vitacine are guaranteed;

(b) That Vitacine will afford relief within any definite period of time;

(c) That Vitacine is a new discovery;

(d) That sufferers from psoriasis can be classified according to their types of skin;

(e) That Vitacine can be depended on to afford positive or complete relief or definite results without determination of the type of the skin and the type of psoriasis;

(f) That Vitacine will penetrate the pores, glands or hair follicles;

(g) That Vitacine is an effective treatment for psoriasis, unless qualified to indicate that it may not be effective in all cases;

(h) That Vitacine can be relied upon as an effective treatment for stubborn or extreme cases of psoriasis. (Feb. 8, 1937.)

01653. Vendor-Advertiser—Medicinal Preparation.—Kalis Products, Inc., a corporation, St. Joseph, Mo., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Kalis Capsules, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Kalis Capsules drive colds out of the system;

(b) That Kalis Capsules will not cause griping;

(c) By inference or otherwise, that Kalis Capsules is a competent remedy for flu or influenza;

(d) That Kalis Capsules act on the liver and drive a cold out of the system quickly;

(e) That Kalis Capsules possess tonic properties;

(f) That Kalis Capsules tend to tone up the system and make one feel tip top. (Feb. 9, 1937.)

01654. Vendor-Advertiser—Medicinal Preparations.—Wilhelmina Wittigschlager, an individual doing business under the trade name of Indian Root & Herb Co., Miami, Fla., vendor-advertiser, was engaged in selling various medicinal preparations, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing, directly or otherwise:

(a) Using the word "Indian" as a part of her trade name or as a part of the trade name for any of her products;

(b) Representing that any of her products are of Indian origin;

(c) Using the picturization of an Indian in her advertising literature, on her letterheads, or on the labels of any of her products;

(d) Representing that her Treatment for Nose and Throat—

1. Works fast;

2. Is a competent treatment for nasal catarrh;

3. Will cause one to have "no more nasal catarrh;"

4. Is highly recommended as a gargle for public speakers;

5. Is one of the greatest remedies for nasal catarrh;

6. Has cured hundreds of people of nasal catarrh;

7. Will cause one to have "no more throat trouble";

(e) Representing that her preparation Tonic is a great tonic for lost manhood;

(f) Representing that her hair tonic will serve as a tonic for the hair, strengthen its growth; stop it from falling out; correct dandruff; and cause one to have no more baldness;

(g) Representing that her Liniment or preparation for rheumatism—

1. Will cause one to have "no more rheumatism";

2. Will cause one to have a restful night with one application;

3. Is the greatest and most reliable liniment on the market;

(h) Representing that her tea for rheumatism—

1. Carries off poisons;

2. Is a blood purifier;

3. Is a decoction;

4. Is a stimulant for people run down in health;

(i) Representing that her preparation for rheumatism is a competent treatment for chronic rheumatism;

(j) Representing that her sponge cream—

1. Ends unsightly skin blemishes;

2. Is a competent treatment for bad complexion, pimples, skin eruptions, and blackheads; and

3. Is a skin tonic;

(k) Representing that her Foot Ease will prevent foot ailments and cause corns to disappear and "heal out";

(l) Representing that her Teeth and Breath Powder is a competent treatment for soft gums and pyorrhea;

(m) Representing that her preparation designated High Blood Pressure is a competent treatment for high blood pressure;

(n) Representing that her preparation designated High Blood Pressure will rid the system of fermenting poisons and diminish poisons in the blood;

(o) Representing that her preparation designated Magic Liniment is a competent treatment for muscular pains, neuralgia, lumbago, myalgia, pleurodynia and for sore spots generally;

(p) Representing that either of her preparations designated Constipation Tea and Constipation Capsules—

1. Is a competent treatment for indigestion, liver disorders, acid stomach or chronic constipation;
2. Will act as a tonic, blood purifier, or intestinal cleanser;
3. Will enable one to gain strength, become energetic and cause the body to function properly when one's vital organs fail to perform their work correctly and the bowels and kidneys cannot throw off waste;
4. Relieve all irritations;
5. Will bring improvements at once no matter how severe stomach indigestion may be;
6. Will bring on natural action;
7. Is a competent treatment for diseases and bad complexion arising from impure blood;
8. Will keep the system clean;
9. Is a competent treatment for sluggish liver, bloated stomach, soreness and tiredness;

(q) Representing that her preparation designated Women's Blessing is a competent treatment for leucorrhoea or female troubles;

(r) Representing that her Pile Salve or Pile Lotion either singly or combined is a competent treatment of any form of piles;

(s) Representing that her preparation designated Squaw Tea—

1. Is a tonic;
2. Exerts a powerful influence on the reproductive organs of females;
3. Is a most reliable remedy or competent treatment for leucorrhoea, or other female troubles;
4. Is a competent treatment for all urinary affections;

(t) Using the word Squaw as apart of the trade name of any of her preparations to designate or describe a tea not of Indian origin;

(u) Representing that her preparation designated Men's Delight—

1. Is a competent treatment for chronic constipation, indigestion, liver disorders and acid stomach;
2. Is a tonic, blood purifier and internal cleanser;
3. Will cause the body to function properly;
4. Will cause one to gain in strength and become energetic;
5. Is a competent treatment for sluggish liver, bloated stomach, sourness and tiredness;

(v) Representing that her preparation designated Nerve Tea—

1. Is a competent treatment for insomnia, nervousness, and restlessness;
2. Is a tonic;

3. Is a blood purifier;
4. Is a builder;

(w) Representing that any of her preparations is a competent treatment for retroversion of the womb. (Feb. 9, 1937.)

01655. **Vendor-Advertiser—Medicinal Preparation.**—French Lick Springs Hotel Co., a corporation, French Lick, Ind., vendor-advertiser, was engaged in selling a laxative designated Pluto Water, and agreed in soliciting the sale of and selling its said product, in interstate commerce, to cease and desist from representing directly or otherwise:

- (a) That Pluto Water is the "Only" laxative;
- (b) That Pluto Water will restore health;
- (c) That Pluto Water will "correct" constipation, unless said representation be limited to indicate acute constipation;
- (d) That Pluto Water will end constipation in one hour or at all, unless said representation be limited to indicate acute constipation;
- (e) That Pluto Water is a competent treatment for constipation, unless said representation be limited to indicate acute constipation;
- (f) That Pluto Water will bring "safe" and "permanent" relief from morning-after head;
- (g) That Pluto Water will stimulate the gall bladder and liver to normal free flowing action, or is of itself a competent treatment for gall bladder and liver troubles;
- (h) That more than 50,000 doctors use Pluto Water themselves to keep regular and recommend it to their patients for constipation unless such representation be qualified to indicate that 50,000 doctors "have" used Pluto Water for constipation;
- (i) That Pluto Water is a competent treatment for asthenia;
- (j) That Pluto Water will rid the system of the poisons that make one feel lazy and achy, unless limited to the intestinal tract;
- (k) That Pluto Water will carry away any excess acid in the stomach;
- (l) That Pluto Water is a "double action" laxative;
- (m) That Pluto Water will free the vascular and nervous systems from poisons which produce irritative and degenerative effects in cases where, because of intestinal insufficiency there are conditions of toxic disturbances of the stomach, liver, kidneys, skin, joints, vasomotor, or nervous system;
- (n) That Pluto Water provides a sure way of cleansing the system of health destroying poisons or eliminating or banishing dangerous "accumulated" poisons, unless limited to the intestinal tract. (Feb. 9, 1937.)

01656. **Vendor-Advertiser—Money Making Plans.**—Willard Mathias Moore, an individual, doing business under the trade name of "Mooremade", Lapeer, Mich., vendor-advertiser, was engaged in selling plans for an amusement park device, methods of engaging in mail order business and other money making schemes, and agreed 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 plan for making money enabled him to make \$40,000;
- (b) That respondent's plan will make "easy money" or a "lot of money" for anyone;

(c) That "The Novelty Dealer's Guide" will give one full instructions on how to start and conduct a mail order business;

(d) That "The Novelty Dealer's Guide" will enable one to earn an independent living;

(e) That the regular price for "The Novelty Dealer's Guide" is \$2.00, but is sold by respondent for 25 cents in stamps;

(f) That respondent's receipt for "Magic Artificial Honey" will produce honey equal to bee's honey and is often taken for genuine honey by judges;

(g) That agents can sell easily ten receipts a day at \$1 each and average one sale at every sixth house;

(h) That the "Magic Ink Eraser" is sold readily in banks, offices, etc. for fifty cents a bottle, although costing only three cents each to make;

(i) That agents can sell a gross of "The Magic Mucilage" every day as every merchant or banker called on will buy one or more;

(j) That "Celebrated Magic Cologne" is in universal demand and the profit from the amount sold in a single large town will handsomely maintain a family;

(k) That "Magic Grease Eradicator"

(1) Will remove every vestige of grease, oil, paint, stains, etc. from all kinds of clothing;

(2) Is the only liquid of its kind;

(3) Sells readily everywhere;

(4) Several hundred dollars' worth can be sold in a single township in a week's time;

(l) That "The Roadman's and Streetman's Guide" contains real plans for making big money;

(m) That respondent's book "Famous Secret Formulas"

(1) Will enable one to clear \$20.00 a day;

(2) Contains a formula for making an everlasting black ink;

(3) Contains a formula for tablets that are a competent treatment for dyspepsia;

(4) Contains a formula for a tea that is a competent treatment for kidney disorders;

(5) Contains a formula for a preparation that will cure the liquor habit;

(6) Contains a formula or plan for making a Goldometer or gold measuring device;

(7) Contains a formula for making inkless pens;

(8) Contains a formula for making a preparation that will cure the tobacco habit;

(9) Every order brings \$1.00;

(n) That respondent makes a "remarkable offer" or "reduced price" of 50¢ per copy, or 3 copies for \$1, for a book on the mail business, the regular price of which is \$1, when said price of 50¢ per copy or 3 copies for \$1 is the regular selling price of said books;

(o) That the book "The Trust Scheme"

(1) Will enable one to start in business as well equipped as though he were possessed of a large amount of capital and experience;

(2) Will enable one to make from \$1 to \$1.50 on every reply;

(3) Will enable one to make enormous profits;

(4) Will enable persons to make large fortunes;

(p) That respondent's method of selling post cards will enable one to earn from \$4.00 to \$10.00 a week in spare time;

(q) That respondent's "Sales Reporter" will enable one to engage in a business "paying big" wherever tried and that never becomes old or worn out;

(r) That respondent will enable one to get advertising free;

(s) That respondent enabled one of his customers to get \$2000 worth of advertising free;

(t) That respondent will enable one to make \$15 to \$20 a month in spare time selling sewing machine oil. (Feb. 9, 1937.)

01657. Vendor-Advertiser—Literature on Mentalphysics, Etc.—The Institute on Mentalphysics, a corporation, Los Angeles, Calif., vendor-advertiser, was engaged in selling Correspondence Courses, Books, Papers and other literature on Mentalphysics, and agreed 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 founder of the Institute of Mentalphysics was taught by "masters" of the Far East in Tibet; is "today's authoritative interpreter of the ancient wisdom"; can take one into the "very center of the Center of Wisdom"; is a world teacher "of unequaled experience possessing a perfect mind in a perfect body"; imparts "secret knowledge of how to enjoy unfading youth of body and mind"; or can take one "to the highest point that he is evolutionally able to reach";

(b) That the instructions contained in respondent's courses, books, literature, periodicals or pamphlets will:

1. Enable one to bring into realization in his own life whatever he may have dreamed he could do or become, no matter how fantastic it may appear;
2. Enable one always to win, do, or be whatever he wants to win, do or be in life;
3. Cause new implements to fall into one's lap;
4. Cause miracles to happen;
5. Enable one to see himself radiantly full of life, successful, happy, have plenty of the world's goods and properly using what he has; see himself a leader; see himself possessing a beautiful body, writing books, singing, speaking, teaching, and doing what he wants to do;
6. Teach any man to become strong and well, grow young and keep young, improve his figure and build a body that will respond to any demand made upon it at any time;
7. Enable one to develop himself so as to be "one man in 10,000";
8. Enable one to become the conqueror of every situation;
9. Cause fear and failure to disappear from one's experience;
10. Enable one to develop powers within himself so as to create or increase an intense personal magnetism;
11. Provide the breath of life to women, revealing to them beauty and charm of body, personality, unfading youth, grace, sweetness of disposition, alertness and vivacity, and that "IT" which all the outstanding personalities of stage and screen possess;

(c) That respondent offers its students a secret method of the actual technique of rejuvenation; or

1. That its teachings of such principle are 100 years ahead of their time, or embody practices and secrets "known only to the Masters of Tibet", or that Tibet is the land "where age has been finally conquered"; or
2. That such teachings by respondent have caused miraculous changes in the physical bodies in scores of its students; or
3. That respondent's teachings will enable one to attain the age of 120 years or any other specified age, and be physically fit to enter the state of matrimony at such age;

(d) That old age is "only a chemical change" which respondent is able to instruct its students to overcome;

(e) That Mentalphysics enables one to cure constipation, appendicitis, sinus trouble, chronic nephritis, fur poisoning; or will cause goitre or heart trouble to disappear; or corrects curvature of the spine;

(f) That the breathing exercises taught by Mentalphysics will cleanse, revivify, strengthen, rejuvenate, or beautify the body; or eliminate waste matters, introduce physical and mental harmony and strength, develop the voice, develop absolute fatiguelessness, or will establish positive conditions of a radiant, abundant life;

(g) That respondent's "Practical Health and Beauty Guide" will—

1. Enable one to determine his "chemical type" and be free through health;
2. Teach one the simplicity of correct diet for his individual chemical type, the chemical structure of his body, his physical and mental analysis, his predispositioning ailments, and how to avoid them, his principal characteristics and how to develop them;

(h) That there is a chemical cause for unhealthiness, unhappiness, melancholy, poverty or whatever goes wrong in one's life experience;

(i) That Mentalphysics will enable one to attain a perfect supply of the right kind of food or chemical elements so as to have perfect cells, a perfect body, or perfect brains and perfect thought, or will cause one to have perfect emotion and action in life;

(j) That a person's mental or spiritual condition is determined by his physical condition;

(k) That Mentalphysics is of essential interest to all Free Masons;

(l) That respondent provides its students with a "sealed book unfolding the sacred mysteries of Tibet";

(m) That Mentalphysics provides its students with sacred exercises of of priceless value "known only to advanced Oriental masters" (Feb. 10, 1937.)

01658. **Vendor-Advertiser—Medicinal Preparation.**—Jim Bourland, an individual operating as Star Products Co., Houston, Tex., vendor-advertiser, was engaged in selling a medicinal preparation designated as "Blue Star Ointment" and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Blue Star Ointment is a "positive" relief for itchy skin;

(b) That said product will penetrate the pores, or will "kill" common itch, tetter, rash, eczema, foot itch, or ringworm;

(c) That the said product kills the itch germ, or that itch is caused by a germ;

(d) That the said product will "get rid of" itch, rash, tetter, footitch, ring-worm, eczema;

(e) That said product contains tested medicines that "kill" the itching. (Feb. 10, 1937.)

01659. **Vendor-Advertiser—Medicinal Preparation.**—Red Sea Balsam Co., Inc., a corporation, Taunton, Mass., vendor-advertiser, was engaged in selling a medicinal preparation designated Red Sea Balsam, and agreed in soliciting the sale of and selling its said product, in interstate commerce, to cease and desist from representing directly or otherwise:—

(a) That Red Sea Balsam is a competent treatment or effective remedy for:

1. Bruises,
2. Sprains,
3. Burns,
4. Scalds,
5. Sunburn,
6. Chapped hands and lips,
7. Stiff and sore muscles due to exposure and overexertion;

(b) That Red Sea Balsam is a competent treatment or effective remedy for colds, unless limited to the conditions associated with colds;

(c) That Red Sea Balsam is a competent treatment or effective remedy for sore throat, lame muscles, combating the pain and coughs, unless the same is qualified and limited to relief for minor cases of these disorders. (Feb. 15, 1937.)

01660. **Vendor-Advertiser—Washing Fluid.**—Crown Products Corp., a corporation, San Francisco, Calif., vendor-advertiser, was engaged in selling a washing fluid designated Sani-Clor, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing, directly or otherwise:—

(a) That Sani-Clor—

1. Destroys germs;
2. Is a "sterilizer"; or
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 Sani-Color is a disinfectant, unless directions are given for first cleansing the surface or area to be disinfected, and then thoroughly wetting all surface with a proper solution of the product. (Feb. 15, 1937.)

01661. **Vendor-Advertiser—Medicinal Preparation.**—G. H. Glitzke, an individual trading as Ulgo Co., Kansas City, Mo., vendor-advertiser, was engaged in selling a product designated Ulgo and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

That Ulgo is a competent remedy in the treatment of leg sores or arm sores other than to control, but not cure, some cases of leg sores when caused by trichophyton tinea germs. (Feb. 16, 1937.)

01662. Vendor-Advertiser—Urine Analysis.—Dr. A. L. Barth, an individual doing business as Central Laboratory and Central Laboratory Service, Pana, Ill., vendor-advertiser, was engaged in selling Urine Analysis and health service, and agreed 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 findings of respondent's urine analysis are an index to the state of one's health or indicate whether all the vital organs are performing their work properly or require attention;

(b) That by respondent's urine analysis one "can see where he stands in regard to health" unless limited to the recognized conditions disclosed by urine analysis;

(c) That the analysis by respondent will reveal waste poisons which may be the cause of headaches, eye trouble, nervousness or other troubles;

(d) That respondent gives "as complete and scientific analysis as can be obtained;"

(e) That respondent's health service teaches one to use the right food in the right way unless limited to cover such dietary deficiencies as might be disclosed by urine analysis;

(f) Directly or by inference, that vitality, energy and endurance are built up by use of the food diet prescribed by respondent unless such deficiencies are due to causes capable of being shown by urine analysis, and also unless it is made to appear that no diet can alone build up vitality, energy and endurance;

(g) That good food makes good blood or bad food makes bad blood, without regard to the various pathological conditions affecting the purity of the blood:

(h) That poor blood is the cause of all disease;

(i) That respondent can, unless by a physical examination and an accurate diagnosis based thereon, build up the blood so that a purchaser of his food diet will have vitality, energy and endurance;

(j) That by the use of respondent's services the cause of dropsy, tonsillitis, decayed teeth, diabetes, prostate gland troubles, female troubles, leucorrhea, tumors, gall bladder pain, colic, eczema, skin troubles, granulated lids, headaches, sinus trouble, nervousness, goitre, piles, angina pain and indigestion may be determined and the condition relieved; or that the services are a competent treatment for the above maladies;

(k) That respondent's services correct or help to cure disease or treat all diseases or secure wonderful results;

(m) That respondent's urine analysis and health service is a safeguard against disease unless limited to diseases indicated by urine analysis;

(n) That drugs or medicine will prevent the user from getting results from the use of respondent's service;

(o) That respondent's diet and treatment heals ulcers or restores health;

(p) That respondent's service includes a balancing, dissolving, eliminating, regenerating, healing, nonmucus forming, vibration producing, magnetism creating, heat and energy producing, blood cooling, fatigue banishing, brain and nerve-building diet;

(q) That respondent's service makes the sick well and keeps the well healthy. (Feb. 16, 1937.)

01663. **Vendor-Advertiser—Washing Fluid.**—Estate of James Austin, doing business under the trade name of James Austin Co., Pittsburgh, Pa., was engaged in selling a sodium hypochlorite washing and bleaching fluid designated, Austin's A-1 Solution, and agreed in soliciting the sale of and selling its said product, in interstate commerce, to cease and desist from representing, directly or otherwise:

(a) That Austin's A-1 Solution will serve as a disinfectant for household purposes unless qualified by the direction that the articles or places to be disinfected must be thoroughly washed or cleansed before application of the solution;

(b) That Austin's A-1 Solution will disinfect cuts, wounds and insect bites;

(c) That Austin's A-1 Solution may be used for laundering and the need for bluing will be obviated. (Feb. 15, 1937.)

01664. **Vendor-Advertiser—Poultry Preparations.**—Farmaide Products Co., a corporation, Lincoln, Nebr., vendor-advertiser, was engaged in selling various preparations designated Ex-Tone Poultry Worm Tablets, Ex-Tone Poultry Worm Powder and Chloraide, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Ex-Tone Poultry Worm Tablets or Ex-Tone Poultry Worm Powder will, alone or in combination with each other, constitute a competent treatment or an effective remedy for worm infestation of chickens and/or turkeys, or that the said products or either of them—

1. Will save a flock from worms,
2. Will expel worms from poultry, or contain sufficient quantities of proper vermifuges to accomplish this purpose;
3. Is an effective flock treatment for wormy flocks;
4. Will control the infestation of round worms and tape worms in poultry;
5. Is a "wormer";
6. Expels large round worms, pin worms, and tape worms from poultry;
7. Is a thoroughly efficient vermifuge;
8. Will remove intestinal parasites from poultry;
9. Will cause every bird in a flock so treated to be healthier, more productive, or more profitable;
10. Is a specific against all kinds of worms in all kinds of poultry;
11. Destroys intestinal worms;
12. Will rid fowls of worms;
13. Will keep a flock free from worms;

(b) That Chloraide is suitable for all sanitation purposes in the home and on the farm to promote sterile conditions;

(c) That Chloraide will "sterilize" dairy utensils, milk bottles, cans, cream separators and milking machines, or kill bacteria;

(d) That Chloraide is "safe";

(e) That Chloraide is the most effective germicide known to medical science;

(f) That Chloraide is twelve times as potent in germ killing power as carbolic acid;

(g) That Chloraide is non-poisonous.

(h) That Chloraide is a sterilizer;

(i) That Chloraide destroys bacteria;

- (j) That Chloraide will insure freedom from foul odors and disease germs;
- (k) That in connection with bees, Chloraide will constitute a competent treatment or an effective remedy for European Foul Brood;
- (l) That one teaspoonful of Chloraide to a pint of water makes an effective disinfecting and germicidal solution for practically all purposes;
- (m) That 1 to 2 teaspoonsful of Chloraide to 1 gallon of water is a sufficiently strong solution to be of value in cleansing milk and cream cans, pails, ice cream cans, and similar articles;
- (n) That Chloraide will utterly destroy all bacteria and necrotic matter with which it comes in contact;
- (o) That Chloraide is the most effective preventative of disease in a herd of cattle;
- (p) That Chloraide will prevent the spread of communicable diseases;
- (q) That to assure continued health and growth of chickens, the brooder and chicken houses should be cleaned, and thoroughly sprayed with Chloraide at least every week;
- (r) That Chloraide constitutes a competent treatment or an effective remedy for—

- | | |
|------------------------------|----------------------|
| 1. Bacillary White Diarrhea, | 9. Blackhead, |
| 2. Coccidiosis, | 10. Diarrhea, |
| 3. Roup, | 11. Enteritis, |
| 4. Canker, | 12. Colds, |
| 5. Chicken Pox, | 13. Pneumonia, |
| 6. Aspergillosis, | 14. Swelled Head, or |
| 7. Bronchitis, | 15. Sorehead. |
| 8. Cholera, | |

- (s) That Chloraide is the most suitable of all germicides for effective poultry sanitation;
- (t) That Chloraide is not a poison;
- (u) That Chloraide will prevent disease infection in chickens;
- (v) That Chloraide will control poultry disease epidemics when they appear;
- (w) That losses from poultry diseases will be stopped by the use of Chloraide;
- (x) That Chloraide has any germicidal action on germs on the beak and in the mouth and crop of chickens;
- (y) That most contagious diseases are seeded through the drinking water tank;
- (z) That Chloraide is a preventative treatment for common bronchial diseases and intestinal infections of poultry;
- (aa) That Chloraide constitutes a competent treatment or an effective remedy for bunions. (Feb. 16, 1937.)

01665. Vendor-Advertiser—Medicinal Preparation.—Thomas J. McBride, trading as The Entromul Co., Los Angeles, Calif., vendor-advertiser, was engaged in selling a medicinal preparation, and agreed in soliciting the sale of and selling its said product, in interstate commerce, to cease and desist from:—

- (a) Representing, directly or otherwise, that Entromul is a competent treatment or effective remedy for:
1. Sore and inflamed stomach—bowels;
 2. Mucous or spastic colitis;

3. Colitis;
4. Nervousness;
5. Diarrhea;
6. Gastro-intestinal inflammation;
7. Distress caused by acid secretion;
8. Constipation; unless limited to temporary relief;

(b) The use of testimonials stating that Entromul will effect the cure of any disorder, disease or malady of the human body, or that it has "saved lives" or "rid" the system of any disorder, disease or malady. (Feb. 17, 1937.)

01666. **Vendor-Advertiser—Borax.**—Pacific Coast Borax Co., a corporation, Los Angeles, Calif., vendor-advertiser, was engaged in selling a preparation designated 20 Mule Team Borax, and agreed in soliciting the sale of and selling said product in interstate commerce, to cease and desist from representing, directly or otherwise:—

- (a) That the product will "banish" or destroy all odors;
- (b) That the product "gets rid" of insects, bugs, etc.;
- (c) That by use of the product "bugs won't stay where it is" or that "no bug will stay where there is 20 Mule Team Borax";
- (d) That the product is healing unless limited to its aid in the process thereof;
- (e) That the product will cure athlete's foot;
- (f) That the product will banish insect pests. (Feb. 17, 1937.)

01667. **Vendor-Advertiser—Beauty Product.**—Francess Kable, Inc., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling a device designated Hollywood Contour Neck Band and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Francess Kable's Hollywood Contour Band is Hollywood's most guarded secret;
- (b) That Francess Kable's Hollywood Contour Band is used and endorsed by famous stage and screen stars unless and until such use and endorsement by such celebrities is an actual fact;
- (c) That Francess Kable's Hollywood Contour Band—
 1. Rebuilds relaxed neck and contour muscles;
 2. Corrects under-chin heaviness;
 3. Builds up a receding chin; or
 4. Creates and protects the perfect contour.

Respondent further agreed, in soliciting the sale of its product in interstate commerce, to cease and desist from using the word "Hollywood" in designating its product. (Feb. 19, 1937.)

01668. **Vendor-Advertiser—Medicinal Preparation.**—Scientific Medicinal Products, Inc., a corporation, San Francisco, Calif., vendor-advertiser, was engaged in selling a preparation designated Slenderets and agreed in soliciting the sale of and selling said product in inter-

state commerce to cease and desist from representing directly or otherwise:

(a) That use of said product or any definite amount thereof alone or in combination with a diet or otherwise will enable one to reduce any definite number of pounds within any definite period of time;

(b) That use of said product will cause one to have "plenty of pep";

(c) That by use of said product one will never feel "a hungry moment";

(d) That said product will enable one to "get rid of fat";

(e) That the product will "remove" fat;

(f) That the product converts food or fat into energy;

(g) That the product redistributes stored fat;

(h) That "results" are guaranteed;

(i) Inferentially or otherwise that the product has been used in the reducing clinic of any hospital unless and until such is a fact. (Feb. 19, 1937.)

01669. Vendor-Advertisers—Business Treatise.—Elizabeth May and George W. Haylings, co-partners, trading as, National Folio Service, Los Angeles, Calif., vendor-advertisers, were engaged in selling a certain treatise on business, and agreed in soliciting the sale of and selling their product, in interstate commerce, to cease and desist from representing, directly or otherwise:

(a) That Treatise #5 is a remarkable plan which tells you HOW to earn a remarkable wage every week;

(b) That there is no limit to the possibilities and no other service needed so badly in these modern days;

(c) That in order to succeed with the business described in Treatise #5 it is not necessary to canvass or that one may succeed in the business described therein by working only a few hours each day. (Feb. 19, 1937.)

01670. Vendor - Advertiser — Correspondence Course. — Towertown Studios, Inc., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling a correspondence course in art and commercial drawing, and agreed 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 or method of instruction offered by the respondent is "new";

(b) That special cash offers are made or prizes are given for "promptness";

(c) That by studying the respondent's course or method of instruction, a person can start selling his drawings as soon as he is able to produce the same;

(d) That the price of the respondent's course or method of instruction is fluctuating and subject to a rise, or that the price of the same is "special" and that a reduction in tuition may be effected by "promptness" in enrollment, unless such increase in price actually takes place. (Feb. 19, 1937.)

01671. Vendor-Advertiser—Medicinal Preparations.—Paul Gardinier, an individual trading as D. Smythe Co., H. Smythe Co., G. Smythe Co., C. Smythe Co., and D. F. Smythe Co., Newark, Mo., vendor-advertiser, was engaged in selling preparations designated Vitality

Tonic, Antiseptic Douche Powder, Roots, Herbs, Gazing Crystals, Booklets and Novelties of Various Types and Descriptions, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing, directly or otherwise:

(a) That the said tonic is a competent treatment or an effective remedy for "lost vitality";

(b) Inferentially or otherwise that the said tonic will make one strong or healthy or that it will increase one's vigor;

(c) That the said tonic contains nothing harmful;

(d) That the said douche powder is a competent treatment or an effective remedy for leucorrhoea, ulcers, etc., or that it will cure any of the said conditions;

(e) That the gazing crystals are free from defects;

(f) That by use of the book entitled "Old Secrets and New Discoveries," one can:

1. "Make a person at a distance think of you";

2. "Charm those you meet and make them love you";

(g) That by carrying "John the Conqueror Root" on one's person one:

1. Will never be without money;

2. Can obtain anything he desires;

3. Will always feel strong and powerful;

4. Will have much luck;

5. Will become invisible at wish;

(h) That "John the Conqueror Root" is a valuable medicinal drug or that it is an effective vermifuge;

(i) That "Adam and Eve Root" possesses "magic qualities in restoring vitality to the generative organs";

(j) That by the use of "Adam and Eve Root" one can "Bring back and hold the love of a husband, wife or a sweetheart";

(k) That "Adam and Eve Root" is a competent treatment or an effective remedy for bladder or kidney trouble;

(l) That "Blood Root" is competent as "a tonic for weak men";

(m) That "Lilly Root" is a competent treatment or an effective remedy for leucorrhoea or falling of the womb;

(n) That "Lilly Root" "rejuvenates" the system, or that it is of value "during the period known as the 'change of life'";

(o) That "Jezebel Root" is a competent treatment or an effective remedy for cystitis, calculous affections, chronic inflammation or ulceration of kidneys, gonorrhoea, leucorrhoea, dropsy, rheumatism or bladder troubles;

(p) That "Grains of Paradise" are effective as a stimulant to the generative organs;

(q) That the respondent manufactures incense or any other article not so manufactured by him;

(r) That the "Fairy or Lucky" Stones are "perfect" or "natural" crosses of stone;

(s) That the "Fairy or Lucky" Stones will protect the wearer against witchcraft, sickness, accidents or disasters;

(t) That the "Fairy or Lucky" Stones have been or are carried on the

person of any former President of the United States or any other person unless such was or is a fact;

- (u) That Brimstone is effective to fumigate infected areas or articles;
- (v) That by carrying the booklet "Pow-Wows or the Long Lost Friend" one:
 1. Is safe from all his enemies;
 2. Cannot burn in any fire, or that unjust sentences cannot be passed upon him;

(w) That by use of the booklet "Pow-Wows or the Long Lost Friend" one can:

1. "Banish all kinds of pain";
2. "Compel a thief to stand still";
3. "Fasten or spellbind anything";

or that the booklet contains "many rare and valuable secrets never before disclosed";

(x) That the booklet entitled "Albertus Magnus" is:

1. A "sure means to avoid sickness", or that it will make persons:
 - a. Fortunate in their crops and stock raising;
 - b. Prosperous in all undertakings;
 - c. Enable one to acquire wealth, honor or esteem;

(y) That "Five Finger Grass" will bring restful sleep or ward off any evil;

(z) That "Good Luck Herbs" will "keep moths and insects away";

(aa) That "Lesser Periwinkle Herb" will cause love between persons of opposite sex;

(bb) That Buckeyes will ward off rheumatism or any other ailment;

(cc) That any article is imported from any foreign nation unless and until such is a fact. (Feb. 19, 1937.)

01672. Vendor-Advertiser—Correspondence Course.—G. E. Hendrickson, an individual doing business as Three-M Syndicate, Argyle, Wisc., vendor-advertiser, was engaged in selling a correspondence course in art designated Three-M Service, and agreed in the sale of its course in interstate commerce:

(a) Not to make unmodified representations or claims of earnings in excess of the average earnings of students of his course achieved under normal conditions in the due course of business; and

(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 expressions, any amount in excess of what has actually been accomplished by one of respondent's students under normal conditions in the due course of business; and

(c) That in the future respondent will not represent in form letters sent to prospective students that he has received remittances from any magazine or publication unless such is a fact; and

(d) That in the future respondent will not use the term "Syndicate" or any other word that might indicate that respondent is doing business other than as an individual; and

(e) Not to represent that unless a prospective student complies with time limitations as to enrollment in a course of instruction, he cannot avail himself of reduced rates unless and until the time limitation is strictly enforced. (Feb. 19, 1937.)

01673. **Vendor-Advertiser—Medicinal Preparation.**—The Grove Laboratories, Inc., a corporation, St. Louis, Mo., vendor-advertiser, was engaged in selling a certain preparation designated Grove's Emulsified Nose Drops and agreed 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 will afford relief in cases of asthma and sinusitis.
- (b) That the preparation will relieve nasal pains and irritations or congestion of the nasal mucosa, unless the representation is so worded as to clearly indicate that it has reference to pains, irritations or congestion due to or usually associated with the progress of head colds.
- (c) That the preparation will open the nasal air passages unless the representation is so worded as to clearly indicate that it has reference to temporary obstruction or restriction of such passages due to or usually associated with the progress of head colds.
- (d) That the preparation will relieve choking sensations and the condition commonly termed "short breath".
- (e) That the preparation will relieve difficult breathing, unless the representation is so worded as to clearly indicate that it has reference to difficulty in breathing through the nasal passage due to temporary obstruction or restriction of such passages due to or usually associated with the progress of head colds.
- (f) That the preparation will stop "hawking".
- (g) That the preparation will penetrate "all the way" to irritated nasal membranes.
- (h) That the preparation will clear the head "in one minute" or any other specified period of time.
- (i) That the preparation will speedily or otherwise relieve sinus pains and aches and, also, that the preparation will speedily or otherwise relieve the condition termed "stuffed head" unless the latter representation is so worded as to clearly indicate that it has reference to temporary obstruction or restriction of the nasal passages due to or usually associated with the progress of head colds.
- (j) That the preparation will stop children's "sniffles" in three (3) or other specified number of applications.
- (k) That the preparation will stop "hawking" and "wheezing".
- (l) That the preparation will open "stuffed head", stop running eyes and nose, relieve all distress and restore the head to comfort in any specified number of applications.
- (m) That the preparation will stop the nastiest head cold or the most stubborn case of children's "sniffles" in one day or in any other specified period of time.
- (n) That the preparation is a preventative of head colds and "sniffles", or prevents spread of a cold.
- (o) That a few drops or other quantity or dosage of the preparation injected or applied within the nostrils will quickly or otherwise "fix up" any case of "sniffles".
- (p) That a few drops or other quantity of the preparation applied each day (or more frequently) within the nasal passage will be efficacious in warding off infection.
- (q) That the preparation should be used as insurance against head colds.

The respondent assumed all responsibility for any and all representations appearing in testimonials published by it and agreed that it will not publish or cause to be published any testimonial containing any representation substantially contrary to the foregoing agreement. (Feb. 23, 1937.)

01674. **Vendor-Advertiser—Medicinal Preparation.**—W. M. Robbins, an individual trading as Ray-Zem Laboratories, St. Paul, Minn., vendor-advertiser, was engaged in selling a certain medicinal preparation designated, Ray-Zem, and agreed in soliciting the sale of and selling its said product, in interstate commerce, to cease and desist from representing directly or otherwise:

- (a) That Ray-Zem is non-poisonous;
- (b) That Ray-Zem is harmless;
- (c) That Ray-Zem counteracts hyperacidity, unless limited to hyperacidity of the crop and stomach of poultry;
- (d) That Ray-Zem is indispensable for anyone who wants to make a success of turkey and poultry raising. (Feb. 23, 1937.)

01675. **Vendor-Advertiser—Medicinal Preparations.**—Hollywood Hygienic Products, Inc., a corporation, Hollywood, Calif., vendor-advertiser, was engaged in selling Hollywood Dainties, Ur-Gard, Glandex, and Retardex, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) By inference or otherwise that Hollywood Dainties constitute an effective contraceptive;
- (b) That by the use of Hollywood Dainties the home becomes happy or peaceful, or that doubt need no longer trouble the young wife;
- (c) That vaginal insertion is the most effective method for all round use;
- (d) That because of its effervescent action (or at all) the germicidal qualities of Hollywood Dainties become active at once;
- (e) That Hollywood Dainties give assurance of strength or quality not found in other preparations for marriage hygiene;
- (f) That Glandex is
 1. A tonic;
 2. A tried and tested preparation;
 3. A competent remedy for nervousness, sleeplessness or indifference to life's pleasures;
 4. The essence of full strength of the actual substances in the original glands;
 5. Available for the blood stream;
- (g) That the users of Glandex report reawakened ambitions or a new interest in life by the use of a two weeks' supply, or any other definite amount;
- (h) By inference, or otherwise, that Glandex would enable one to experience the satisfaction of a renewal of energy, physical fitness or ability where other preparations have failed so to do;
- (i) That Ur-Gard
 1. Is a Medical Corps prophylactic;
 2. Was perfected by a United States Army Officer;

3. Has been thoroughly tested or its effectiveness proven;
4. Combines the antiseptic or germicidal ingredients recognized as standard in masculine hygiene;
5. Inferentially or otherwise has prophylactic properties fully effective for prevention or treatment of social diseases generally;

(f) That Retardex

1. Is Hollywood's original retardant or personal antiseptic;
2. Is used by thousands of men or that it is used all over the world;
3. Gives "lasting" satisfaction;
4. Is a gland tonic;
5. Is harmless, or is "guaranteed harmless";
6. Has been used with success where other remedies have failed. (Feb. 23, 1937.

01676. Vendor-Advertiser—Books and Curios.—A. W. Daggett, an individual trading as Daggett Publishing Co., Chicago, Ill., vendor-advertiser, was engaged in selling certain books, charms and curios and agreed 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 Book of Power is a true book of mastership, from which old masters gained any knowledge or power or from which the old masters sold limited portions to Kings, Priests, or anyone else either under pledge of secrecy or otherwise; or that respondent is the first to reveal the secrets of any such book, or that any of the contents of said book are secret;

(b) That reading respondent's Book of Power will enable one to remove the cause of every condition that keeps him miserable and unhappy; or that by the reading of said book, "all things can be yours";

(c) That respondent's Book of Power or any of respondent's publications will:

1. Unfold the mystic records of all the secrets of the ages; or enable one to;
2. Know the particular day and hour to do anything he desires;
3. Gain control of or bend the will of all enemies and opposers;
4. Regain the love of anyone;
5. Bring happiness to broken homes;
6. Remove the source of unhappiness;
7. Regain youth and vigor;
8. Understand motives of people or just what they have in mind;
9. Choose his words according to ancient Holy methods or old Cuthian or Chaldean forms;
10. Chant his desires in the silent tongue in a way that can be made to reach anyone anywhere;
11. Make people walk in their sleep or do one's bidding;
12. Do the works of the old Masters, Priests, and Ancients;
13. Overcome all enemies;
14. Cast spells of enchantment;
15. Give one the mastery of all things;
16. Make his life just what he wants it to be;
17. "Do the Lord's work that you are called to do";
18. Know what others are doing without their knowledge;

19. Escape from prison;
20. Satisfy any desire;
21. Mold anyone to his will;

(d) That respondent's Book of Power teaches all mysteries of life from the cradle to the grave and beyond;

(e) That by a study of the Book of Power or mastery of the contents thereof, a person can obtain supernatural or mystical powers not otherwise obtainable;

(f) That by the use of said book one can learn to do all that the Masters in the ancient world could do;

(g) That any "Vow of Silence" has been broken, or that for the first time since the dawn of creation such information is to be given to all who will use it for the good of their fellow men;

(h) That the "regular" price of respondent's Book of Power is \$2.00, so long as the listed price remains \$1.00, or so long as \$1.00 plus a so-called "credit coupon" is accepted as the purchase price;

(i) That one can get the Book of Power "free" so long as any merchandise must be purchased from the advertiser before the book is received;

(j) That the user of respondent's "Gazing Crystal Outfit" should quickly become an "expert" with the Gazing Crystal; or that the book of instructions furnished therewith is written by one of the world's greatest mind readers;

(k) Directly or inferentially that by the use of respondent's "Success Candle Book" one may be able to procure money, love, home, success, overcome all opposition, make dreams come true, get results that are desired, or secure any other results by burning candles or otherwise;

(l) That the "regular" price of respondent's "Success Candle Book" is \$3.00, until such be the fact; or that the price of \$1.00 is offered for a limited period of time, only unless orders received after such times are refused;

(m) Directly or inferentially, that respondent's book, "How To Make Your Dreams Come True" will in fact enable one to make dreams come true or to dream winning numbers, or that it discloses one of the most seriously guarded secrets of the ages; or is an amazing guide to all truth or to any truth;

(n) That the "regular" value of respondent's book, "How to Make Your Dreams Come True" is \$2.00 but it may be obtained for \$1.00 for a limited period of time upon the presentation of respondent's advertisement;

(o) That the respondent's "Ten Lost Books of Moses";

1. Are the key to knowledge;
2. Contain "The Mystery of Sinai", things never told before;
3. Reveal "The Mystic Secret of Sinai";
4. Contain "All the Master Secrets that Man has Sought Through the Ages", the "Foundation of Wisdom", and "The Way to All Power";
5. Contain the secrets of the Adepts or Moses' Secret Power;
6. Are the 10 books of all knowledge;

(p) That the respondent's book, "Short-cut to Regeneration Through Fasting", is a safe or sane guide to fasting that will restore the discouraged, sick or diseased to health; or that it has helped suffering thousands from every part of the world;

(q) Directly or inferentially, that by the use of respondent's numerology book, one can get his or her number and forge ahead;

(r) That the respondent's "Course in Spiritual Science":

1. Gives more and better results to the students than anything ever published;

2. Gives the user the golden key that unlocks the great city of your inner consciousness and lays bare all measures of the inner life, giving power to use it as you will;
3. Contains the deepest "secrets";
4. Gives knowledge to do all that the "old Masters could ever do";

(s) That respondent's book, "Silent Friend, Marriage Guide and Medical Advisor";

1. Contains secrets never before published;
2. Includes the wonders of the Cabala, copies from rare old manuscripts, the "great 7th Book";
3. Is a gold mine of money-saving, money-making secrets;
4. Exposes gamblers' secrets, the \$50,000 secret;
5. Includes many ways to health and hundreds of other amazing secrets;

(t) That respondent's book, "Pow-Wows—or the Long Lost Friend":

1. Contains most mysterious, wonderful and valuable arts and remedies for man and animals, or that "whosoever carries this book with him is safe from all enemies and cannot die without the Holy Corpse of Jesus Christ, nor drown nor burn, nor can any unjust sentence be passed upon him";
2. Contains information on how to make a thief return stolen goods, and extinguish fire without water;
3. Discloses how to find all kinds of metal, banish all kinds of pain, fasten or spell-bind anything, protect one's house and hearth;
4. Discloses valuable secrets never before discussed;

(u) That respondent's Sixth and Seventh Books of Moses are translations from the Mosaic Books of Cabala and the Talmud; or contain the magical and spiritual arts of Moses; or contain exact copies of seals used by Moses, Aaron, the Israelites and Egyptians in the magic and arts;

(v) That respondent's Astrological Forecasts are made by the world's foremost Astrologer, or are the most complete ever published; that the forecasts will tell the person's vocation, financial prospects, how to manage business, partners, enemies, how to improve health, the best time to buy and sell or to undertake anything; what days are best for signing papers, seek employment, travel, love, etc.;

(w) That respondent's book "How to Attract Money" will enable the purchaser to bring money into his world by visualizing and concentration, or otherwise;

(x) That any of the following articles offered by respondent, to wit: "Bag of Fortune", "Loadstone", "High John the Conqueror Root", "Jinx Breaking Oil", "Magic Dream Seals", "Lucky Oil", "Blessed or Voliva Candles", "Moses Incense", "Tabernacle Incense", "Lucky Bath Salt", "Hot Foot Powder", "Birth Month Perfume", "Frankincense and Myrrh", "Holy Religious Incense Compound", "Virgin Stones", "Blood Root", "Five Finger Grass", "Adam and Eve Root", "Dragon's Blood Stick", "Love Perfume", "Love Links Sachet Powder", "Devil's Shoe String", "Chinese Mystic Horn Nut", "Holy Sandal Wood", "Egyptian Style Black Cat Luck Ring", "Ancient Egyptian Luck Ring", "White Lodestone", "Sea Spirit", "Old Original Floor Wash", "Queen Elizabeth Root", and other charms, oils, talismans, tokens and paraphernalia:

1. Will have any magic or mystical properties;
2. Will exert any influence on the life or being of the user, or of any other person whatsoever;

3. Will bring luck, success or health to the purchaser, wearer, user, or any other person;

(y) That the respondent's Genuine Parchment paper and ink is genuine lamb skin virgin parchment, or is the same kind that is used for making seals, etc., by adepts and other occult people;

(z) That the respondent's Book, "Albertus Magnus Egyptian Secrets", is the book of nature and contains the hidden secrets and mysteries of life unveiled or the forbidden knowledge of ancient philosophers;

(aa) That the respondent's Blessed Dream Candles will cause the user or burner to dream what will happen in the future or to dream winning numbers. (Feb. 25, 1937.)

01677. Vendor-Advertiser—Electrical Massage Appliance.—H. D. Sandstone, an individual, trading as Rol-A-Ray Sales Co., Portland, Oreg., vendor-advertiser, was engaged in selling an electrical massage appliance designated Rol-A-Ray, and agreed 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 beneficial results of the Rol-A-Ray electrical appliance are achieved by a newly discovered method of producing a spray of invigorating, ozone carrying, vitalizing rays that awaken sluggish processes of elimination and assist Nature in her efforts to bring about a cure;

(b) That Rol-A-Ray electrical appliance has performed miracles in relieving those who had lost all hope of ever enjoying normal health again;

(c) That the Rol-A-Ray electrical appliance gives a miracle electrical massage;

(d) That the Rol-A-Ray electrical appliance is a competent treatment for anemia, arthritis, neuritis, sciatica, neuralgia, rheumatism, sore, stiff and swollen joints, paralysis, asthma, bronchitis, laryngitis, pneumonia, pleurisy, influenza, sinus infection, prostate trouble, boils, ulcers, colitis, insomnia, constipation, or that such appliance has brought a new era of health and relief from pain for many sufferers from such ailments;

(e) That Rol-A-Ray electrical appliance will prevent sickness, suffering, pain or worry;

(f) That the Rol-A-Ray electrical appliance will banish or give quick relief from arthritis, neuritis, neuralgia, asthma, bronchitis and sinus trouble with its attendant ailments;

(g) That the Rol-A-Ray electrical appliance will cure any ill or ailment;

(h) That the Rol-A-Ray electrical appliance aids Nature's way to health;

(i) That the Rol-A-Ray electrical appliance is wonderful for asthma, heart trouble and high blood pressure;

(j) That the Rol-A-Ray electrical appliance will cure rheumatism, constipation or tone up the system;

(k) That the Rol-A-Ray electrical appliance is a cure of sinus infection, will heal sores or any inflammation, will do away with congestion, make pain mostly unnecessary or give a zest for living;

(l) That the Rol-A-Ray electrical appliance is a cure or competent treatment for verma tils;

(m) That the Rol-A-Ray electrical appliance is a cure for lameness;

(n) That the Rol-A-Ray electrical appliance gives quick relief from chronic ills. (Feb. 25, 1937.)

01678. Vendor-Advertisers—Cosmetics.—William A. Wickland and Myndall Cain Wickland, co-partners doing business under the firm name of The Myndall Cain House of Beauty, Minneapolis, Minn., vendors-advertisers, were engaged in selling face creams, designated Myndall Cain Cleansing Cream and Myndall Cain Nourishing Cream, and agreed in soliciting the sale of and selling their said products in interstate commerce, to cease and desist from representing directly or otherwise:

- (a) That by using either of respondent's creams, one can appear years younger and take on a natural bloom;
- (b) That either of respondent's creams are "penetrating" oils;
- (c) That respondents' products are "scientific" triumphs;
- (d) That the use of respondents' products will float the dust and dirt out of one's skin;
- (e) That respondents' products will cause the skin to become lighter;
- (f) That respondents' products will serve as a diet to the skin, revitalize, or rebuild the skin, banish wrinkles, or pour back those youthful secretions that have been robbed from the skin by time and exposure, or that they are amazingly effective;
- (g) That respondents' products anoint the skin with youth;
- (h) That respondents' products are "beauty insurance";
- (i) That the skin drinks in either of respondent's creams;
- (j) That two applications, or any specified number of applications, of respondents' products will quickly overcome "crepeyness" or that "rough look".

The respondents further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 26, 1937.)

01679. Vendor-Advertiser—Medicinal Preparation.—Thomas Leeming & Co., Inc., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a preparation for the relief of pain designated "Baume Analgesique" or "Baume Bengue" (Ben-Gay), and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing, directly or otherwise:

- (a) That Baume Bengue will allay or relieve pain in any part of the body except the local area of application;
- (b) That Baume Bengue will "stay" in the area where it is applied until the pain is "banished", "routed", or "killed";
- (c) That Baume Bengue
 1. Penetrates "deeper" or
 2. Penetrates into the muscles or joints themselves, or
 3. Penetrates through muscles to the pain itself, or
 4. Penetrates deeper than the superficial tissues containing the nerve ends in the locality of application;
- (d) From representing in any manner:
 1. That Baume Bengue is the only "true" Baume Analgesique, or
 2. From employing any similar phrase which may be reasonably taken to imply that there are no other reputable or authentic preparations on the market of substantially similar ingredients and therapeutic properties.
 (Feb. 23, 1937.)

01680. **Vendor-Advertiser — Medicinal Preparation.**—G. Bernardi, Cleveland, Ohio, vendor-advertiser, was engaged in selling a preparation designated Benaris, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Benaris is a competent treatment or effective remedy for—

1. Colds;
2. Chronic colds;
3. Catarrh;
4. Bronchitis;
5. Laryngitis;
6. Dryness of the throat;
7. Headaches;
8. Sinus ailments;
9. Throat irritation and inflammation;
10. Congestion of the nasal passages;
11. Tonsils which are enlarged or inflamed;
12. Hoarseness;

(b) That Benaris will afford a cure or act as a preventative of any disorder, disease or malady of the human body;

(c) That the use of Benaris will—

1. Neutralize the tissues;
2. Eliminate colds, and result in better health;
3. In all cases relieve the difficulties caused by mouth breathing when due to nasal congestion;
4. Assure a healthful, efficient day, or bring "new life and sensation";
5. Be found of great benefit because of its cleansing quality which "penetrates the membranes of the nose and the entrance to the sinuses";
6. "Permit greater diaphragmatic breathing, with the result of finer head tones";
7. Increase the resonance, volume and quality of the voice. (Mar. 1, 1937.)

01681. **Vendor-Advertiser—Pigeons, Etc.**—Elmer C. Rice, an individual trading as Plymouth Rock Squab Co., Melrose, Mass., vendor-advertiser, was engaged in selling Pigeons and Pigeon Supplies and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That orders are waiting for hundreds of thousands of squabs or that squabs are scarce or prices are up unless reliable authorities indicate such to be the fact at the date of such representation or time of distribution of such information unless such representation is contained in a book or pamphlet intended as a reference book to be used over a period of time, in which case, the date such conditions exist shall be distinctly shown in direct connection with such representation;

(b) That more than one hundred million or any other number of squabs are produced by customers of the respondent unless reliable information showing such to be the fact is in the possession of the respondent;

(c) That with an order for pigeons or any other products additional pigeons or products are given free when in fact a price therefor is included in the purchase price of the product ordered;

(d) That by reading the National Standard Squab Book one cannot go wrong or help but succeed in the squab business;

(e) That the facts in the National Standard Squab Book are indispensable and can be obtained nowhere else and is the instruction one must have for real information and success;

(f) That the information contained in the National Standard Squab Book will enable one to make double the usual squab profits;

(g) That the respondent makes no profit from the sale of the National Standard Squab Book;

(h) That the National Standard Squab Book is the fastest selling book on livestock ever written;

(i) That by reading the National Standard Squab Book one may learn how broken pigeon eggs may be hatched;

(j) That Baby Chick Health Grit or the same or a similar product by another name is needed or that poultry fed the same will live or that this or Plymouth Rock Health Grit or any other grit will definitely increase the egg production of pigeons or number of squabs produced;

(k) That PR Germ Death Fog Mite Destroyer or the same product by another name will kill mites other than those commonly known as chicken mites;

(l) That PT Germ Death Insect Spray or the same product by another name is 100% active unless it is stated in direct connection therewith that it is not 100% effective against insects and is not of value against bacteria;

(m) That PR Germ Death Fog Cleaner or the same product by another name will destroy all germs or bacteria;

(n) That the price charged by respondent for wire netting or any other product is the same price at that received by the factory therefor or is "factory price";

(o) That ailments are best cured with Venetian Red or that an affected bird can be cured by giving it Venetian Red every day. (Mar. 1, 1937.)

01682. Vendor-Advertiser—Perfume.—Chas. C. Merriam, an individual doing business under the trade name of Caswell Agency, New Haven, Conn., vendor-advertiser, was engaged in selling a perfume designated, Hollywood Nights Perfume, and agreed 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"—

1. "Is a new sensation in perfume,"
2. Originated in Paris;
3. Has taken Hollywood by storm;
4. Has been endorsed by Hollywood's most discriminating stars; or
5. Is compounded from a secret formula straight from Paris;

(b) That a \$1.00 introductory bottle is sent postpaid for 25 cents and the return of a coupon. (Mar. 1, 1937.)

01683. Vendor-Advertiser—Shampoo.—Collins Laboratories, a corporation, St. Louis, Mo., vendor-advertiser, was engaged in selling a certain preparation designated Nuro-Sheen Dandruff Eliminator Shampoo and agreed 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 product is guaranteed to give relief;
- (b) That the preparation gives "positive" relief from dandruff;
- (c) That this preparation will maintain a healthy condition of the scalp;
- (d) That the product will remedy dandruff trouble, or enable one to "kiss his dandruff trouble farewell";
- (e) That the preparation revives dead and lifeless hair.

The respondent further agreed to cease and desist from the use of the word "eliminator" as a part of the trade name for this preparation, or from otherwise representing that it "eliminates" dandruff. (Mar. 1, 1937.)

01684. Vendor-Advertiser—Cleaning Preparation.—Frank H. Jones, an individual, trading as the Britelite Co., Greenfield, Mass., vendor-advertiser, was engaged in selling a product designated Brite-Lite, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Brite-Lite restores to their original luster or brightness
 1. Antiques;
 2. Brass;
 3. Pewter;
 4. Old materials;
- (b) That Brite-Lite restores or renews
 1. Metals;
 2. Porcelain;
 3. Fixtures;
 4. Tools;
 5. Hardware;
- (c) That Brite-Lite makes old things new;
- (d) That Brite-Lite is a "lasting" polish;
- (e) That no other polish will do the things that Brite-Lite will do;
- (f) That any article is patented until such time as it shall be protected by a patent granted by the United States Government;
- (g) That agents or salespersons for the respondent are assured of repeat orders, or that any territory is open to them. (Mar. 1, 1937.)

01685. Vendor-Advertiser—Booklet.—Mary C. Hogle Foundation, a corporation, (non-profit), Salt Lake City, Utah, vendor-advertiser, was engaged in selling a certain booklet entitled "Build Up With Foods That Alkalinize and Heal," and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing, directly or otherwise:

- (a) That sufferers from stomach trouble, kidney and bladder stones, tuberculosis and chronic infections can be made well by using carrot juice;
- (b) That carrot juice and celery juice
 1. Are recommended for rebuilding broken health;
 2. Offer the body the essential food materials for good blood and healthy cells;

3. Can be consumed in quantities sufficient for rapid body revitalization;
or

4. Facilitate the digestion of certain important auxiliary foods;

(c) That the booklet "Build Up With Foods That Alkalinize and Heal," is a manual for all sick people;

(d) That the booklet "Build Up With Foods That Alkalinize and Heal":

1. Tells the things one may do to keep well when in health and to regain health when ill;
2. Tells the foods that protect, revitalize, alkalinize, soothe and heal;
3. Contains diets for the seriously sick;
4. Contains food regimes for digestive disorder, cancer, arthritis, anemia, emaciation, cold, etc. (Mar. 4, 1937.)

01686. Vendor-Advertiser — Medicinal Preparation.—Scott-Phillips, Inc., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated Eye-Gene, and agreed in soliciting the sale of and selling its product, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That Eye-Gene should be used every day in the eyes, or that it is an essential of eye hygiene;

(b) That Eye-Gene constitutes a competent treatment for bloodshot eyes unless specifically limited to the relief of bloodshot eyes caused by a minor local condition such as dust irritation, wind irritation, excessive reading, etc.;

(c) That this product is safe as water;

(d) That Eye-Gene will relieve strained eyes, regardless of cause;

(e) That this preparation will make eyes "healthy";

(f) That Eye-Gene is a competent treatment, or an effective remedy for inflamed eyes and lids unless limited to relief when due to a minor local condition;

(g) That the use of this preparation will quiet nervous twitching;

(h) That Eye-Gene does not contain boric acid, or that the latter is an old-fashioned solution;

(i) That by the use of Eye-Gene dull, bloodshot eyes will assume the natural brilliance of youth;

(j) That Eye-Gene is a competent treatment or an effective remedy for "Hay Fever Eyes". (Mar. 8, 1937.)

01687. Vendor-Advertiser—Potato Chip Fryer.—H. W. Eakins, doing business under the trade name of Long-Eakins Co., Springfield, Ohio, vendor-advertiser, was engaged in selling a potato chip fryer and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any profits in the potato chip business are certain;

(b) That he will help finance prospective purchasers of his machines;

(c) Impliedly or otherwise, by the use of such expressions as "Wanted Men", that he has employment to offer;

(d) That the profits to be made from the operation of these machines are up to 80¢ of each dollar taken in, or any other figure not definitely established by competent proof;

(e) That dealers everywhere are waiting to be supplied with the product of respondent's machines;

(f) That one may get his money back within the first few days of operation of said machine, or within any other specified time not definitely established by competent proof;

(g) That the information in his booklet could not be bought for \$10,000.00, unless this amount, or any other amount stated, has actually been refused by respondent;

(h) That the business for which this machine is intended is a ready made business. (Mar. 8, 1937.)

01688. Vendor-Advertiser—Cosmetics.—The Compagnie Parisienne, Inc., a corporation, trading as H. U. Rhodius, Perfumes, San Antonio, Tex., vendor-advertiser, was engaged in selling cosmetics and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Madam Roxy Cold Cream

1. Cleanses pore deep or rejuvenates the skin;
2. Removes the cause of blackheads, eruptions or other muddy sallow look;
3. Protects youthful complexion or restores texture to older skins;

(b) That Madam Roxy Almond Milk Skin Lotion contains special beneficial ingredients, or that such ingredients are thirstily absorbed or otherwise absorbed by the skin cells or under tissues;

(c) That Madam Roxy Cleansing Cream penetrates or goes to the depths of the pores;

(d) That Madam Roxy Nourishing Cream

1. Rejuvenates the skin or penetrates the pores or oil glands;
2. Softens out wrinkles;
3. Firms the underlying muscle tissue;
4. Smooths away crows feet;
5. Assists nature to build new beauty from within;
6. Firms crepy throat;
7. Holds or restores contour of chin or sagging muscles;
8. Gives back to youth oils the skin must have;
9. Provides tissue stimulation for nerves or blood vessels;
10. Brings back normal activity to the skin or a youthful complexion to age or advanced years;

(e) That Madam Roxy Bleach is a competent or effective treatment for sallow or muddy complexions, sunburn, moth patches, spots on hands, skin discolorations, or for the "banishment" of freckles;

(f) That Madam Roxy Deep Pore Astringent

1. Tonics or stimulates the deep down structure of nerves or skin glands not reached by creams;
2. Is a deep pore lotion;
3. Is the most effective of all lotion skin tonics;
4. Vitalizes like a tonic taken for one's body;

(g) That by the use of Madam Roxy Pore Deep Astringent

1. One need never have coarse pores;
2. Every tiny blood vessel receives fresh blood;
3. Every nerve is stimulated;
4. Each tiny skin gland is invigorated.

The respondent further agreed to cease and desist in his advertising from the use of the words "deep-pore" and "nourishing" as a part of the trade name of any of its products. (Mar. 8, 1937.)

01689. Vendor-Advertiser—Medicinal Preparations.—Arwell, Inc., a corporation, Waukegan, Ill., vendor-advertiser, was engaged in selling certain medicinal preparations designated Arwell, Arwellex and Arwellmist, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing, directly or otherwise:

- (a) That any preparation gets "rid" of odors, or of insects;
- (b) That any product sold by this respondent will "free" the camp of insects;
- (c) That if Arwellex or any other preparation is used, one will have no fly or mosquito worries;
- (d) That Arwellex will positively exterminate insects. (Mar. 8, 1937.)

01690. Vendor-Advertiser—Medicinal Preparations.—Zerbst Pharmaceutical Company, a corporation, St. Joseph, Mo., vendor-advertiser, was engaged in selling certain medicinal preparations designated Ulypto Cough Drops and Zerbst Capsules, and agreed in soliciting the sale of and selling its said products, in interstate commerce, to cease and desist from representing directly or otherwise:

- (a) That Ulypto Cough Drops—
 1. Keep the throat clean;
 2. Are good for the throat and many other things besides coughs;
 3. Are good for more than coughs due to colds;
 4. Quickly stops coughs;
 5. End colds quickly;
- (b) That the healing effects of eucalyptus oil eases tender throat tissues;
- (c) That eucalyptus oil (one of the ingredients) makes the difference between other good cough drops and Ulypto;
- (d) That Zerbst Capsules—
 1. Act quicker and drive out colds;
 2. Stop colds before they get started;
 3. Get rid of colds quickly;
 4. Drive germ laden impurities out of the system;
 5. Stop colds before they get anywhere;
 6. Get a cold out of the system;
 7. Check colds quicker;
 8. Drive colds out of the system in one night;
 9. Keep colds from becoming serious;
 10. Keep colds from spreading throughout the system;
 11. Thoroughly eliminate germ laden impurities;
 12. Begin action almost at once and soon have colds under control;
 13. Lessen the chances of complications;
 14. Keep one free from colds;
 15. Are a real insurance against colds; or
 16. Keeps colds from becoming dangerous. (Mar. 8, 1937.)

01691. **Vendor-Advertiser—Medicinal Preparations.**—Lockhart Drug Store, Inc., a corporation, Lockhart, So. Car., vendor-advertiser, was engaged in selling medicinal preparations designated, “Red Star Liquid” and “Red Star Lotion”, and agreed in soliciting the sale of and selling its said products, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That Red Star Liquid and Red Star Ointment will penetrate through the skin;

(b) That said products kill the itch germ;

(c) That said products cure athlete's foot;

(d) That said products are a competent remedy or treatment for the various forms of eczema, ringworm, tetter, athlete's foot and itch unless such representations are limited to palliative relief from itching and burning;

(e) That said products will heal water blisters;

(f) That said products will give “complete” relief or stop itching “instantly”;

(g) That either of said products or any therapeutic action claimed for them is “guaranteed”. (Mar. 8, 1937.)

01692. **Vendor-Advertiser—Beverage.**—The Howdy Co., a corporation, St. Louis, Mo., vendor-advertiser, was engaged in selling a certain beverage known as 7-Up and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That 7-Up “takes ouch out of grouch”;

(b) That 7-Up—

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| 1. Settles the stomach; | 10. Gives power to the muscles; |
| 2. Purifies; | 11. Loosens toxic waste; |
| 3. Energizes; | 12. Slenderizes; |
| 4. Alkalizes; | 13. Expands four times; |
| 5. Sweetens; | 14. Tunes up the stomach; |
| 6. Normalizes; | 15. Peps up every muscle; |
| 7. Dispels “hang-overs”; | 16. Neutralizes over acidity; |
| 8. Prevents nerve jitters; | 17. Speeds digestion; |
| 9. Banishes distress after eating; | |

(c) That 7-Up banishes the woozy feeling caused by over-smoking;

(d) That the use of 7-Up makes one “turn to their work with a new zest” or “sleep like a top”;

(e) That heat calories are carried away by 7-Up. (Mar. 8, 1937.)

01693. **Vendor-Advertiser—Book.**—Raymond Stotter, an individual, doing business under the trade name of The Raymond Press, New York, N. Y., vendor-advertiser, was engaged in selling a book designated “Beauty Unmasked” and agreed 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 book “Beauty Unmasked” reveals secrets that have brought astounding beauty to many men and women;

(b) That the use of respondent's book “Beauty Unmasked” will enable one to “change” his face or any of his facial features;

(c) That the use of respondent's book "Beauty Unmasked" will give one a new straight nose;

(d) That the use of respondent's book "Beauty Unmasked" will enable one to correct—

- (1) an old-looking wrinkled face,
- (2) protruding ears,
- (3) thick lips,
- (4) puffy eyelids,
- (5) sagging breasts;

(e) That the use of respondent's book "Beauty Unmasked" will enable one to remove—

- (1) facial scars,
- (2) signs of age,
- (3) moles,
- (4) pimples, and
- (5) skin blemishes;

(f) That the use of respondent's book "Beauty Unmasked" enables one to acquire physical and mental attraction;

(g) That the issue of "Beauty Unmasked" is limited. (Mar. 9, 1937.)

01694. **Vendor-Advertiser—Correspondence Courses.**—B. C. Burden, an individual, operating under the trade name of Lincoln Engineering School, Lincoln, Nebr., vendor-advertiser, was engaged in selling correspondence courses in Radio and Electrical Engineering, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That a student will receive more training for the money invested from Lincoln Engineering School than from any other school in the correspondence field;

(b) That these courses are more than equivalent to any other now being offered, but are sold for only a fraction of the cost of comparable courses;

(c) That any pin furnished students at the time of enrollment—

1. Is "free", when the cost thereof is included in the price charged for the course;
2. Identify the wearer as "having had" professional training in the electronic arts;

(d) That graduates of this school are so trained as to be able to step into hundreds of thousands of positions paying \$125 to \$350 per month;

(e) That these courses—

1. Will give each student a complete coverage of the profession of radio, public address, electronics, etc., or
2. Cover the complete electrical field; or
3. That a graduate of this school will be so equipped that he can successfully compete with college trained men; or
4. Is the "most modern course";

(f) That equipment is furnished students at prices less than manufacturers' costs. (Mar. 9, 1937.)

01695. **Vendor-Advertiser—Medicinal Preparations.**—The Filbertone Co., Inc., a corporation, Saginaw, Mich., vendor-advertiser, was engaged in selling certain medicinal preparations designated Filbertone Powder and Filbertone Pills and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Filbertone Powder or Filbertone Pills, either separately or in combination, will constitute a competent treatment or an effective remedy for—

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| 1. Rheumatic aches and pains; | 16. Lumbago; |
| 2. Upset stomach; | 17. Arthritis; |
| 3. Nervousness; | 18. Gout; |
| 4. Acid system; | 19. Sciatica; |
| 5. Sluggish system; | 20. Upset stomach; |
| 6. Acid poisons in the system; | 21. Heartburn; |
| 7. Stiffness in joints; | 22. Gas and abdominal bloot; |
| 8. Bad taste in mouth; | 23. Restlessness at night; |
| 9. Rheumatism; | 24. Hives; |
| 10. Neuritis; | 25. Skin eruption; |
| 11. Nervous headache; | 26. Hiccoughs; |
| 12. Indigestion; | 27. Bladder irritation; |
| 13. Stomach distress; | 28. Stomach trouble; or |
| 14. Muscular rheumatism; | 29. Severe backache; |
| 15. Inflammatory rheumatism; | |

(b) That Filbertone Powder hastens the digestion and elimination of foods;

(c) That Filbertone Powder neutralizes poisonous acids;

(d) That Filbertone Powder flushes poisonous acids from the system;

(e) That Filbertone Powder or Filbertone Pills is guaranteed to give relief;

(f) That Filbertone Powder sweetens the stomach, or cleanses the entire elimination tract of accumulated poisons;

(g) That Filbertone Powder or Filbertone Pills, separately or in combination, will keep the system on the alkaline side;

(h) That Filbertone Powder is restoring thousands of sufferers to health and happiness;

(i) That Filbertone Powder acts as an alternative to the blood;

(j) That Filbertone Powder neutralizes acid urine;

(k) That Filbertone Pills constitute a diuretic stimulant; or a competent treatment or an effective remedy for acid conditions of the urine. (Mar. 9, 1937.)

01696. **Vendor-Advertiser—Medicinal Preparation.**—R. Flores, an individual doing business under the trade name of Sana-Cutis Chemical Co., Joplin, Mo., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Sana-Cutis, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing, directly or otherwise:

(a) That Sana-Cutis clears eczema;

(b) That Sana-Cutis is a competent remedy in the treatment of dry or moist forms of eczema, tetter, salt rheum, psoriasis, ringworm, athlete's foot, or dry itching skin;

(c) That skin troubles can be adequately diagnosed or effectively treated by means of a "Confidential History Blank," whereon the advertiser asks and the patient answers questions;

(d) That "individual treatment" is made up for each case.

The respondent further agreed, in soliciting the sale of his product, to cease and desist from using as a part of his trade name the words "laboratory," "laboratories," or "chemical company" unless and until such time as he actually operates a laboratory, laboratories, or chemical company.

The respondent further agreed, in soliciting the sale of his product, to cease and desist from using the words "manufacturer" or "manufacturers" in connection with his trade name or products unless and until such time as he actually manufactures the product or products offered for sale by him. (Mar. 9, 1937.)

01697. **Vendor-Advertiser—Medicinal Preparation.**—Wecker Laboratories, Inc., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a preparation designated Klearol, and agreed in soliciting the sale of and selling its said product, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That Klearol Acne Lotion is the result of long years of research;

(b) That the procedure prescribed by respondent is in accordance with a consensus of opinion;

(c) That by the use of Klearol Acne Lotion the affected skin will flake off disclosing clear unmarred skin;

(d) That Klearol Acne Lotion will banish pimples and acne, clear up the skin; or has succeeded in cases considered almost hopeless;

(e) That Klearol Acne Lotion contains costly ingredients. (Mar. 9, 1937.)

01698. **Vendor-Advertiser—Medicinal Preparation.**—Donald S. Kenyon, an individual trading as Kondon Manufacturing Co., Minneapolis, Minn., vendor-advertiser, was engaged in selling a certain medicinal preparation designated, Kondon's Nasal Jelly, and agreed in soliciting the sale of and selling its said product, in interstate commerce, to cease and desist from representing, directly or otherwise:

(a) That Kondon's Nasal Jelly will stop or kill a head cold, or is other than a palliative treatment for the pains and discomfitures of head colds;

(b) That all head colds start in the nose;

(c) That Kondon's Nasal Jelly will prevent mouth breathing, or permit the avoidance of sleepless nights;

(d) That Kondon's Nasal Jelly will protect against chest colds;

(e) That Kondon's Nasal Jelly brings immediate relief in all cases. (Mar. 9, 1937.)

01699. **Vendor-Advertiser—Poultry Preparations.**—S. R. Johnson, D. V. M., an individual, operating under the trade name of Johnson Laboratories, Kansas City, Mo., vendor-advertiser, was engaged in selling various preparations for use in treating poultry, designated Johnson's Poultry Remedies, and individually—Ivacol, Mixed Bac-

terin (Avian), Avispray, Chlor-Em, Iriquin, Kamala Nicotine Tablets, and Mercolated Tablets, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Kamala Nicotine Tablets—

1. Will remove tapeworms or all species of roundworms;
- (b) That any preparation will "stop" worm troubles in poultry;
- (c) That Iriquin or Mercolated Tablets constitutes a competent treatment or an effective remedy for coccidiosis, or that it—

1. Restores poultry to the best of health;
2. Has proved very effective in preventing coccidiosis;
3. Will stop coccidiosis;
4. Will kill the infective organisms associated with coccidiosis;
5. Be very effective in destroying the coccidial organism in the intestinal tract;
6. Will act as a healing agent;
7. Will correct coccidiosis;
8. Prevent intestinal disorders;

(d) That Avispray or Ivacol constitute a competent treatment, or an effective remedy for, or will prevent—

1. Roup, or
2. Colds, or
3. Similar disease conditions of poultry, or
4. Brooder pneumonia, or
5. Respiratory infections, or
6. Inflammation of the mucous membranes of the mouth and nostrils of poultry;

(e) That Mercolated Tablets or Mixed Bacterin (Avian) will constitute a competent treatment or an effective remedy for chicken cholera, fowl typhoid, or other bacterial disease of the digestive system. (Mar. 11, 1937.)

01700. Vendor-Advertiser—Hair Preparation.—Bristol-Myers Co., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a preparation for the hair designated Vitalis and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) Vitalis retards falling hair, unless limited to indicate excessive falling hair;

(b) Vitalis and massage "keeps" the hair healthy and handsome, unless limited to indicate that Vitalis and massage "helps" keep the hair healthy and handsome;

(c) Vitalis and massage brings new life and looks to the hair by giving it a real chance to grow at the roots and scalp;

(d) Children taught the use of Vitalis will be "insured" of healthy, beautiful hair when they grow older;

(e) Vitalis contains oils that hair requires for health;

(f) Loose dandruff is the forerunner of thinning hair;

(g) Vitalis will keep the hair and scalp healthy;

(h) Vitalis "thoroughly protects" against the drying or soaking away of necessary hair oils caused by the summer sun or water while swimming;

(i) Vitalis may be massaged "into" the scalp;

(j) Vitalis gets deep into the pores;

(k) Vitalis goes right down to the hair roots. (Mar. 11, 1937.)

01701. Vendor-Advertisers—Punch Boards & Premium Merchandise.—Jay Zelle and S. Fischman, co-partners, doing business as Variety Sales Co., Minneapolis, Minn., vendors-advertisers, were engaged in selling premium merchandise and punch boards, and agreed in soliciting the sale of and selling their said products, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That one can make big money giving away respondents' movie cameras;

(b) That respondents' movie camera is guaranteed to perform as well as others selling for 10 times the price;

(c) That respondents' movie cameras are the only "three in one camera made";

(d) That with defendants' punch board deals everybody "wins";

(e) That the deals are legal in every state or that there is no gambling in connection with the deals;

(f) That respondents' cigarette lighter deal is not a game of chance or gambling device;

(g) That respondents' merchandise is a "sensational new" business stimulator;

(h) That through the use of respondents' merchandise cigarettes cost the consumer less than the regular price.

Respondents in soliciting salespersons or dealers in aid of the sales of such merchandise, further agreed:

(i) Not to make unmodified representations or claims of earnings in excess of the average earnings of respondents' 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 respondents' 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 respondents' 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.

Respondents further agreed to cease and desist from distribution to prospective agents or salespersons any prize deal or other device which may be used in conducting a lottery for the disposing of merchandise. (Mar. 11, 1937.)

01702. **Vendor-Advertiser—Toilet Preparations.**—Forty Second Street Sales Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling certain toilet preparations designated as Forty Second Street Tissue Cream, Forty Second Street Super Cleansing Cream, and Forty Second Street Hand Cream, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

Forty Second Street Super Cleansing Cream—

- (a) That 42nd Street Super Cleansing Cream penetrates deep into the pores;
- (b) That said cream will condition the pores;
- (c) That said cream will reduce the size of the pores;
- (d) That said cream builds youthful vitality into the skin;
- (e) That the use of said cream will
 1. Prevent dryness of the skin, or
 2. Prevent wrinkles, or
 3. Prevent unwelcome lines;
- (f) That said cream contains nourishing oils;
- (g) That the benefits derived from the use of said cream are beyond those that naturally follow the cleansing of the skin of dirt and grime;

Forty Second Street Tissue Cream—

- (h) That 42nd Street Tissue Cream will chase away skin dryness;
- (i) That 42nd Street Tissue Cream will
 1. Stimulate the skin, or
 2. Tone the skin;
- (j) That 42nd Street Tissue Cream is deeply penetrative;
- (k) That said cream will smooth crepy throats;
- (l) That said cream will refine skin texture;
- (m) That said cream is an effective treatment to help banish signs of age;
- (n) That said cream contains nourishing oils;
- (o) That said cream smooths away lines caused by neglect;
- (p) That the action of said cream is not limited to the surface of the skin;
- (q) That said cream is fortified with the vitamins A and D;

Forty Second Street Hand Cream—

- (r) That 42nd Street Hand Cream penetrates the pores almost instantly or will of itself penetrate the pores in any indicated length of time;
- (s) That said cream will enrich the skin. (Mar. 11, 1937.)

01703. **Vendor-Advertiser—Medicinal Preparation.**—R. S. Agnew, an individual trading as The Genuaid Co., Clarion, Pa., vendor-advertiser, was engaged in selling a preparation designated Genuaids, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing, directly or otherwise:—

- (a) That Genuaids will remove the cause of minor aches and pains or rheumatism;
- (b) That Genuaids are more than a laxative;
- (c) That Genuaids free the system of poisonous wastes or keep the system free of poisonous wastes;

(d) That by the use of Genuaids one can guard against colds, headaches, upset stomach, indigestion, stiff and aching joints, unnatural fatigue, high blood pressure, overweight, etc. (Mar. 11, 1937.)

01704. Vendor-Advertiser—Deodorant.—Cosmos Chemical Corp., a corporation, Boston, Mass., vendor-advertiser, was engaged in selling a certain deodorant designated, Sanovan, and agreed in soliciting the sale of and selling its said product, in interstate commerce, to cease and desist from representing, directly or otherwise:

(a) That Sanovan will permanently rid any place of any odor or eliminate an odor completely, without repeating, as long as the cause of the odor remains;

(b) That Sanovan is the *only* deodorant which will completely eliminate odors. (Mar. 12, 1937.)

01705. Vendor-Advertiser—Medicinal Preparation.—Atkins Chemical Co., Inc., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated "Bonnox," and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Bonnox is an urinary antiseptic unless limited to indicate that it is a "mild" urinary antiseptic;

(b) That Bonnox will end kidney weakness;

(c) That Bonnox will rid one of or stop "getting up nights";

(d) That Bonnox is a rational or competent treatment for kidney, bladder or prostate disorders;

(e) That Bonnox is a competent home treatment for nervousness, loss of pep, leg pains, rheumatic pains, dizziness, circles under the eyes, neuralgia, burning, smarting and itching due to kidney or bladder disorders generally;

(f) That Bonnox will correct any ailment or prevent any ailment from developing into more dangerous stages;

(g) That Bonnox is the answer to thousands of folks' troubles;

(h) That Bonnox will relieve kidney, bladder or prostate irritation unless limited to indicate its use in cases where the irritation is due to excess acidity;

(i) That Bonnox will bring grateful comfort from backache, rheumatic pains, swollen feet and ankles, nervousness, loss of pep and vitality and dizziness unless limited to indicate its use in cases where excess acidity is the cause of the ailment;

(j) That Bonnox will afford blessed relief from weak, overburdened kidneys generally;

(k) That Bonnox will rid one of frequent but scanty passages, burning and itching and strain due to kidney or bladder disorders;

(l) That Bonnox will restore color to pale cheeks and sparkle to dull eyes;

(m) That Bonnox has curbed the misery and restored the comfort of normally operating organs to men and women well on in years who have tried many other preparations without results;

(n) That Bonnox is a stimulant for the entire urinary system unless limited to indicate that it is a "mild" stimulant;

(o) That Bonnox is a doctor's treatment originated by a qualified practicing physician in his private practice. (Mar. 12, 1937.)

01706. **Vendor-Advertiser—Hair Treatment and Cosmetic Cream.**—Laura Phillips, an individual, New York, N. Y., vendor-advertiser, was engaged in selling a preparation recommended for growing hair and treating diseased scalps, designated Laura's Rapid Tonic and Hair Formula; also a facial cream designated Realization Facial Cream and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Laura's Rapid Hair Tonic or Rapid Hair Formula will

1. Stop falling hair, unless limited to the stopping of excessive loss of hair;
2. Stimulate dormant roots;
3. Reward the user by a natural and pleasing growth of hair within six months or a year; or
4. Promote the growth of hair;

(b) That "eighteen treatments of Laura's", or any other number of treatments will grow new hair;

(c) That Laura's Realization Face Cream will

1. Eliminate wrinkles;
2. Make the skin firm, smooth and white; or
3. Eliminate sallow complexion (Mar. 18, 1937.)

01707. **Vendor-Advertiser—Instruction Folio.**—John F. Coleman, an individual, operating under the trade name of Typists' Information Service, Smithboro, N. Y., vendor-advertiser, was engaged in selling a folio of instruction for typists designated, "Typing Tips for Typists", and agreed in soliciting the sale of and selling his said Instruction Folio, in interstate commerce, to cease and desist from representing directly or otherwise;

That all details explaining how to earn \$15 to \$20 weekly are furnished on receipt of a stamp.

The respondent further agreed to cease and desist from representing, by publication of advertisements in "Help Wanted" columns or otherwise, that he has any employment to offer.

The respondent further agreed not to make unmodified representations or claims of earnings in excess of the average earnings of purchasers of respondent's course.

The respondent further agreed 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 Folio of Instructions. (Mar. 17, 1937.)

01708. **Vendor-Advertiser—Medicinal Preparations.**—Dr. J. F. True & Co., Inc., a corporation, Auburn, Me., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Dr. True's Elixir and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Dr. True's Elixir is useful for the "ordinary ailments" of children;
- (b) That Dr. True's Elixir—
1. Safeguards health;
 2. Contains no harmful ingredients;
 3. Gives children double protection. (Mar. 16, 1937.)

01709. Vendor-Advertiser—Toilet Preparations.—Chas. H. Phillips Chemical Co., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling certain toilet preparations designated Phillips' Milk of Magnesia Cleansing Cream, Phillips' Milk of Magnesia Texture Cream, and Phillips' Milk of Magnesia Toothpaste, and agreed in soliciting the sale of and selling its said products, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That Phillips' Milk of Magnesia Texture Cream helps to neutralize the fatty acid accumulations on the skin, unless said statement is qualified by use of the word "excess" fatty acid accumulations;

(b) That Phillips' Milk of Magnesia Texture Cream helps to "correct" such ugly skin blemishes as blackheads, large pores, oily shine, wrinkles, age lines, coarseness and a dry, scaly roughness of the skin;

(c) That Phillips' Milk of Magnesia Texture Cream protects the skin against all surface irritations;

(d) That Phillips' Milk of Magnesia Texture Cream will "refine" the skin or will "refine" coarse skin texture;

(e) That Phillips' Milk of Magnesia Cleansing Cream helps to neutralize the fatty acid accumulations on the skin, unless said statement is qualified by use of the word "excess" fatty acid acumulations;

(f) That Phillips' Milk of Magnesia Toothpaste:

1. Is the "best way" yet discovered to give teeth cleanliness, charm and sparkle;
2. Is science's "latest discovery" in cleaning teeth, in combating the acids that cause much teeth decay and gum trouble;
3. Contains more milk of magnesia than any other toothpaste, unless such statement is true at the time it is made;
4. Whitens, brightens and polishes teeth like no other way now known;

(g) That dentists urge Phillips' Milk of Magnesia Toothpaste as probably the most effective type of toothpaste known. (Mar. 11, 1937.)

01710. Vendor-Advertiser—Astrology Booklets.—A. Carolus Becker, an individual, Brooklyn, N. Y., vendor-advertiser was engaged in selling various pamphlets containing information relative to astrology and numerology including certain products designated: "Astrological Forecasts," "How to Become a Medium", "Simple Lessons in Astrology", "How to Win at any kind of Speculation", "Numerology", and "Solid Gold Dream Book," and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any booklet sold by respondent will enable the purchaser to become a medium;

(b) That information sold by respondent is not obtainable in similar form from other advertisers, or is the equivalent of many scientific books or of unobtainable instruction in classes;

(c) That by the use of any of respondent's courses, one will be able, in a short time, or at all, to construct his own horoscope or arrive at his own astrological predictions;

(d) That the instruction contained in any book sold by respondent will assure the purchaser thereof of winning at any type of speculation;

(e) That there is a science of numerology based upon the English language;

(f) That any book sold by respondent covers the subject of numerology thoroughly, or that the reader thereof will derive any useful information in following the science of numerology;

(g) That any "forecast" sold by respondent includes a true analysis of the purchaser's character or a reliable or practicable guide for every day in the year, or is marvelously accurate, or accurate in any sense whatsoever;

(h) That any writings sold by respondent are either scientifically or otherwise accurate;

(i) That forecasts sold by respondent are "reliable";

(j) That books containing information relative to astrology or forecasts sold by respondent will enable the purchaser thereof to—

1. Outline in advance good and bad times for action;
2. Know the best times to buy, sell, etc.;
3. Learn how to improve his health;
4. Determine individual fundamental tendencies, lines of ability or inherent characteristics;
5. Determine his vocation, financial prospects, with whom to affiliate on a basis of friendship, his enemies, his psychic and clairvoyant powers, when to avoid changes and new expenditures;

(k) That everyone should purchase forecasts for children before they are fifteen years old or that respondent's forecast will enable them to intelligently plan their future or save them many of the troubles of life;

(l) That it is possible to make an analysis of character on the basis of the birthday of the subject alone. (Mar. 19, 1937.)

01711. Vendor-Advertiser—Astrology Booklets.—J. M. Simmons, an individual operating under the trade name of J. M. Simmons & Co., Chicago, Ill., vendor-advertiser, was engaged in selling various pamphlets containing information relative to astrology and numerology including certain products designated "Astrological Forecasts," "How to Become a Medium," "Simple Lessons in Astrology," "How to Win at Any Kind of Speculation," "Numerology," and "Solid Gold Dream Book," and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any booklet sold by respondent will enable the purchaser to become a medium;

(b) That information sold by respondent is not obtainable in similar form from other advertisers, or is the equivalent of many scientific books or of unobtainable instruction in classes;

(c) That by the use of any of respondent's courses, one will be able in a short time, or at all, to construct his own horoscope or arrive at his own astrological predictions;

(d) That the instruction contained in any book sold by respondent will assure the purchaser thereof of winning at any type of speculation;

(e) That there is a science of numerology based upon the English language;

(f) That any book sold by respondent covers the subject of numerology thoroughly, or that the reader thereof will derive any useful information in following the science of numerology;

(g) That any "forecast" sold by respondent includes a true analysis of the purchaser's character or a reliable or practicable guide for every day in the year, or is marvelously accurate, or accurate in any sense whatsoever;

(h) That any writings sold by respondent are either scientifically or otherwise accurate;

(i) That forecasts sold by respondent are "reliable";

(j) That books containing information relative to astrology or forecasts sold by respondent will enable the purchaser thereof to—

1. Outline in advance good and bad times for action;
2. Know the best times to buy, sell, etc.;
3. Learn how to improve his health;
4. Determine individual fundamental tendencies, lines of ability or inherent characteristics;
5. Determine his vocation, financial prospects, with whom to affiliate on a basis of friendship, his enemies, his psychic and clairvoyant powers, when to avoid changes and new expenditures;

(k) That everyone should purchase forecasts for children before they are fifteen years old or that respondent's forecast will enable them to intelligently plan their future or save them many of the troubles of life;

(l) That it is possible to make an analysis of character on the basis of the birthday of the subject alone. (Mar. 19, 1937.)

01712. Vendor-Advertiser—Medicinal Preparation.—The Methusa Co., a corporation, Cleveland, Ohio, vendor-advertiser was engaged in selling a certain medicinal preparation designated Methusa, and agreed in soliciting the sale of and selling its said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Methusa constitutes a competent treatment for or will enable one to shake off—

1. Nervousness,
2. Rheumatism,
3. Sleeplessness,
4. Arthritis,
5. Constipation,
6. Backache,
7. Overfatigue,
8. Ailments common to men and women whose systems have been allowed to become clogged with toxic congestions,
9. Mental tension, unless specifically limited to temporary, palliative relief from the symptoms;

(b) That Methusa is an inner body conditioner, or is bringing new life or new health to users;

- (c) That there has never been anything like Methusa before;
- (d) That through the use of Methusa, the weight of years and age are removed;
- (e) That Methusa will completely recondition the human system;
- (f) That satisfaction is "guaranteed";
- (g) That Methusa will "end" ailing;
- (h) That Methusa will—
 1. Flush kidneys and bowels,
 2. Eliminate or correct toxic congestion, or
 3. Overhaul the system.

Respondent further agreed to cease and desist from the use of the term "Manufacturing Chemists" or any other term implying that it manufactures Methusa or any other preparation. (Mar. 19, 1937.)

01713. Vendor-Advertiser—Pictures.—W. J. Latimer, an individual doing business under the trade name of The Midwest Art Co., St. Paul, Minn., vendor-advertiser, was engaged in selling pictures of movie stars and agreed 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 filling in the missing word it will be possible to win \$1000 in cash without the expenditure of one red cent;
- (b) That in the event of a tie for any one prize there will be as many prizes reserved as there are participants tied. (Mar. 19, 1937.)

01714. Vendor-Advertiser—Toothpaste.—Bristol-Myers Co., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a toothpaste designated, Ipana, and agreed in soliciting the sale of and selling its said product in interstate commerce, to cease and desist from representing directly or otherwise:

- (a) That Ipana and massage will "correct" any unhealthy gum condition;
- (b) That Ipana and the use of the tooth brush will restore to the gums the stimulation they require to remain firm and healthy;
- (c) That Ipana and Massage is the civilized way to build firm gums;
- (d) That the rubbing of a little Ipana Tooth Paste into the gums will produce a new circulation, awakening the "tissues" and resulting in a new, healthy firmness in the gum walls themselves;
- (e) That the use of Ipana and Massage will make a "definite" start toward "complete" oral health;
- (f) That dentists "usually" prescribe Ipana Tooth Paste and Massage to patients having "pink tooth brush";
- (g) That the use of Ipana and Massage is a sensible "health" measure, and will rouse the gums to health;
- (h) That modern dental science or the "country's dentists" urge or approve the use of Ipana and Massage in the care of teeth and gums, and as a vital aid in keeping gums healthy and teeth white;
- (i) That Ipana and Massage "mean" or "assure" sparkling or glowing teeth and healthy gums;
- (j) That Ipana and Massage will enable one to have sparkling teeth and firm, healthy gums all his life;

(k) That Ipana and Massage afford a protection against the troubles that may follow "pink tooth brush," or serious gum troubles generally;

(l) That Ipana and Massage will keep "pink tooth brush" a "stranger" or "among the unknown";

(m) That Ipana and Massage has been effective in millions of cases of weak, tender, ailing gums;

(n) That Ipana and Massage will prevent one from becoming a "Dental Cripple";

(o) That Ipana and Massage will enable one to have the healthiest gums and the prettiest teeth in town;

(p) That the use of Ipana Plus Massage is taught in modern schools;

(q) That Ipana "keeps" the teeth clean, white, good looking and the gums sound and healthy;

(r) That Ipana is one dentrifice that will take care of all tooth and gum difficulties;

(s) That respondent maintains a staff of dentists. (Mar. 22, 1937.)

01715. Vendor-Advertiser—Pictures.—United Milk Crate Corp., a corporation, operating under the trade name of The Lifetime Portrait Society, Cincinnati, Ohio, vendor-advertiser, was engaged in selling pictures enlarged and processed by a method designated Por-Ce-Lite Process, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing, directly or otherwise:

(a) That three moving picture studios have ordered pictures treated by this process;

(b) That the bonus offered by respondent will pay agents \$140.00 extra per month, or any month;

(c) That leads are furnished salesmen and agents.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed:

(d) 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;

(e) 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;

(f) 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.

The respondent further agreed to cease and desist from the use of the word "Lifetime" as a part of the trade name of this product, or as a part of the trade name of the advertiser or vendor of said product, and from representing in its trade name or otherwise that such portraits are permanent, eternal, mysterious, or everlasting, or will last an ordinary lifetime, or will never fade, rip, tear, break, bend,

warp or soil, or will last for generations, or are preserved forever against the ravages of time.

The respondent further agreed to cease and desist from the use of the word "Society" as a part of its trade name. (Mar. 24, 1937.)

01716. **Vendor-Advertisers—Books and Novelties.**—Alfred Johnson Smith, Paul Smith, and Arthur Smith, copartners, doing business under the trade name of Johnson Smith & Co., Detroit, Mich., vendors-advertisers, were engaged in selling books of instruction for the piano and on hypnotism, and various novelties, and agreed in soliciting the sale of and selling their said products, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That respondents' "The Vamping Tutor" will enable one to

1. Learn to vamp on the piano;
2. Play the piano without lessons or personal instruction;
3. Play the piano or organ without going through the drudgery of learning the scales and keys or without tedious practice;
4. Play the accompaniment to any tune or song written in any time or key after a little practice;
5. Play the accompaniment to songs, ballads, waltzes, the latest hits, etc., entirely by ear and without music;
6. Play the piano without any knowledge of music;

(b) That respondents' Book on Hypnotism will enable one to

1. Learn the art or hypnotism;
2. Master the secrets of hypnotism easily;
3. Sway others easily;
4. Influence the thoughts of others, and control their desires;
5. Become master of every situation;
6. Make others love him;
7. Strengthen his will power;
8. Banish fear and worry;
9. Improve his memory;
10. Overcome bad habits;

(c) That respondents' Japanese Rose Bushes

1. Are the Wonder of the World;
2. Bloom all year round;
3. Bloom every ten weeks, summer or winter. (Mar. 24, 1937.)

01717. **Vendor-Advertiser—Medicinal Preparation.**—H. M. Cheney, an individual, doing business as Cheney Medicine Co., Toledo, Ohio, and as F. J. Cheney Co., Toledo, Ohio, vendor-advertiser was engaged in selling a certain medicinal preparation designated Hall's Nasal Catarrh Medicine and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Hall's Nasal Catarrh Medicine is a competent treatment for Sinusitis;

(b) That Hall's Nasal Catarrh Medicine stirs up the sluggish cells in the membrane of the sinus cavities and helps them to grow stronger, and throw off impurities;

(c) That Hall's Nasal Catarrh Medicine is a competent or effective remedy for the symptoms of sinus troubles, unless limited to the relief of headaches that occur in cases where an excessive amount of nasal congestion prevents the proper drainage of the sinus cavities;

(d) That Hall's Nasal Catarrh Medicine is a competent treatment for Catarrh of the head, unless the claim is limited to the relief of the symptoms only;

(e) That the use of Hall's Nasal Catarrh Medicine and Nasal Ointment will help rid a person of chronic catarrhal irritations, or any other physical ailments, unless the representations are limited to the palliation or relief of the symptoms associated with chronic catarrhal irritations;

(f) That respondent's products will stop hawking, stuffed-up nose, bad breath, or phlegm filled throat;

(g) That 96 out of every 100 persons are fully satisfied because they get relief, the other 4 are pleased, too, because they get their money back, or any specific number or percentage are satisfied users. (Mar. 24, 1937.)

01718. Vendor-Advertiser—Medicinal Preparation.—Herman Nagel, an individual, Chicago, Ill., vendor-advertiser was engaged in selling a preparation designated Formula B (Vitality Restorer) and agreed 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 said tablets will restore vitality;

(b) That the use of said tablets will bring back one's youth;

(c) That Formula B consists "mainly" of extracts of tropical herbs which have been used for centuries for their erotic and vivifying effects;

(d) That said tablets are "harmless" or "accumulative" in their effects. (Mar. 25, 1937.)

01719. Vendor-Advertiser—Food Product.—The Cream of Wheat Corp., a corporation, Minneapolis, Minn., vendor-advertiser was engaged in selling a product designated Cream of Wheat, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That a child can store up in his system only half enough energy for a single day;

(b) That by the use of Cream of Wheat a person increases resistance to disease, nervousness or colds unless limited to its value as a nourishing food;

(c) That a little child burns up as much or more energy than—

1. A full-grown athlete; or

2. Red Grange in a football game; or

3. A college football player, or

4. A laboring man; unless comparison is made between an active child and an adult and in proportion to weight;

(d) That Cream of Wheat has been especially created to help youngsters escape contagion.

And will cease and desist from making comparative representations unless such comparative statements are supported by evidence based on the results of competent scientific tests. (Mar. 26, 1937.)

01720. Vendor-Advertiser—Medicinal Preparation.—Bristol-Myers Co., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling an effervescent salt, designated Sal Hepatica and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Sal Hepatica promotes intestinal purification by clearing away "stoppage";

(b) That Sal Hepatica is used in cases of constipation to prevent more serious physical conditions or trouble;

(c) That Sal Hepatica will cleanse the system thoroughly unless limited or qualified to indicate the intestinal tract;

(d) That Sal Hepatica will correct acid conditions, or that it will counteract acid condition, unless qualified or limited to indicate gastric hyperacidity;

(e) That Sal Hepatica corrects the acid condition that always aggravates colds, or that it will be effective in such cases unless limited or qualified to indicate the neutralization of the acidity usually associated with such conditions as colds or overindulgence;

(f) That Sal Hepatica will free the intestinal tract of poisons;

(g) That Sal Hepatica provides the scientific way to treat colds successfully;

(h) That Sal Hepatica is a competent treatment for colds or will "overcome" a cold;

(i) That Sal Hepatica will have any effect on the cause of rheumatism, arthritis and neuritis;

(j) That Sal Hepatica will rid the body of harmful and poisonous wastes, unless limited to indicate the removal of waste from the intestinal tract;

(k) That Sal Hepatica is a competent treatment for headaches, indigestion, upset stomach, nervousness or unnatural fatigue, unless limited to such conditions when due to hyperacidity or constipation;

(l) That Sal Hepatica is a basic treatment for stopping colds quickly;

(m) That Sal Hepatica will prevent cold germs from taking hold or multiplying in an acid system;

(n) That Sal Hepatica will prevent a cold from getting worse;

(o) That Sal Hepatica will help one back to health in just a little while;

(p) That Sal Hepatica will enable one to stay clear headed, alert and be his healthy, normal self;

(q) That the action of Sal Hepatica is thorough and helps regulate the balance of body fluids. (Mar. 26, 1937.)

01721. Vendor-Advertiser—Medicinal Preparations.—Louis J. Schuck, an individual, Jamaica, N. Y., vendor-advertiser was engaged in selling certain medicinal preparations designated Kandu Tabs, Kandu Delight, Kandu Jelly, and the formula for "Sex Energy Creating Tonic," and has sold a preparation designated, Nox-Alco, and agreed in soliciting the sale of and selling its said products, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) Inferentially or otherwise, that any of his preparations or any of the ingredients thereof are imported from Indo-China or any other geographical section, unless and until such is a fact;

(b) That the odor of Kandu Delight or Kandu Jelly will "captivate" any woman;

(c) That either Kandu Delight or Kandu Jelly is effective in the prevention or treatment of infection;

(d) That Kandu Tabs will be of benefit to one in need of "pep";

(e) That either Kandu Tabs or the "tonic" or a combination thereof will "stir up", "wake up", or strengthen weak or tired glands;

(f) That Kandu Tabs or the "tonic" or a combination thereof will be of benefit in the prevention or treatment of coughs or colds;

(g) That Kandu Tabs or the "tonic" or a combination thereof will:

1. Cause one to "feel just as you did 30 or more years ago";
2. Cause one to have "a general desire to do things and go places";

(h) That the information contained on the formula sheet for the "tonic" will "save your life", or that by use of said information one will not "drop dead from a weak heart";

(i) That either Kandu Delight or Kandu Jelly is "non-injurious";

(j) That the product prepared according to the formula is a "sex energy creating tonic";

(k) That any offer is limited to a definite period of time unless all offers to purchase according to the terms of the offer received after its expiration date are refused.

The respondent has definitely discontinued the advertising for and sale of the preparation designated "Nox-Alco." (Mar. 26, 1937.)

01722. Vendor-Advertiser—Hypnotism Book.—B. W. Rucker, an individual operating under the trade names of De Sala Enterprises, and Vincent De Sala, Buechel, Ky., vendor-advertiser was engaged in selling a certain book entitled "This Power Called Hypnotism", and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That every person can learn to hypnotize others or is susceptible of being hypnotized, or that persons taking this course

1. Will be enabled to hypnotize instantly, or at all;
2. Will gain dynamic power, or have dynamic power unlocked;
3. Will be enabled to control others;
4. Will be able to understand and apply methods of hypnotism;
5. Will become masterful, successful, and happy;
6. Will be enabled to use the secrets of hypnotism, psychology, telepathy and personal magnetism;

(b) Inferentially or otherwise that one reading respondent's book will be enabled thereby to cure disease, bad habits and complexes;

(c) That the price of this course was formerly \$10.00 or any other price different from that at which it was regularly sold;

(d) That this course reveals the real secrets of hypnotism;

(e) That adequate training in the actual practice of hypnotism may be taught by correspondence or by reading generally. (Mar. 26, 1937.)

01723. **Vendor-Advertiser—Medicinal Preparations.**—C. E. Richards, an individual, Lewiston, Mont., vendor-advertiser, was engaged in selling Nu Way Method for tuberculosis, gall-stones, etc., and agreed 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 respondent's System Cleaner will clean the system, break up a case of Typhoid, remove gallstones, cure appendicitis, puts the digestive system in working order or has any therapeutic value except that of a laxative;

(b) That any preparation made from respondent's Indian Root is a long breath liniment;

(c) That respondent's Indian Root Treatment treats the body by medicated air;

(d) That respondent's Indian Root Treatment kills germs or microbes or heals sore places;

(e) That respondent, through the use of his preparations, can do more for a person than a M. D. can;

(f) That respondent's treatment reaches microbes in the lungs;

(g) That Catarrh is a germ disease that can be successfully treated by respondent's treatment;

(h) That respondent's treatment will "break a case of pneumonia in from 6 to 10 hours", or is a competent treatment for pneumonia;

(i) That one can know whether the lungs are affected by a simple home test;

(j) That respondent cured himself of tuberculosis or consumption, or otherwise indicating directly or indirectly that any of his preparations are effective in the treatment of tuberculosis or consumption;

(k) That respondent's treatment is the equivalent of bringing mountain air to the purchaser;

(l) That the Indian Root used in respondent's Nu Way Method is of great healing quality;

(m) That respondent's treatment is a blood purifier;

(n) That respondent's treatment is often sold at \$10.00 a treatment or any other price in excess of that regularly received;

(o) That through the use of respondent's treatment one is schooling himself for health;

(p) That there is no danger of spreading tuberculosis when respondent's treatment is used;

(q) That the inhalation of any preparation made from respondent's products kills germs or heals lungs;

(r) That the inhalation of respondent's preparation opens the lung cells or reaches every part of the lungs;

(s) That respondent's Nu Way Method is a competent treatment or effective remedy for hay fever or adenoids. (Mar. 29, 1937.)

01724. **Vendor-Advertiser—Chicken Feed.**—Spear Brand Mills, Inc., a corporation, Kansas City, Mo., vendor-advertiser was engaged in selling Spear Brand Chick Feed, and agreed in soliciting the sale of and selling its said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Spear Brand feeds will grow healthier, sturdier chicks at less cost or in quicker time than any other feed on the market;

(b) That Spear Brand Chick Feed contains all the vitamins and minerals necessary for rapid, healthy and sustained growth;

(c) That Spear Brand Feed produces the greatest possible growth in the shortest possible time;

(d) That Spear Brand Start-To-Finish Feeds gets its vitamins from potassium iodide, iodized salt or calcium phosphate;

(e) That Spear Brand Start-To-Finish Feed is the most perfectly balanced of all chick feeds;

(f) That the use of Spear Brand Feeds will "guarantee" profits;

(g) That the Spear Brand Feed contains all the essential minerals and proteins or "assures" better results. (Mar. 29, 1937.)

01725. **Vendor-Advertiser—Medicinal Preparation.**—E. B. Graham, an individual doing business under the trade name of Golden West Co., Knoxville, Tenn., vendor-advertiser, was engaged in selling Golden West Compound and agreed 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 is a competent treatment or an effective remedy for—

1. Stomach disorders.
2. Kidney troubles or kidney ailments.
3. Constipation.
4. Rheumatism.
5. Blood disorders.
6. Liver ailments.
7. Indigestion.
8. Rheumatic pains.
9. Stomach gases.
10. Dizzy spells.
11. Faulty elimination.

(b) That respondent's product has relieved chronic cases of stomach gases and indigestion;

(c) That respondent's product is a tonic;

(d) That respondent's product is

1. Sure;
2. Nature's way;
3. World's Mildest Laxative;
4. A blood purifier;

(e) That respondent's product has any therapeutic efficacy beyond that of a stomachic and a diuretic laxative. (Mar. 29, 1937.)

01726. **Vendor-Advertiser—Medicinal Preparation.**—Western Chemicals, Inc., a corporation, Seattle, Wash., vendor-advertiser, was engaged in selling a preparation designated Alcoban and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the product is a competent treatment or effective remedy for the alcoholic habit that will effect a permanent relief from the desire for alcoholic beverages.

- (b) That the product will "correct" alcoholism.
- (c) That the product or the formula upon which it is based has been used in hospital treatment.
- (d) That the product contains no harmful drugs.
- (e) That the product will "drive off" toxic cell poisons.
- (f) That the product will "save" or "revive" "tired" or "exhausted" glands.
- (g) That the product "kills" the desire or appetite for alcoholic drink.
- (h) That the product "stops" the desire or appetite for alcoholic drink unless it is clearly indicated in direct connection therewith that such result may not be permanent.
- (i) That the product will prevent the "drink habit" or "Drunken rages."
- (j) That the use of the product will bring peace of mind.
- (k) That the product will "banish" alcohol from one's life.
- (l) That the product will "free" one of the desire for alcohol.
- (m) That the product will cure one of the alcoholic habit.
- (n) That the product will "remove" the craving for liquor.
- (o) That the product will make up one's mind for one in connection with its use as a treatment for the liquor habit.
- (p) That the product will "rid" one of the desire for alcohol.
- (q) That the product will "rid" one of the threat of "dropping dead from heart disease", "being carried to Potter's Field", "undergoing hospital operation for ulcers, cancerous tumors".
- (r) That the product "builds Up" resistance to the craving for liquor.

The respondent further agreed to cease and desist from representing that any offer is for a limited time unless a definite time limit is set and all offers to purchase according to the terms of the offer is received after the expiration of such time are refused. (Mar. 30, 1937.)

01727. Vendor-Advertiser—Medicinal Preparation.—E. L. Morris, an individual operating under the trade name of Nuway Products, Frankford, Del., vendor-advertiser, was engaged in selling a product designated Vim Tabs and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Vim Tabs—
 1. Contain glandular substances;
 2. Constitute a food for glands or nerves;
 3. Contain no harmful drugs;
 4. Are safe to take;
 5. Are pure herbs;
 6. Will stimulate or feed the glands or nerves;
- (b) That the use of Vim Tabs would be of any material benefit when one feels
 1. Restless;
 2. Irritable;
 3. Tired, or can't sleep;
- (c) That the use of Vim Tabs will "pep up" men or women or make them feel younger. (Mar. 30, 1937.)

01728. Vendor-Advertiser—Medicinal Preparation.—W. F. Young, Inc., a corporation, Springfield, Mass., vendor-advertiser, was engaged in selling a product designated Absorbine, Jr., and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Absorbine Jr. will induce sleep or that it

1. Brings peace or sleep;
2. "Coaxes" sleep;
3. "Pours sweet dreams";
4. Enables one to sleep like a baby;

(b) That Absorbine Jr., rubbed into the back of the neck or on the chest aids sleep or brings relief from nights of tossing;

(c) That selling Absorbine Jr. is equivalent to selling sleep;

(d) That by the use of Absorbine Jr. any definite or specified number of people have been relieved from sleeplessness;

(e) That Absorbine Jr. is "Sandman's Helper." (Mar. 31, 1937.)

01729. Vendor-Advertiser—Beverage Concentrate.—Chemm, Inc., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a beverage concentrate designated Chemm, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Chemm—

1. Is a "balanced" food drink.
2. Improves digestion or provides natural digestive and nutritive action unless limited to supplying such elements of Chemm as are missing from the regular diet,
3. Relieves fatigue unless limited to assisting in the relief of fatigue,
4. Induces sound sleep, unless limited to "often induces sound sleep;"
5. Combats irritability unless limited to irritability due to indigestion,
6. Develops healthful beauty,
7. "Causes" children to drink more milk,
8. Builds strong bones and teeth unless qualified as a help to that end,
9. Provides nourishment particularly required by those suffering from anemia;

(b) That Chemm supplies all required amounts of Vitamins A, B, and D;

(c) That additional diastase is required to digest starch unless expressly limited to those individuals whose diet does not supply an adequate amount;

(d) That commercial malted milk preparations contain little or no vitamins;

(e) That Chemm is a malted milk preparation;

(f) That drinking a glass of Chemm will make one's troubles vanish;

(g) That Chemm alone produces any results which may be ascribed properly to a combination of Chemm and milk;

(h) That a glass of Chemm will bring restful sleep in every case;

(i) That Chemm will bring refreshment and new energy in every case;

(j) That Vitamin A is the anti-infection vitamin;

(k) That Chemm will stimulate the appetite, unless expressly limited to cases in which the lack of appetite is due to vitamin B deficiency. (Mar. 31, 1937.)

01730. **Vendor-Advertiser—Stamping Machine.**—H. W. Boetticher, an individual, operating under the trade name of “Blue Dot” Stamp Co., Detroit, Mich., vendor-advertiser, was engaged in selling a machine designed to stamp impressions upon United States Pennies and designated Blue Dot Coin Embosser and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise: .

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;

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 salespersons or dealers under normal conditions in the due course of business. (Apr. 2, 1937.)

01731. **Vendor-Advertiser—Medicinal Preparation.**—W. M. Akin Medicine Co., a corporation, Evansville, Ind., vendor-advertiser, was engaged in selling Dr. R. A. Armistead's Ague Tonic, and agreed 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 will “vitalize” or “invigorate” the system, or that it will “bring the system back to par”, when the system is affected with colds and influenza;

(b) That respondent's product is a competent treatment or an effective remedy for influenza;

(c) That respondent's product “builds up” resistance to colds or influenza;

(d) That respondent's product will prevent colds or influenza;

(e) Inferentially or otherwise, that respondent's product will prevent complications of colds. (Apr. 5, 1937.)

01732. **Vendor-Advertiser—Bleaching Preparation.**—Frank Cremona, an individual operating under the trade name of Valley Soap & Chemical Co., Turtle Creek, Pa., vendor-advertiser, was engaged in selling Valox Bleacher, formerly designated Sun Ray Bleacher, and Bleacher and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That this product cleans and disinfects in the same operation;

(b) That this preparation is effective in the treatment of fleas or mange;

(c) That this preparation is effective as a treatment for “aching feet”;

(d) That this product is a “germ killer”. (Apr. 5, 1937.)

01733. **Vendor-Advertiser—Printed Matter and Book Matches.**—Banner Printing Co., a corporation doing business under the trade name of All-Trades Printing Service, Rockford, Ill., vendor-advertiser, was engaged in selling Printed Matter and Book Matches, and agreed 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 printing sells at half cost;
- (b) That respondent's company is the only one offering book matches without extra cost;
- (c) That people desiring to get 1,000 book matches with their names and addresses printed therein, can get same free.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed—

(d) 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;

(e) 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. (Apr. 6, 1937.)

01734. Vendor-Advertisers—Bread.—Omar Baking Co., a corporation, Omaha, Nebr., and National Baking Co., a corporation, Omaha, Nebr., vendor-advertisers, were engaged in selling Omar Bread, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Omar Bread is balanced "as a diet is balanced";
- (b) That Omar Bread furnishes:
 1. Tremendous over-generosity of calcium;
 2. Eight hundred per cent more calcium than "ordinary" milk-free bread;
 3. Perfected beauty and health balance;
 4. Calcium and eight or any other specific number of important food elements;
 5. "Food element control";
 or that:
 6. Hard, tough bones go a long way toward eliminating injury;
 7. Omar Bread is a "daring" contribution in the science of bread making;
 8. Omar Bread is a complete, rounded balance of all the other bread-essentials with the calcium;
 9. Ninety-five per cent of small children have dental defects;
- (c) That mal-nutrition is the result of lack of sufficient calcium;
- (d) That calcium is the sole requisite for strong, hard, tough, growing bones, and sound, white teeth. (Apr. 7, 1937.)

01735. Vendor-Advertiser—Yeast Tablets.—Northwestern Yeast Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling Yeast Foam Tablets, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the typical every day diet is sadly deficient in vitamin B;
- (b) That the use of respondent's product will:
 1. Correct skin troubles, eruptions, blemishes, or color, or
 2. Rid one of the cathartic habit; or

3. Correct the cause of constipation; or
4. Restore one's digestive and eliminative system to normal, healthy function, unless such claims are limited to such conditions when due to a deficiency of Vitamin B complex, or
5. Eliminate body poisons and wastes, unless limited to the intestinal tract; or
6. Restore energy or relieve headaches not due to constipation;

(c) That respondent's Animal-Poultry Yeast Foam helps a dog get "all" the nourishment from his food;

(d) That feeding respondent's product to dogs will result in:

1. Stronger bones; or
2. Thick hair; or
3. Immunity from worms and disease;

(e) That feeding respondent's product to chickens will cause coccidiosis and/or other intestinal diseases to disappear. (Apr. 7, 1937.)

01736. **Vendor-Advertiser—Medicinal Preparation.**—Charles Keller, an individual doing business under the trade name of Keller Co., Mechanicsburg, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated Bukets, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Bukets will "strengthen" the bladder, or prevent bladder "weakness";

(b) That by the use of Bukets it is possible to get "rid" of bladder irritation;

(c) That Bukets will lax the bladder;

(d) That the action of Bukets on the bladder is similar to the action of castor oil on the bowels. (Apr. 9, 1937.)

01737. **Vendor-Advertiser—Medicinal Preparation.**—Margaret Voorhees Doyle, in her own right and as Executrix of the Estate of C. A. Voorhees, deceased, trading and doing business as Est. of C. A. Voorhees, M. D., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Bumstead's Worm Syrup, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Bumstead's Worm Syrup is—

- (1) Generally endorsed by physicians,
- (2) Recommended by "all" physicians,
- (3) A "specific" for the ills the preparation is intended to alleviate;

(b) That it never fails, either where directions are followed or otherwise;

(c) Inferentially or by direct statement that Santonin is scarce;

(d) That respondent's product is a "sure" Santonin remedy or a "sure" remedy at all for worms in either children or adults;

(e) That said product is the only article for worms that does not make children deathly sick to take, or the only worm medicine now made by a regular practicing physician;

(f) Inferentially or otherwise that said product is of value in the treatment of tape worms;

(g) That never before has there been an article offered to the public so "certain" of destroying worms as this;

(h) That irregular or unnatural appetite, furred tongue, fetid breath, with a copious flow of saliva, swollen abdomen, irregular bowels, disordered stomach, irritability, fretfulness, picking at the nose, starting up out of sleep as if from fright, grinding of the teeth at night while asleep, or a slight run of fever during the afternoon and evening indicate the presence of worms, unless in direct connection therewith it is stated that these symptoms may also be the result of other ailments;

(i) That the proprietor or manufacturer of Bumstead's Worm Syrup is a practicing physician, or that the originator of the formula is now a living person;

(j) That Bumstead's Worm Syrup kills, or is of benefit in removing worms other than large round worms, thread worms and whip worms;

(k) That thousands of little children die annually from worms as the primary cause, until such statement can be established by reliable statistics. (Apr. 13, 1937.)

01738. Vendor-Advertiser—Foot Appliances.—Gate City Manufacturing Co., a corporation doing business under the trade name of Foot Health Products, Kansas City, Mo., vendor-advertiser, was engaged in selling orthopedic foot appliances designated as Air-O-Matic Eze Arches, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That one wearing Air-O-Matic Eze Arches will be relieved of foot pain and other foot troubles instantly;

(b) That Air-O-Matic Eze Arches give relief from metatarsal pain, burning callouses, bunions, flat feet, weak and fallen arches, swollen ankles and sweaty feet in all cases;

(c) That respondent's product is offered at a special price for a limited time only, unless such orders are refused at the end of a time determined. (Apr. 13, 1937.)

01739. Vendor-Advertiser—Lubricant.—Woonsocket Nash Co., a corporation, operating under the trade name of Blue Moon Products Co., Woonsocket, R. I., vendor-advertiser, was engaged in selling Blue Moon Miracle Lube, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Blue Moon Miracle Lube will eliminate friction, wear, heat or noise;

(b) That this product will enable an automobile to be operated—

1. On less oil or gasoline, or
2. With increased power, speed and smoothness, regardless of the mechanical condition of the engine, or under all conditions when it is not in a good state of repair;

(c) That Blue Moon Miracle Lube will afford perfect protection against friction, wear, sticky valves, and scores of other motor ills due to faulty lubrica-

tion, or that it affords any protection at all unless expressly limited to the certain conditions when it is of some value;

(d) That this product lengthens the life of cars, or stops repair bills, or means freedom from costly repairs;

(e) That this product levels scored cylinders and other irregularities under all conditions;

(f) That if Blue Moon Miracle Lube is added, there will be no wear, no friction, no sticking, no scoring, or no seizing;

(g) That Blue Moon Miracle Lube prevents dilution of oil, or prevents metal to metal contact or wear;

(h) That 90% of motor repairs are caused by faulty lubrication. (Apr. 13, 1937.)

01740. **Vendor-Advertiser—Medicinal Preparation.**—People's Drug Stores, Inc., a corporation, Washington, D. C., vendor-advertiser, was engaged in selling a medicinal preparation designated Thompson's Effervescent Aspirin Compound Tablets, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Thompson's Effervescent Aspirin Compound Tablets will relieve the "effects of many ordinary ailments";

(b) That this product will be effective "when you feel bad," unless qualified by explaining exactly the cause of such condition;

(c) That this preparation will relieve pain unless there appears an explanation of the causes of pain which can be relieved thereby;

(d) That by the use of this product anyone can get "rid" of any physiological disturbance or condition;

(e) That this preparation will relieve headaches unless limited to simple headaches;

(f) That the product will relieve neuralgia unless limited to the relief of neuralgic pains;

(g) That Thompson's Effervescent Aspirin Compound Tablets constitute a competent treatment or an effective remedy for colds, or for indigestion, unless limited to the specific type of indigestion which can be reached by said tablets;

(h) That these tablets are a competent treatment or an effective remedy for over-acidity or any of its symptoms, unless expressly limited to over-acidity of the stomach. (Apr. 13, 1937.)

01741. **Vendor-Advertiser—Hand Lotion.**—The Kendall Co., a corporation doing business as Bauer & Black, Chicago, Ill., a vendor-advertiser, was engaged in selling a hand lotion designated as "Velure Lotion" and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Velure Lotion is a recent scientific discovery;

(b) That Velure Lotion combines with nature to produce the lovely skin every woman desires;

(c) That Velure Lotion leaves no artificial veneer;

(d) That Velure Lotion disappears right into the skin; or is instantly absorbed by the skin;

(e) That Velure Lotion contains two ingredients absolutely new to hand lotions;

(f) That Velure Lotion contains two ingredients that soften hands in 15 seconds;

(g) That Velure Lotion makes the roughest coarsest skin soft and smooth in 15 seconds no matter how hard-worked the hands may be;

(h) That Velure Lotion makes the hands "more than perfect";

(i) That Velure Lotion is a "marvelous" or "amazing" hand lotion or secret, and does wonders;

(j) That all the best hand creams and lotions are sticky and gummy;

(k) That four or five drops of Velure Lotion are equal to a whole tablespoon or teaspoonful of any other hand lotion;

(l) That Velure Lotion is "absolutely" non-sticky;

(m) That Velure Lotion will "miraculously transform busy work-roughened hands to white soft things of beauty";

(n) That Velure Lotion transforms homely hands;

(o) That Velure Lotion accomplishes the impossible;

(p) That Velure Lotion leaves the hands as smooth and soft as satin;

(q) That Velure Lotion will make red, lined hands look younger;

(r) That Velure Lotion works with nature to give the hands a natural refreshing softness stimulating the oil cells to give off more natural softening oils;

(s) That Velure Lotion goes into the pores of the skin or reaches or works under the skin;

(t) That Velure Lotion works from inside;

(u) That Velure Lotion does away with chapping and roughness;

(v) That Velure Lotion makes red rough hands 5 or 6 shades lighter overnight;

(w) That Velure Lotion whitens hands faster and keeps them soft, smooth, white 2 to 3 times longer than other hand lotions;

(x) That Velure Lotion works with nature to restore the natural oils to the skin;

(y) That Velure Lotion will cause one to have "no chapping" or "no roughness" of the hands; and keep the hands smooth, white and lovely;

(z) That Velure Lotion is a new "Dermatic" lotion. (Apr. 14, 1937.)

01742. Vendor-Advertiser—Medicinal Preparation.—W. K. Sterline, an individual, Sidney, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated Asthma Treatment and agreed 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 will "overcome" asthma;

(b) That respondent's Asthma and Hay Fever Treatment—

1. Will remove the cause of asthma or hay fever;
2. Is so safe a child can use it;
3. Is the correct treatment;
4. Gives permanent relief;
5. Will cause or bring about steady improvement.

(c) That prospective purchasers of respondent's preparation may expect results equivalent to results reported by other users of said medicine;

(d) That by using respondent's preparation asthma or hay fever "will leave" or the suffering resulting therefrom will "stop" or any other words or expressions denoting finality of results or certainty of results in the relief of symptoms of said ailments;

(e) That said preparation will do more than give temporary relief from the paroxysms of asthma and the symptoms of hay fever.

The respondent assumed all responsibility for testimonials published by him and agreed that he will not publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

Respondent further agreed that in promoting the sale of said medicine as a palliative, or relief for asthma and hay fever symptoms he will state neither directly or by inference that said preparation is "safe" unless in direct connection therewith it is stated that the preparation is not intended for use by persons having tuberculosis. (Apr. 14, 1937.)

01743. Vendor-Advertiser—Books, Curios, Etc.—Charles H. Birnbaum, an individual, doing business under the trade name of Star Book & Novelty Co., Camden, N. J., vendor-advertiser, was engaged in selling Books, Publications, Herbs, Roots, Curios, Perfume and Incense Powder, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any of respondent's roots or herbs or any combination thereof or any preparation made therefrom is a cure or competent treatment or remedy for

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|--------------------------------------|--|
| 1. Chronic ailments; | 22. Scrofula; |
| 2. Catarrh; | 23. Syphilis; |
| 3. Asthma; | 24. Ulcers; |
| 4. Constipation; | 25. Cancer; |
| 5. Diarrhoea; | 26. Eczema; |
| 6. Dysentery; | 27. Itch; |
| 7. Piles; | 28. Erysipelas; |
| 8. Dyspepsia; | 29. Pimples; |
| 9. Diabetes; | 30. Weak Manhood; |
| 10. Gall Stones; | 31. Gonorrhoea; |
| 11. Dropsy; | 32. Gleet; |
| 12. Kidney and bladder troubles; | 33. Stricture; |
| 13. Sleeplessness; | 34. Spermatorrhoea; |
| 14. Heart Trouble; | 35. Leucorrhoea; |
| 15. Nervous Headaches and Neuralgia; | 36. Amenorrhoea; |
| 16. St. Vitus Dance; | 37. Irregular and Suppressed Menstruation; |
| 17. Epilepsy; | 38. Bed Wetting; |
| 18. Delirium Tremens; | 39. All diseases of women; |
| 19. General Debility; | 40. Colic; |
| 20. Rheumatism; | 41. Boils and Pimples; |
| 21. Skin Diseases; | 42. Painful Menstruation; |

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| 43. Fits; | 67. Catarrhal inflammation of the stomach and bowels; |
| 44. Liver and stomach troubles; | 68. Gastritis; |
| 45. Sick and nervous headache; | 69. Bloating; |
| 46. Lung troubles; | 70. Heartburn; |
| 47. Inflammatory conditions of the urinary tract and reproductive organs; | 71. Indigestion; |
| 48. Bright's disease; | 72. General debility; |
| 49. Defective action of the kidneys; | 73. Worms; |
| 50. High Blood Pressure; | 74. Tape worms; |
| 51. Kidney affections; | 75. Piles; |
| 52. Kidneys and bladder; | 76. Over-fatness; |
| 53. Gravel; | 77. Wounds; |
| 54. Backache; | 78. Skin affections; |
| 55. Exhaustion of fat people; | 79. Ringworm; |
| 56. Paralysis; | 80. Pyorrhoea; |
| 57. Jaundice; | 81. Tonsillitis; |
| 58. Falling disease; | 82. Throat troubles; |
| 59. Falling sickness; | 83. Ulcers; |
| 60. Stiff joints; | 84. Goitre; |
| 61. Sciatica; | 85. Enlarged glands; |
| 62. Stiff neck; | 86. Pleurisy; |
| 63. Inflammation of the nerves; | 87. Scarlet Fever; |
| 64. Lumbago; | 88. Glandular swellings; |
| 65. Cramps; | 89. Inactive kidneys; |
| 66. Neuralgia; | 90. Inflammation of bladder; |
| | 91. Derangement of water passages. |

(b) That any of respondent's products is an antispasmodic or will promote easy child birth;

(c) That respondent's Lavender Flower Compound is a heart tonic;

(d) That respondent's German Celery Compound is a tonic;

(e) That any of respondents' products is a blood purifier or blood tonic;

(f) By designation or otherwise that any of respondent's products is "healing";

(g) That any of respondents' products is a hair color restorer or will restore hair to its former or natural color;

(h) That the use, possession, carrying or wearing of any of respondents' roots, herbs, or curios, will

1. Cause love between men and women;
2. Overcome, cure or avoid rheumatism;
3. Bring good luck;
4. Drive away evil spirits;
5. Stop a baby from crying;
6. Restore vitality to generative organs;
7. Produce sleep;
8. Ward off evil;
9. Give victory over enemies;
10. Attract the opposite sex;
11. Induce love;
12. Have any influence on honor or health;
13. Enable one to bewitch or produce spells;
14. Enable one to perform black magic;
15. Insure or promote success;
16. Overcome disease or enemies;

17. Promote health;
 18. Be safe from his enemies;
 19. Have immunity from fire or unjust sentences;
 20. Have immunity from death without the Holy Corpse of Jesus Christ;
- (i) That any of products sold by respondent possess magic qualities;
- (j) That the so-called "Mysterious Seals" sold by respondent are the only genuine seals or that there are no others like them;
- (k) That the reading or studying of any book or publication sold by respondent will enable one to perform any supernatural act; or make him proficient in, the acts of goetic theurgy, sorcery, witchcraft, black art, bewitchments, evocations, spells, infernal necromancy or black magic;
- (l) That the reading or studying of any book or publication sold by respondent will
1. Enable one to rise above his present surroundings;
 2. Enable one to be a master;
 3. Enable one to increase his financial "elixir";
 4. Make one's mind a master mind or a powerful concentrated force;
 5. Make one a winner;
 6. Give one efficiency, intellectual supremacy or influence;
 7. Enable one to restore health;
 8. Disclose a road to opulence;
 9. Enable one to rise above drudgery or labor;
- (m) That any book or publication sold by respondent contains "all" that is known about the occult sciences of Dæmonology, Spirit Rappings, Witchcraft, Sorcery, Astrology, Palmistry, Mind Reading, Spiritualism, Table Turning, Ghosts and Apparitions, Omens, Lucky and Unlucky Signs and Days, Dreams, Charms, Divination, Second Sight, Mesmerism, Clairvoyance, Psychological Fascination, Etc."
- (n) That respondent's lodestones or magnetic sand possess any curative or therapeutic properties or have any influence upon the blood;
- (o) That any of respondents' incense powders, perfumes, fumigators, or suffumes, or the burning thereof
1. Will produce a spiritual generation of power;
 2. Will bind spirits;
 3. Will bring luck in money matters;
 4. Will bring back friends, lovers or members of one's family;
 5. Will enable one to make new friends;
 6. Will result in health, wealth, power, or happiness;
 7. Will keep a circle of friends unbroken;
 8. Will keep one safe from enemies;
 9. Will make wishes come true;
 10. Will prevent bad signs from coming true;
 11. Will enable one to communicate with the unseen world;
 12. Possess occult virtue;

(p) By designation or otherwise that any product is Oriental, unless such product is produced in the Orient (Apr. 16, 1937.)

01744. Vendor-Advertiser—Wheat Germ Preparation.—Phoenix-Powers Co., a corporation, Haddonfield, N. J., vendor-advertiser, was engaged in selling a wheat germ oil preparation designated E-Now, and agreed in soliciting the sale of and selling said product in inter-

state commerce to cease and desist from representing directly or otherwise:

- (a) That E-Now is of value in cases of lack of vigor unless expressly limited to lack of vigor due to vitamin E deficiency;
- (b) That E-Now is a "concentrate" of vitamin E;
- (c) That in any cases there is an "absence" of vitamin E;
- (d) That a deficiency in vitamin E results in a lack of physical vigor, or in physical deterioration;
- (e) That vitamin E will prevent premature old age except when due to vitamin E deficiency;
- (f) That E-Now is the only safe product in this field, or that its results are "certain";
- (g) That E-Now is of value in prolonging the life of the reproductive system unless limited to impairment due to vitamin E deficiency;
- (h) That E-Now will be effective regardless of the age of the subject;
- (i) That this preparation will build up the health of the entire system;
- (j) That E-Now produces spontaneous stimulation, or that physicians prescribe it for this purpose (Apr. 16, 1937.)

01745. Vendor-Advertiser—Diet Instructions.—W. A. Orr, an individual doing business under the trade name of Orr Health System and Orr Health Service, Louisville, Ky., vendor-advertiser, was engaged in selling Printed Instructions Regarding Diet and Exercises as a Relief for Constipation, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the Orr Health System or Orr Health Service is a competent remedy in the treatment of constipation or indigestion, unless such representations are clearly qualified to indicate that there are many cases in which beneficial results may not be expected;
- (b) That said system is based on natural or scientific principles;
- (c) That by following respondents' instructions—
 1. Constipation will be eliminated;
 2. The eliminative system can be made normal, or corrected;
 3. One will have the best of health or a robust digestive system;
 4. Benefits may be expected in chronic cases;
 5. Any ailment will be ended;
 6. That any ailment or the cause of any ailment will be eliminated or corrected;
- (d) That any results claimed for those who follow respondent's instructions are permanent, certain, long-lasting, harmless, positively effective or guaranteed;
- (e) That said instructions are—
 1. More effective than laxatives or medicines;
 2. Different from other treatments, or unique;
- (f) That the following of respondents' instructions will produce beneficial results within any specified or definite time (Apr. 16, 1937.)

01746. Vendor-Advertiser—Medicinal Preparation.—E. I. Leisenring, an individual trading as U. S. Drug and Sales Co., Denver, Colo.,

vendor-advertiser, was engaged in selling Special Vitality Tablets, and agreed 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 is compounded from properly balanced powerful glandular substance with other active ingredients;

(b) That respondent's product is made by registered pharmacists;

(c) That respondent's product is a stimulator or toning compound for weak men or women;

(d) That respondent's product will aid in renewing the entire system, renew strength or energy, or that its use results in healthy and active glands;

(e) That the use of respondent's product makes the user feel good all the time, or feel healthy or strong;

(f) That respondent's product will give youthful pep or vigor or will pep up organs, blood or glands;

(g) That the use of respondent's product will give lasting results. (Apr. 16, 1937.)

01747. Vendor-Advertiser—Medicinal Preparation.—Floratone Co., a corporation, Los Angeles, Calif., vendor-advertiser, was engaged in selling a certain medicinal preparation designated "Floratone," and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Floratone may be used safely to "normalize" the chemistry of the colon by providing a suitable environment that invites the growth of "friendly bacteria" and at the same time tends to retard disease-producing germs;

(b) That the use of Floratone will—

1. Free one from mucous colitis;
2. Make a man "well";
3. Regulate bowel movements;
4. Relieve gaseous stomach trouble;
5. Cause Mucous Colitis to disappear;
6. Bring relief from constipation in as little as 15 minutes;
7. Successfully relieve the most stubborn cases of constipation, mucous colitis and gaseous conditions of the bowels and stomach;
8. Give "complete" relief;
9. Make one "feel like a new man";
10. Save life;
11. Clear up a dark brown skin;
12. Make one's bowels move normally;
13. Banish more serious ailments;
14. Correct a condition which may strike one down at any time with a far more serious ailment;

(c) That Floratone is food for the normal, beneficial bacteria that exist in the colon and assists in providing a satisfactory environment in which they can live and multiply;

(d) That 17¢ a day (the cost of a full month's treatment of Floratone) is the cost of better health and freedom from constipation and mucous colitis;

(e) That 1½ jars (or any other quantity) of Floratone will make one feel "in perfect health";

(f) That Floratone seems to "reach the trouble" and is "instantaneous." (Apr. 21, 1937.)

01748. Vendor-Advertiser—Medicinal Preparations.—A. B. Mueller and A. L. Trader, co-partners, doing business under the firm name of N. R. S. Co., Kansas City, Mo., vendor-advertiser, was engaged in selling Vigorsol and Conditioner, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Vigorsol is a prostate remedy;
- (b) That home treatment with Vigorsol will give quick and positive results;
- (c) That Vigorsol will have curative value for prostate or kindred ailments;
- (d) That prostate or kindred ailments are trivial;
- (e) That by using Vigorsol one will eliminate his trouble;
- (f) That an attempt at self-medication of Vigorsol is harmless;
- (g) That the use of Vigorsol will prevent one from losing manhood or womanhood, as the case may be; and that respondents' product will restore sexual vigor, or the power of youth;
- (h) That Vigorsol will cure prostate trouble; gonorrhoea, gleet, leucorrhoea or whites, female debility, etc.;
- (i) That Vigorsol prevents venereal diseases;
- (j) That Vigorsol is a quick or positive remedy for inflammation of the bladder, and that it gives relief almost immediately;
- (k) That respondents' product "Conditioner" is harmless or that it will—
 1. Eliminate toxins;
 2. Purify the blood;
 3. Maintain a free intestinal tract. (Apr. 21, 1937.)

01749. Vendor-Advertiser—Medicinal Preparation.—Johnston, Holloway & Co., a corporation, Philadelphia, Pa., vendor-advertiser, was engaged in selling a certain preparation known as Alergene, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That Alergene is a competent treatment for allergy, unless limited to indicate allergic symptoms due to Vitamin F deficiency, or a lack of unsaturated fatty acids;
- (b) That allergic conditions in an individual are usually due to Vitamin F deficiency or a lack of unsaturated acid fats as an essential food element;
- (c) That science has proved a close relationship between the cause of skin diseases and "allergy", unless limited to indicate allergy due to an insufficiency of unsaturated acid fats;
- (d) That allergy is over-sensitiveness to certain foods, drugs, pollens, hair, feathers, and is commonly associated with an unbalanced diet "often" deficient in unsaturated acid fats;
- (e) That Alergene will correct the allergic symptoms in persons sensitive to certain foods, such as eggs, beef, fish or berries, unless limited to indicate allergic symptoms due to Vitamin F deficiency or a lack of unsaturated acid fats;
- (f) That Alergene may be indicated as a supplemental food for auxiliary use in the alleviation of Asthma, Eczema and other conditions due to allergy, unless limited to cases of allergy due to unsaturated fatty acid deficiency;

(g) That Alergene is a competent treatment or indicated for Asthma, Hay Fever, Rose Cold, Eczema, Acne, skin diseases or other conditions due to allergy, unless limited to indicate allergic symptoms due to Vitamin F deficiency or a lack of unsaturated fatty acids;

(h) That Alergene is a necessary supplemental food that balances the diet and attacks at the source of the trouble the cause of Eczema, Asthma, Acne, Pimples, Hay Fever and Rose Cold, or any other disease;

(i) That Alergene is the one essential food that attacks Asthma, Hay Fever, Rose Cold, Eczema, Pimples, Acne, Hives, and Psoriasis at their source;

(j) That the primary cause of Acne, Eczema, Asthma, Rose Cold, Hay Fever and most conditions due to allergy is a lack of unsaturated fatty acids;

(k) That a lack of unsaturated acid fats as an essential food element are "frequently" or "often" the underlying cause of Hay Fever, Rose Cold or any other disease, unless limited to allergic persons;

(l) That Alergene is the "richest" emulsion concentrate of linolenic and linolenic acid unsaturates;

(m) That Alergene is the "richest" known palatable source of Vitamin F;

(n) That a group of scientists have recently isolated Vitamin F in a concentrated form by a secret process which is now known as Alergene;

(o) That Alergene is endorsed by physicians, unless and until such be the fact;

(p) That any specific portion or number of the persons in America or elsewhere are allergic unless supported by reliable statistics. (Apr. 21, 1937.)

01750. **Vendor-Advertiser—Cleansing Preparation.**—Roman Cleanser Co., a corporation, Detroit, Mich., vendor-advertiser was engaged in selling a cleansing preparation designated Roman Cleanser and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Roman Cleanser—

1. Disinfects as it cleanses;
2. Sterilizes combs, brushes, etc.;
3. Is a substitute for sunshine;
4. Keeps dainty baby things free from germs;
5. Disinfects or deodorizes unless accompanied by directions to wash and/or thoroughly clean the article to be disinfected or deodorized, before using Roman Cleanser.

(b) That Roman Cleanser kills germs, unless limited to oxidizable germs, or qualified by the statement that it will not kill all germs, including their spores;

(c) That Roman Cleanser 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. (Apr. 16, 1937.)

01751. **Vendor-Advertiser—Vitamin Concentrate.**—Bakon-Yeast, Inc., a corporation, New York, N. Y., vendor-advertiser was engaged in selling a vitamin concentrate designated Bakon-Yeast, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That grain grown yeast is the richest of all sources in the essential vitamin B1, unless limited to natural sources;

(b) That one level teaspoonful of Bakon-Yeast provides enough B vitamins to make good whatever deficiency there may be in each day's intake of food;

(c) That one level teaspoon of Bakon-Yeast gives the user the equivalent in B vitamins of 3 yeast cakes, unless such be the fact demonstrated by competent test;

(d) That Bakon-Yeast is invaluable to those on a diabetic diet;

(e) That yeast is as nearly a complete food as we have;

(f) That skin eruptions are caused by lack of vitamin B or that doctors prescribe yeast to correct skin eruptions, anemia or neuritis;

(g) That each 25¢ shaker of Bakon-Yeast is equal to 50 cakes of yeast, unless such be the fact demonstrated by competent test;

(h) That Bakon-Yeast builds up vitality;

(i) That through the use of Bakon-Yeast one is speeded on the way to recovery;

(j) That many minor ailments such as headaches, indigestion, faulty elimination, skin eruptions, or chronic fatigue are due to the lack of B vitamins and food iron in the diet, or that one teaspoon of Bakon-Yeast can be relied upon to make good this lack;

(k) That a level teaspoonful of Bakon-Yeast in the daily diet will correct skin eruptions;

(l) That Bakon-Yeast is "health building";

(m) That one teaspoonful of Bakon-Yeast supplies the user's "quota" of B vitamin;

(n) That by serving Bakon-Yeast one can build and preserve health, unless limited to conditions due to vitamin deficiency. (Apr. 23, 1937.)

01752. Vendor-Advertiser—Hair Preparation.—Ann J. MacHale, Inc., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a preparation designated MacHale's Hair Color Restorer, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That through use of respondent's product, the hair takes on the natural color;

(b) That respondent's product restores or brings back faded gray hair to its natural color;

(c) That respondent's product has been used by men and women for many years with excellent results in bringing back color to faded gray hair;

(d) That respondent's product is not a dye.

The respondent further agreed not to designate its product as "Hair Color Restorer". (Apr. 23, 1937.)

01753. Vendor-Advertisers—Medicinal Preparation.—Ellaline W. Childers and Beatrix R. Hoyt, partners trading as May Medicine Co., formerly trading as W. H. May Laboratory, New York, N. Y., vendor-advertisers, were engaged in selling Dr. May's Formula, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the users of Dr. May's formula have lost the fear of recurring nervous disorders, spasms, convulsions, etc.;

(b) That there are persons who are on the road to recovery through the healing qualities of respondent's treatment or that respondent's treatment is healing;

(c) That respondent's tablets will take care of the bowels, kidneys, liver and stomach, or regulate the action of these various organs or that these tablets have therapeutic value other than laxative;

(d) That Dr. May's Formula will conquer maladies or arrest the progress of disease;

(e) That letters from grateful patients are received daily or more often than respondent's records indicate;

(f) That respondent's medicine is prepared in their own laboratories by efficient chemists or that respondents maintain a laboratory;

(g) That Dr. May's Formula is an effective treatment or competent remedy for St. Vitus Dance, Epilepsy or nervous disorders, unless limited to palliative relief from the symptoms of those conditions. (Apr. 26, 1937.)

01754. Vendor-Advertiser—Medicinal Preparation.—Little & Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling Garlic & Parsley Tablets, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the oil of garlic causes other than a temporary lowering of blood pressure;

(b) That Oleum Allii, the active oil of garlic, when taken by ingestion destroys many different disease germs;

(c) That garlic is recognized as a competent treatment and is recommended in many conditions, such as chronic bronchitis and some forms of asthma, prostate and intestinal trouble;

(d) That parsley has therapeutic value in its action on the kidneys and liver;

(e) That Little's Garlic and Parsley Tablets are recommended as a great aid in intestinal disorders, skin troubles and as a cleanser of the blood stream, or that garlic has a benefiting effect on the kidneys, liver, bowels and the whole digestive tract;

(f) That high blood pressure is reduced with garlic by taking Little's Garlic and Parsley Tablets, unless it is stated that this reduction is limited to a reduction only while the medication is active or that the tablets must be taken continuously at prescribed intervals;

(g) That Little's Garlic and Parsley Tablets correct intestinal putrefaction;

(h) That Little's Garlic and Parsley Tablets are an internal antiseptic (Apr. 26, 1937).

01755. Vendor-Advertiser—Medicinal Preparation.—Shuptrine Co., a corporation, Savannah, Ga., vendor-advertiser, was engaged in selling a preparation designated "Tetterine" and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Tetterine is a competent remedy in the treatment of eczema, tetter, itch, or other skin diseases, unless limited to the palliative relief of the symptoms of said diseases;

(b) That the use of Tetterine applied to the raw inflamed parts is the "sure" or "easy" way to get "immediate" relief;

(c) That Tetterine will kill parasites, unless limited to parasites that it contacts;

(d) That by the use of Tetterine the spread of Athlete's Foot can be "stopped";

(e) That Tetterine is a competent remedy in the treatment of itching piles;

(f) That Tetterine:

1. Affords "instant" relief for itching toes;
2. Will "end" the torture of Athlete's Foot, or that it is a "one-night" or "certain" relief for said disease;
3. "Stops" the itch, or does so "immediately", or "stops the itching instantly";
4. "Penetrates" to the parasites that bore into the skin;
5. Causes the skin or flesh to heal or that it produces a growth of skin (May 3, 1937.)

01756. Vendor-Advertiser—Beverage Preparations.—Food Balance Corp., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling two beverage products designated Sil-Tea and Beverly Hall Cereal Beverage, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Sil-Tea—

1. Is highly alkaline,
2. Is rich in organic alkaline salts,
3. Is an antiaacid, or
4. Renders the tissues more alkaline;

(b) That Sil-Tea is an antiseptic;

(c) That Sil-Tea—

1. Is a tonic,
2. Is tonic to every cell of the human body,
3. Is tonic to the nervous system and the intellect;

(d) That Sil-Tea is healing or purifying;

(e) By direct statement or by reasonable inference that Sil-Tea—

1. Renders one more resistant to disease,
2. Counteracts acidosis,
3. Makes the hair more luxuriant,
4. Makes the muscles firmer,
5. Strengthens the walls of the arteries,
6. Strengthens ligaments and linings of organs,
7. Invigorates the generative system,
8. Improves or is required by the teeth, nails, and skin,
9. Assists the healing of wounds, or
10. Acts indirectly on the mind;

(f) By direct statement or by reasonable implication that Sil-Tea is a competent treatment or an effective remedy for—

1. Cancer,
2. Felons along side the nails,
3. Styes, or
4. Susceptibility to infection;

(g) That Beverly Hall Cereal Beverage—

1. Benefits the liver, or is a helpful drink for the liver, or is a natural food tonic for the liver,
2. Insures sleep,
3. Benefits the pancreas, nerves and blood, or
4. Is a competent treatment or an effective remedy for diabetes, or is valuable in sugar metabolism. (May 3, 1937.)

01757. Vendor-Advertiser—Books and Printed Matter.—C. E. Curtiss and The Enterprise Press, Corfu, N. Y., vendor-advertisers, were engaged in selling various books and printed matter, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the Showman's Guide exposes and lays bare the Black Art;

(b) That any of his books is:

1. The Mystic Secret Writing System, or The Art of Cryptography;
2. The Rare Book of Golden Secrets;
3. The Gypsy Oracle Fortune Teller;

(c) That any of his books is a dictionary of dreams, a perfect oracle or provides lucky lottery numbers, or the means for providing charms;

(d) That any of his books is a golden hand book for married and single people and furnishes complete information for their guidance;

(e) That he furnishes anyone with money-making schemes that will enable them or guarantee them any specific amount of profit or earnings;

(f) That any of his books contains schemes or suggestions for earning unreasonable sums of money on ridiculously low investments;

(g) That any of his books contains formulas for making remedies that will cure baldness, make eye brows grow, beautify teeth, or serve as a corn remedy, treatment for tetter, or any disease whatsoever;

(h) That any of the formulas contained in his books will serve as a tonic or is of Indian origin;

(i) That any of the formulas contained in his books is "Nature's Health Restorer" or will serve as a cure for the drink or tobacco habit;

(j) That any of the formulas contained in his books will serve as a guide to beauty and provide health hints resulting in cures for dandruff, falling hair, baldness, wrinkles, excessive perspiration, or will serve as a bust developer or enable one to retain body symmetry;

(k) That any of his books contains infallible remedies for poverty or provides successful money-making enterprises or methods of acquiring wealth;

(l) That any of his books is an authentic translation of the Sixth and Seventh Books of Moses;

(m) That any of his books provides remedies for both man and beast;

(n) That any of his books provides the means for locating hidden treasure or minerals and metals of any kind whatsoever;

(o) That any of his books opens the door to certain riches or provides fortunes for anyone in the amount of \$20,000 more or less;

(p) That any of his books is a key to success in the mail order business;

(q) That the respondent sells mysterious seals contained in the Sixth and Seventh Books of Moses and that said seals are the original or genuine and are on genuine old parchment;

(r) That any of his books reveals heart secrets or makes mind reading easy, or discloses the inner mysteries of Clairvoyance;

(s) That any of his books provides the rapid road to wealth;

(t) That any of his books provides a cure for bashfulness;

(u) That any of his books provides an effective course in hypnotism. (May 3, 1937.)

01758. **Vendor-Advertiser—Cleaning Device.**—Paul Case, an individual, trading as Cape Cod Cleaner, Brockton, Mass., vendor-advertiser, was engaged in selling a device designated Cape Cod Cleaner, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any ordinarily ambitious man or woman can average a dozen sales a day of the Cape Cod Cleaner in almost any territory;

(b) That respondent's personal selling plan will sell 8 out of 10 women contacted.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed:

(c) 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;

(d) 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;

(e) 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

(f) 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. (May 7, 1937.)

01759. **Vendor-Advertiser—Treatment for Piles.**—J. E. Gessner, an individual, doing business under the trade name of J. E. Gessner Co., Chicago, Ill., vendor-advertiser, was engaged in selling a preparation recommended as a treatment for piles, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Gessner's Treatment for Piles:

1. "Ends" pile torture;
2. "Stops" the pain;
3. "Relieves" the pressure;
4. "Reduces" the swelling; or
5. "Strengthens" the tissues;

(b) That Gessner's Treatment for Piles will:

1. Do away with the cause of constipation, recondition the bowels, and cleanse the bowels from poisonous, irritating, disease-breeding wastes;
2. Stop inflammation, itching, flow of blood and watery matter;
3. "Stop" pain almost instantly;

(c) That Gessner's Treatment for Piles:

1. Gives permanent relief; or
2. Oblivates the necessity of an operation. (May 10, 1937.)

01760. Vendor-Advertisers—Medicinal Preparations.—Albert N. Reay and Fraser S. Reay, co-partners, operating under the firm name of The Reay Laboratories, San Francisco, Calif., vendor-advertisers, were engaged in selling alcoholic extracts of the active principle of the leaves of Poison Oak designated Otox and Okatox, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Otox or Okatox is a competent treatment or an effective remedy for poison ivy poisoning;

(b) That Otox is "safe";

(c) That Otox is used by the second largest public utility company in the world;

(d) That Otox or Okatox prevents or builds up immunization against poison ivy poisoning;

(e) That either of these products is a "specific";

(f) That Otox is the only efficient product available to be relied upon in its field of activity. (May 10, 1937.)

01761. Vendor-Advertiser—Medicinal Preparation.—The Knox Co., a corporation, Los Angeles, California, vendor-advertiser, was engaged in selling a preparation designated Buroids, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That one will receive any substantial or noticeable benefit from the product due to any one ingredient contained therein unless the product contains a quantity of the ingredient sufficient to obtain the benefit claimed;

(b) That the product will afford any certain benefit within any definite period of time;

(c) That the product will cause one to "sleep soundly", or that it will "quiet" the nerves;

(d) Inferentially or otherwise that the product is efficacious in all cases for any condition;

(e) That the product will stimulate or build the "system";

(f) That the product is a competent treatment or an effective remedy for Anemia or constipation. (May 11, 1937.)

01762. Vendor-Advertiser—Eye Preparation.—The Murine Co., Inc., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated Murine, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That by the use of Murine it is possible to engage in any outdoor activity without eye discomfort;
- (b) That Murine will keep the eyes strong;
- (c) By direct statement or implication that Murine differs from all other eye cleansers in that it alone contains no morphine or habit-forming drugs;
- (d) That Murine will tone up the eyes, or prevent strained or dragged-out dullness of the eyes;
- (e) That Murine will safely protect one from blurred or reddened eyes;
- (f) That cleansing the eyes is equally as important as cleansing the teeth;
- (g) That Murine has been recommended by authorities for over forty years.

The respondent further agreed to cease and desist from using as an endorsement or recommendation of its product any statement of any person connected with its organization, unless the connection of such person with The Murine Co. is clearly disclosed in direct connection with such statement. (May 11, 1937.)

The respondent further agreed to cease and desist from using as an endorsement or recommendation of its product any statement of any person connected with its organization, unless the connection of such person with the Murine Co. is clearly disclosed in direct connection with such statement. (May 11, 1937.)

01763. Vendor-Advertiser—Shampoo.—The R. L. Watkins Co., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a shampoo designed Mulsified Coconut Oil Shampoo, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That a clean scalp prevents infection;
- (b) That mulsified Coconut Oil Shampoo cannot possibly injure the most tender scalp;
- (c) That scientists say that the safe and best thing to use for healthy beautiful hair is Mulsified Coconut Oil Shampoo;
- (d) That this product is a remarkable discovery, or is the scientists' discovery or is radically and totally different from anything ever known;
- (e) That the use of Mulsified Coconut Oil Shampoo gives the hair the vital color and texture of health;
- (f) That every one in Hollywood uses Mulsified Coconut Oil Shampoo;
- (g) That ordinary shampoos and lotions contain free alkali or have damaged millions of children's scalps, or foster the growth of dandruff;
- (h) That mulsified Coconut Oil Shampoo will flush away all traces of dandruff unless limited to dandruff scales;
- (i) That Mulsified Coconut Oil Shampoo guards or restores the natural oils of the hair or scalp;
- (j) That Mulsified Coconut Oil Shampoo restores the youthful beauty to hair;
- (k) That the use of Mulsified Coconut Oil Shampoo is scientific care of the hair;
- (l) That the use of Mulsified Coconut Oil Shampoo will make the hair thick, or stimulate the hair roots;
- (m) That the use of Mulsified Coconut Oil Shampoo will restore the shimmer or even color to streaked hair or that the user will have hair as handsome

or silky as the most glamorous person in Hollywood or the movie actors. (May 14, 1937.)

01764. **Vendor-Advertiser—Medicinal Preparation.**—E. A. Rush, an individual, doing business under the trade name of Beeman's Laboratory, Atlanta, Ga., vendor-advertiser, was engaged in selling a certain preparation designated Beeman's Quick Relief (B. Q. R.), and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Beeman's Quick Relief (B. Q. R.)—

1. Will "stop" a cold;
2. Relieves a cold quickly;
3. Will "cure" a cold;
4. Will "rid" one of a cold or make one suffering from a cold, feel good in a short time;
5. "Kills the cold right out";
6. Relieves a cold overnight;
7. Is the quickest relief one can find for a cold;
8. Gives quick relief to suffering from asthma and hay fever;
9. Prevents influenza;
10. Makes every sign of influenza disappear;
11. Is "guaranteed to satisfy"; or
12. Is recommended by Doctors;

(b) That Beeman's Quick Relief (B. Q. R.) is a competent remedy in the treatment of colds, coughs due to colds, asthma, hay fever, or aching joints. (May 14, 1937.)

01765. **Vendor-Advertiser—Medicinal Preparations.**—The Hydrosal Co., a corporation, Cincinnati, Ohio, vendor-advertiser, was engaged in selling two medicinal preparations designated Hydrosal Liquid and Hydrosal Ointment, and agreed 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 implication, that Hydrosal is a treatment for the cause of any condition causing itching or burning, or other than a relief from the irritation produced by such conditions;

(b) That Hydrosal will refine the skin, or improve the skin;

(c) That Hydrosal is unlike any old fashioned salve in that it helps nature the ideal way to soothe and relieve;

(d) That Hydrosal will stop summer time itches;

(e) That Hydrosal will stop the burning pain of all bites and stings like magic;

(f) That Hydrosal will stop "maddening" itching which defies old-fashioned lotions and salves;

(g) That Hydrosal has been especially recommended and tested by doctors for Eczema;

(h) That Hydrosal penetrates through the skin to aid nature in swiftly healing sick, irritated tissues. (May 20, 1937.)

01766. **Vendor-Advertiser—Poultry Feeds.**—Fisher Flouring Mills Co., a corporation, Seattle, Wash., vendor-advertiser, was engaged in sell-

ing certain products designated Fisher's Poultry Feeds and Mashcs, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That any of Fisher's Poultry Feeds will increase the egg yield unless specifically limited to its use in feeding to hens not receiving an efficient egg-producing feed;

(b) That the use of these feeds will result in—

1. More eggs,
2. Larger eggs,
3. Greater vitality,
4. Quicker molting.
5. Less mortality, or
6. Longer laying life;

unless specifically limited to cases where the feed in use is deficient in elements required to produce these results;

(c) That the use of Fisher's Feeds will protect the health of chickens;

(d) That the use of Fisher's Feeds—

1. Will "insure" profits for the turkey raiser, or maximum egg production with low mortality, or
2. Will provide "laying" insurance. (May 29, 1937).

01767. Vendor-Advertiser—Shaving Sets.—Segal Safety Razor Corp., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a shaving set consisting of shaving brush, Segal unitary razor, razor blades and an imitation leather case, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the brush is germ-proof;

(b) That the razor is rust or tarnish proof. (May 24, 1937.)

01768. Vendor-Advertiser—Medicinal Preparation.—M. L. Durham, an individual, Carthage, Mo., vendor-advertiser was engaged in selling a medicinal preparation designated Silver Seal Treatments, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the Silver Seal Treatment is effective or time tested;

(b) That the Silver Seal Treatment is effective when other remedies have failed;

(c) That the Silver Seal Treatment is a "period regulator";

(d) That obstinate or stubborn cases of long standing respond promptly to the Silver Seal Treatment;

(e) That Silver Seal Treatments restore the normal physiological menstrual flow;

(f) That through the use of the Silver Seal Treatment delayed menstruation may be ended unless limited to delayed menstruation resulting from emotional or climatic conditions; or that fear will be banished or uncertainty eliminated;

(g) That Silver Seal Treatments are an entirely satisfactory treatment;

(h) That Silver Seal Treatments stimulate uterine health or aid in toning up the system;

(i) That Silver Seal Treatments relieve pains associated with the menstrual period;

(j) That Silver Seal Treatments are positive acting or cause quick response which ends unnatural irregularities, relieves congestion, induces normal flow or gives healthful strength to female organs. (May 24, 1937.)

01769. Vendor-Advertiser—Washing Fluid.—The Gardiner Manufacturing Co., Inc., a corporation, Buffalo, N. Y., vendor-advertiser was engaged in selling a washing fluid designated "101", and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That 101 "sterilizes" or that articles washed with 101 solution are "sterilized";

(b) That 101 "kills germs";

(c) That 101 will "prevent" or "cure" mange in dogs;

(d) That 101 should be used for all "healing";

(e) That Ivy and oak poisoning "disappear with 101";

(f) That 101 is a competent remedy in the treatment of boils and pimples;

(g) That washing the clothespress with a solution of 101 will both kill grown moths and destroy moth eggs;

(h) That 101 is "not a poison" unless qualified by the expression "when used as directed" or some similar expression;

(i) That 101 deodorizes and/or disinfects, unless directions are given for first thoroughly cleansing the surface to be deodorized or disinfected;

(j) That 101 will "sterilize" and/or "heal" eczema;

(k) That 101 is a competent remedy in the treatment of colds or grippe;

(l) That 101 will "sterilize" and/or "heal" open sores. (May 24, 1937.)

01770. Vendor-Advertiser—Mineral Water Crystals.—Mrs. M. L. Gilleland, an individual, operating under the trade names of Imperial Products Co. and Imperial Laboratories, Waco, Tex., vendor-advertiser, was engaged in selling a certain product designated Imperial Mineral Water Crystals, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Imperial Mineral Water Crystals are obtained from the deepest and strongest thermal wells in the world.

The respondent further agreed, in soliciting salespersons or dealers in aid of the sales of such merchandise—

(b) 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;

The respondent further agreed to discontinue the use of the word "Laboratories" in connection with her trade name; or to otherwise

represent, directly or by reasonable inference, that she owns, operates or controls a laboratory. (May 24, 1937.)

01771. Vendor-Advertiser—Correspondence Course.—Arthur Abrahams Navello, an individual, doing business under the trade name of Navello System, Chicago, Ill., vendor-advertiser, was engaged in selling a correspondence course in singing and crooning designated The Navello Singing Method, and agreed 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 booklet of instructions will enable one to learn to sing or croon;

(b) That respondent's course will enable one to have a trained singing voice or become an accomplished singer or crooner in ten easy home lessons;

(c) That respondent's course will enable one to have a trained singing voice, or become an accomplished singer or crooner "without having a musical education";

(d) That respondent's course enables one to acquire the secrets of easy, natural singing without learning musical terms or engaging in tedious study;

(e) That respondent's course provides all the instructions and exercises necessary to teach one how to sing without entailing the great expense and years of vocal study ordinarily required to accomplish satisfactory results as a singer or crooner;

(f) That respondent's course accomplishes the same results in acquiring the art of singing and crooning as are attained by the usual methods of instruction by eliminating all technical and complicated musical terms;

(g) That respondent's course provides one with a deeper understanding and appreciation of the art of singing;

(h) That one does not need to be a competent musician to be a singer;

(i) That 75 per cent or any other percentage of the popular singers and crooners are not musicians nor do they read music;

(j) That twenty to thirty minutes a day of sound concentrated vocalizing with the Navello Method will positively teach one how to sing popular music and crooning. (May 24, 1937.)

01772. Vendor-Advertiser—Snoring Device.—Winslow W. Chase, an individual, doing business under the trade name of The Taxley Co., Washington, D. C., vendor-advertiser, was engaged in selling a device designated "Don't Snore", and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That the device designated "Don't-Snore" is invaluable in cases of

1. Asthma;
2. Catarrh;
3. Hay Fever;
4. Common Colds;
5. Insomnia;

and will omit all mention of these conditions from his advertising matter

(b) That benefits may be derived in connection with singing, public speaking or athletic activities by the use of the said device by:

1. Singers;
2. Public Speakers;
3. Athletes;

The respondent further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement, and to cease and desist from representing directly or otherwise:

(c) That the use of said device "prevents" or "overcomes" snoring, mouth-breathing or attendant ills, unless qualified by wording of import similar to the following: ". . . in the absence of pathological or anatomical conditions requiring the services of a physician, will in many cases help to——"

and will omit mention of "attendant ills";

(d) That the use of said device "assures" normal breathing (nose breathing), unless properly qualified similarly to qualifications mentioned under (c);

(e) That the device is gold, except qualified as "plated" or "washed." (May 27, 1937.)

01773. Vendor-Advertiser—Medicinal Preparation.—Royal Mfg. Co. of Duquesne, a corporation, trading as Double "D" Laboratories, Chicago, Ill., vendor-advertiser, was engaged in selling a preparation designated Vita-Min-Oil, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That vitamins in respondent's product correct the defects of mineral oil;

(b) That it is an established fact that mineral oil when taken internally diverts the food supply in the intestinal tract, or the adjacent tissues and cells or fat soluble vitamins by a process of absorption;

(c) That respondent's Vita-Min-Oil is a rich source of or supplies the system with vitamins A, D and E;

(d) That Vita-Min-Oil treats, corrects, or curbs the symptoms or cause of constipation;

(e) That the continuous use of mineral oil depletes the system of its vitamins A, D and E, or tends to aggravate the causes of constipation;

(f) That Vita-Min-Oil is science's newest discovery in the vitamin field;

(g) That Vita-Min-Oil is a bowel tonic, or builds up the bowels, strengthens the intestines, increases peristaltic action or assures regularity, or that its effects are lasting;

(h) That Vita-Min-Oil corrects the constipation habit or overcomes constipation;

(i) That Vita-Min-Oil tones the system;

(j) That the use of Vita Min-Oil gives generally needed medication or elements necessary to vigorous health, or resistance to constipation;

(k) That Vita-Min-Oil builds strength, is health-giving or body building (May 27, 1937.)

01774. Vendor-Advertiser—Medicinal Preparations.—Dr. Van Vleck Co., a corporation, Jackson, Mich., vendor-advertiser, was engaged in selling certain products designated Muco Cones, Absorptive Plasma, and Herb Tablets, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

- (a) That the tablets are "herb" tablets;
- (b) That the tablets will correct conditions that are responsible for lack of digestive secretion;
- (c) That the tablets are a competent treatment or an effective remedy for colds;
- (d) That the tablets will prevent colds;
- (e) That the tablets will "rid" one of a cold;
- (f) That the tablets are a competent treatment or an effective remedy for rheumatism;
- (g) That the tablets will "rid" one of rheumatism;
- (h) That any smarting which may result from an application of the Absorptive Plasma conclusively shows a presence of inflammation or ulceration;
- (i) That the Muco Cones or Absorptive Plasma or a combination treatment thereof will heal unless limited to the aid of nature in the process of healing;
- (j) That the Absorptive Plasma will "rid" one of pile suffering or "rid" one of or "banish" pain;
- (k) That application of the Absorptive Plasma creates a tissue building activity or that it creates circulation in the affected parts;
- (l) That the Muco Cones provide tissue nourishment or that they are "a highly beneficial treatment for the famished mucous membranes";
- (m) That any of the products or a combination thereof will remove or correct the cause of piles;
- (n) That the tablets will have a beneficial effect on the whole "system";
- (o) That any of the products or a combination thereof will enable an invalid to become "a healthful, vigorous, happy, light-hearted, rosy cheeked, bright eyed man or woman";
- (p) That respondent's treatment affords a "sure" relief of piles;
- (q) That respondent's treatment will reach the "root" or cause of piles;
- (r) That piles or any rectal "disease" never heals itself or is continually growing worse;
- (s) That respondent's treatment will completely relieve or free one of pile "trouble", or that by the use thereof one will have no return of suffering;
- (t) Inferentially or otherwise that one will receive any benefit from any product due to any ingredient contained therein unless the product contains a quantity of the ingredient sufficient to obtain the benefit claimed or to render it a competent treatment or an effective remedy for the condition represented;
- (u) That by use of the treatment one will be "fully relieved";
- (v) That the respondent manufactures any of its products unless and until such is a fact;
- (w) Inferentially or otherwise that respondent's treatment acts in the place of operations or that its use will prevent the necessity for or ward off an operation. (May 27, 1937.)

01775. Vendor-Advertiser—Medicinal Preparation.—Thornton & Minor Clinic, a corporation, Kansas City, Mo., vendor-advertiser, was engaged in selling a preparation recommended for the treatment of piles designated Private Formula Rectal Ointment, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That, by the use of the Thornton & Minor Private Formula Pile Ointment, the sufferer will:

1. Get quick relief from the disease piles instead of relief from the pain, distress and itching of that ailment;
2. Be "free" from pile pain;
3. "End" pile suffering; or
4. "Escape" from the tortures of piles;

(b) That the use of Thornton & Minor Private Formula Pile Ointment will:

1. "Stop" pile pain;
2. "End" pile torture;
3. Relieve agony of piles "at once";
4. "Stop" hemorrhoid pain; or
5. Relieve piles "at once". (May 21, 1937.)

DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

FEDERAL TRADE COMMISSION *v.* STANDARD
EDUCATION SOC. ET AL.¹

No. 10

(Circuit Court of Appeals, Second Circuit. Dec. 14, 1936)

ENFORCEMENT APPLICATIONS—CORRECTNESS OF ORDER—DETERMINATION OF ANTECEDENT TO COMPLIANCE ISSUE.

On petition for enforcement of order to cease and desist from certain unfair methods of competition, Circuit Court of Appeals may review correctness of order before considering issue of compliance (15 U. S. C. A. Sec. 45).

ENFORCEMENT APPLICATIONS—ANSWER'S PRAYER TO VACATE—AS CROSS-PETITION TO REVIEW—PLEADING.

Where Federal Trade Commission filed petition for enforcement of order to cease and desist from certain unfair methods of competition, respondent was not required to file petition for review, and prayer of answer that order be vacated was proper and could not be treated as cross-petition to review and commission's answer thereto would be stricken (15 U. S. C. A. Sec. 45).

PARTIES—CORPORATE OFFICERS OR EMPLOYEES—PRESIDENT AND SALES MANAGER.

President who acted as general manager and personally conducted correspondence and sales manager familiar with advertisements and with general sales policy of corporation could be held personally for any unfair advertisements or sales methods pursued by corporation and which were traceable to such officers (15 U. S. C. A. Sec. 45).

PARTIES—CORPORATE OFFICERS OR EMPLOYEES—AUDITOR.

Auditor who had charge of corporation's finances but had little or nothing to do directly with trade practices could not be held personally for unfair trade practices of corporation.

PARTIES—CORPORATE OFFICERS OR EMPLOYEES—CRITERIA.

To hold one personally for unfair trade practices of corporation, it is not enough that he be a director or officer of corporation, but he must be shown to have had such connection with wrong as would have made him an accomplice were it a crime, or a joint tort-feasor, were the corporation an individual.

¹ Reported in 88 F. (2d) 692. The case before the Commission is reported in 18 F. T. C. 1.

ENFORCEMENT APPLICATIONS—JURISDICTIONAL PREREQUISITES—INTERSTATE COMMERCE AND COMPETITION—ANSWER AS PRECLUDING ISSUE OF.

In proceeding by Federal Trade Commission to enforce cease and desist order, answer which did not deny that respondent corporations were engaged in interstate commerce, or that there were others with whom corporations competed precluded respondents from claiming that forbidden practices were not shown to have affected interstate competition (15 U. S. C. A. Sec. 45).

UNFAIR TRADE PRACTICES—LONG STANDING OF—AS PRECLUDING COMMISSION.

Federal Trade Commission need not sanction unfair trade practices merely because they are of long standing (15 U. S. C. A. Sec. 45).

UNFAIR TRADE PRACTICES—ITEM OR COMPONENT AS GIVEN AWAY, WHEN SOLD REGULARLY AS PART OF WHOLE OFFERING.

Practice of publisher of encyclopedia in representing that ten books were given away and that only ten years' extension service was sold could not be forbidden by Federal Trade Commission as unfair trade practice (15 U. S. C. A. Sec. 45).

UNFAIR TRADE PRACTICES—PRODUCT OR OFFERING FALSELY AS GIVEN AWAY TO SELECTED CLASS INCLUDING PROSPECT.

Federal Trade Commission could forbid publisher from misrepresenting that [693] encyclopedic work was given away to selected persons among whom prospective buyer was one as an unfair trade practice (15 U. S. C. A. Sec. 45).

UNFAIR TRADE PRACTICES—DYNAMIC SCOPE OF SECTION 5.

Powers of Federal Trade Commission are not confined to such practices as would be unlawful before it acted, but it has duty to discover and make explicit those unexpressed standards of fair dealing which conscience of the community may progressively develop.

UNFAIR TRADE PRACTICES—REVISED OFFERING AS NEW.

Publisher of a revise of an old publication with new supplements to bring it up to date could be directed to cease and desist from representing the work as new (15 U. S. C. A. Sec. 45).

UNFAIR TRADE PRACTICES—OFFERING SOLD UNDER TWO NAMES.

Clause of cease and desist order forbidding publisher of encyclopedic work from selling work under two names *held* reasonable.

UNFAIR TRADE PRACTICES—PRICE FALSELY AS LESS THAN USUAL.

Cease and desist order forbidding publisher of encyclopedic work from falsely representing that price at which work was sold was less than usual price *held* proper (15 U. S. C. A. Sec. 45).

UNFAIR TRADE PRACTICES—SPONSORS OR IMPORTANT CONTRIBUTORS TO OFFERING.

Publisher of encyclopedic work *held* properly prohibited from representing as contributors or editors those who had not contributed to, or edited, the publication.

UNFAIR TRADE PRACTICES SPONSORS, ETC., TO REVISED OFFERING WHERE SUCH IN FACT TO THE ORIGINAL.

Practice of publisher of encyclopedic work in announcing as contributors to the revised work those who had been contributors to the original *held* not unfair (15 U. S. C. A. Sec. 45).

UNFAIR TRADE PRACTICES—USING TESTIMONIALS GIVEN BUT GARBLED.

Provision of cease and desist order prohibiting publisher of encyclopedic work from using testimonials which, though really given, had been garbled so as to be substantially untrue *held* proper (15 U. S. C. A. Sec. 45).

UNFAIR TRADE PRACTICES—PRICE FALSELY AS REDUCED.

Provision of cease and desist order forbidding publisher from representing that course of instruction was offered at reduced price where no reduced price was given *held* proper (15 U. S. C. A. Sec. 45).

UNFAIR TRADE PRACTICES—CORPORATE AGENTS' ACTS—OFFICERS' RESPONSIBILITY.

That practices condemned by cease and desist order of Federal Trade Commission were traced only to agents of corporations did not relieve corporations of responsibility where agents did not act beyond scope of their authority, but executive officers of corporations were responsible only for that which could be traced to them personally (15 U. S. C. A. Sec. 45).

ENFORCEMENT APPLICATIONS—ABANDONMENT PRECEDING—AS DEFENSE.

Abandonment of forbidden practices before filing of complaint for enforcement of cease and desist order of Federal Trade Commission *held* no defense, especially where order was opposed on merits (15 U. S. C. A. Sec. 45).

(The syllabus, with substituted captions, is taken from 86 F. (2d) 692)

On proceeding by Commission against Standard Education Society and others for order to enforce order of Commission to cease and desist from certain unfair methods of competition, order reversed entirely as to respondent Greener, and modified and affirmed in part, and reversed in part, and proceeding remitted to Commission, with directions.

Mr. W. T. Kelley, Mr. Martin A. Morrison, and Mr. James W. Nichol, all of Washington, D. C., for the Commission.

Mr. Henry Ward Beer, of New York City, for respondents.

Before **L. HAND, SWAN, and CHASE**, Circuit Judges.

L. HAND, Circuit Judge:

This case comes up upon a petition under § 45 of Title 15, U. S. Code, for an "enforcement order" upon an order to "cease and desist" of the Federal Trade Commission against the five respondents, two companies and three individuals. The Standard Education Society [694] is a company which published and sold an encyclopoedia called "Standard Reference Work"; the Standard Encyclopoedia Corporation is a subsidiary, or dummy, of that company. Stanford is the president and a director, and acted as general manager, of both companies, and is the owner of 250½ out of the Education Society's 536 shares of stock; Ward is the secretary, a director of both, has charge of sales and owns the same number of shares as Stanford; Greener owns the remaining thirty-five shares, and is in charge of financial

matters as comptroller and auditor. On February 25, 1929, the Commission filed a complaint against the Education Society and Stanford, alleging certain unfair trade practices; they answered, and a supplemental complaint was filed on December fourth, 1929, in the same terms, but joining the Encyclopedia Company and Ward and Greener, all of whom answered. Meanwhile the taking of testimony had begun on May 8, 1929, and was continued until June 20, 1930; and on the twenty-fourth of December, 1931, the Commission filed its findings of fact and the order to cease and desist now before us. In the findings it appears that the Education Society was incorporated in 1909 under another name and published and sold a work called "Aiton's Encyclopoedia", whose title was changed in 1912 to "Standard Reference Work". This was in ten volumes, intended to be kept up to date by a series of loose leaf supplements—called an "extension service"—which were to be sent to subscribers quarterly for ten years, and embodied, or assumed to embody, the latest information. Stanford, Ward and Greener organized the Encyclopoedia Company in August, 1929, and changed the name of the old work to the "New Standard Encyclopoedia"; but the Education Society is still disposing of some remaining sets of "The Standard Reference Work", while the Encyclopoedia Company is selling the encyclopoedia. The ordinary price of each is \$69.50, and includes the "extension service"; when works of fiction are thrown in, as they sometimes are, the price is \$89. It was the uniform practice upon taking subscriptions, for agents to tell buyers that the set of books was given away, and that only the service was paid for; it was the common practice to say that the regular price of the books and service was considerably higher than the offers, at times \$150. or \$200.; it was not infrequently said that the work could take the place of such magazines as the Literary Digest and the Review of Reviews. The originals of some of the testimonials used in selling the books were redrafted, some had never been authorized, and some had originally been issued to cover "Aiton's Encyclopoedia"; the names of some persons were advertised as contributors who had never contributed. The respondents also offered a course of instruction which they called "Special Introductory Enrollment", and for which they charged at first \$98, and finally \$135. The agents represented to the purchaser that these were "special introductory prices," the usual price of the course being \$250; and that the special price was given to ten students only; all of which was false.

The order to "cease and desist" included all the respondents, and forbade kinds of trade practices, as follows. The first clause forbade representing the ten books as given free and only the service as paid for; the second forbade representing that some of the sets were de-

livered to selected persons; the third was in substance the same as the first; the fourth forbade representing the work as "a recently completed, new, and up-to-date encyclopaedia"; the fifth, offering the same work for sale under two names; the sixth, representing its usual price as higher than that at which it was offered; the seventh, representing any person as a contributor who was not a contributor; the eighth, representing any person as giving a testimonial who had not done so; the ninth, publishing other testimonials than those actually given; the tenth, representing the course of instruction as a "Special Introductory Enrollment" at a special reduced price. Nothing was done to enforce this order until January 20, 1936, when the petition at bar was filed; the respondents answered on the first of October, repeating the allegations of their original answer, and praying that the application be dismissed, and that "the order to cease and desist herein be vacated and set aside". Treating this part of the answer as a cross petition of the respondents to vacate the order to cease and desist, the Commission styled its brief an answer. The preliminary question of procedure so raised we will dispose of at once. We held in *Fed. Trade Com. v. Balme*, 23 F. (2d) 615, that upon a petition for enforcement under § 45 of title 15, we would review the cor [695] rectness of the order before considering the issue of compliance; so that once a petition to enforce the order is filed, it is not necessary for the respondent to file a petition for review. The prayer of the respondents' answer here that the order to cease and desist be vacated, was therefore entirely proper in the answer because the Commission had already invoked the preliminary inquiry; and the answer should not have been regarded as a cross petition to review the order. The Commission need not have filed any answer to it, and so far as its brief is entitled an answer, it will be stricken.

The first question is as to the propriety of any order whatever against the individual respondents. Stanford and Ward were jointly in complete control of both companies; as we have said, Stanford was not only president, but acted as general manager, and he was shown to have personally conducted the correspondence. Ward was sales manager, and necessarily familiar with what advertisements went out, and with the general sales policy of the company. This was enough to hold each personally for any "unfair" advertisements or sales methods, with certain exceptions to be noted later. The same is not true of Greener who, being merely the auditor and in charge of the companies' finances, would have little or nothing to do directly with trade practices. The doctrine applicable to patent infringements controls; it is not enough that an individual be a director or an officer of the infringing corporation; he must be shown to have had such connection with the wrong as would have made

him an accomplice were it a crime, or a joint tortfeasor, were the corporation an individual. However, when that is done, his office will not protect him. *National Cash Register Co. v. Leland*, 94 Fed. 502, 507-512 (C. C. A. 1); *Hitchcock v. American Plate Glass Co.*, 259 Fed. 948, 952-954 (C. C. A. 3); *Denominational E. Co. v. Duplex E. Co.*, 80 F. (2d) 186, 194 (C. C. A. 4). If the opinion in *Dangler v. Imperial Machine Co.*, 11 F. (2d) 945 (C. C. A. 7), means more than this, we cannot go along. Our dictum in *New Departure Mfg. Co. v. Rockwell Drake Co.*, 287 Fed. 328, 334, was not meant to declare that so long as an official acted within the scope of his authority he was immune; the contrary had just been decided in *Guarantee Vet. Co. v. Federal Trade Commission*, 285 Fed. 853, 860 (C. C. A. 2).

The respondents insist that the forbidden practices were not shown to have affected interstate competition. It would take little evidence to satisfy us that a company publishing, and distributing generally throughout the country, an encyclopaedia or reference work, was in competition with other similar works; perhaps we might take judicial notice of that without any evidence at all. But Stanford in substance admitted that other works competed with his, and the pleadings had foreclosed the issue anyway. The first article of the complaint alleged that the respondents were "in competition with other corporations, individuals, firms, or partnerships likewise engaged in the sale and distribution in interstate commerce of books, encyclopaedias and reference works, and so-called extension service in connection therewith." The answer of the Education Society did indeed deny that it used unfair methods of competition in interstate commerce, and that any of the methods alleged were unfair; but it did not deny that it was engaged in interstate commerce, or that there were others with whom it competed. Stanford's answer was like that of the Education Society, except that he denied "that he individually or as president * * * is in competition with other corporations." We read this as meaning merely that his relations with the Society did not charge him personally with its doings; not that if it was engaged in competition and he was chargeable with its conduct, he was not engaged in the same competition. The answer of the Encyclopaedia Company was like that of the Education Society, and Ward's answer was like Stanford's.

Coming now to the practices forbidden, the first and third clauses of the order were in substance the same; they forbade representing that the ten books were given away and that only the "extension service" was sold. It is true that the Commission is not to sanction unfair trade practices merely because they are of long standing; its duty is to bring trade into harmony with fair dealing. *Federal Trade Com.*

v. *Winsted Hosiery Co.*, 258 U. S. 483, 493, 494. To the discharge of that duty it should not, however, bring a pedantic scrupulosity; too solicitous a censorship is worse than any evils it may correct, and a community which sells for profit must not be ridden on so short a rein that it can only move at a walk. We cannot take seriously the [696] suggestion that a man who is buying a set of books and a ten years' "extension service," will be fatuous enough to be misled by the mere statement that the first are given away, and that he is paying only for the second. Nor can we conceive how he could be damaged were he to suppose that that was true. Such trivial niceties are too impalpable for practical affairs, they are will-o'-the-wisps, which divert attention from substantial evils. *Winston Co. v. Fed. Trade Com.*, 3 F. (2d) 901 (C. C. A. 3). It is possible to read *Consolidated Book Publishers v. Fed. Trade Com.*, 53 F. (2d) 942 (C. C. A. 7), as holding to the contrary, but the case was complicated by a number of graver practices which probably colored the whole. We are not satisfied that stripped of these, the bare practice would have been held bad; if so, we prefer to follow the Third Circuit.

The second clause of the order forbade representing the work as given away to selected persons among whom the prospective buyer was one. This is supported by evidence, and is the misrepresentation of a fact, though perhaps it would not support an action of fraud. The common-law was not over-solicitous to protect an unwary buyer; but there can be no doubt that such statements give a competitive advantage to the less scrupulous seller and that they not only add nothing to the buyer's opportunities to buy wisely, but hold out to him false inducements. The Commission has a wide latitude in such matters; its powers are not confined to such practices as would be unlawful before it acted; they are more than procedural; its duty in part at any rate, is to discover and make explicit those unexpressed standards of fair dealing which the conscience of the community may progressively develop. *Federal Trade Com. v. Raladam Co.*, 283 U. S. 643, 647-649; *Federal Trade Com. v. Keppel*, 291 U. S. 304, 310-312.

The fourth clause forbade calling the work a "recently completed, new, and up-to-date encyclopoedia". The findings scarcely support so broad a prohibition; the fifteenth says that the respondents have represented the "New Standard Encyclopoedia" as "Something new under the sun", when it was only a revise of the old "Standard Reference Work" with new supplements to bring it up to date. Of course nobody in his senses supposes that an encyclopoedia had not used earlier works as sources; but it seems to us that he might assume that it has been rewritten, perhaps throughout. Had the encyclopoedia professed to be no more than a new edition of the "Reference Work", a buyer

might not have been justified in assuming that it was rewritten, but it professed to be a new work, and it was issued under a new name and by a new company. It was not new in the sense people would understand the word, applied to a book which came in that guise; even a substantial revision does not make a new work.

The fifth clause forbade selling the same work under two names. The order does not cover the sale of the "Standard Encyclopaedia" and the "Standard Reference Work" under their several names. Some time ago the Education Society published some sets of the "Reference Work" under the title "National Encyclopaedia" and it was proved that one buyer at least bought both for a public school, not knowing them to be the same. There was no good reason for using two names in selling the same book and the clause is reasonable enough, except for the fact that all copies of the "National Encyclopaedia" have long since been disposed of. The only possible debate is whether such a practice justifies an order when it was so far in the past; a matter which we will deal with later. We will not disturb the clause.

The sixth clause forbade saying that the price, \$69.50 or \$89 was less than "the usual price". Little need be said about this; it was false and intended to deceive buyers upon a matter of fact. True, it is a very common device in selling, but it is to be discountenanced; morally it is not defensible and the Commission might hold it "unfair".

The seventh clause forbade representing as contributors or editors those who had not contributed to, or edited, the publications. Its propriety depends upon the evidence, and while there is not much of it, it definitely does appear that there was no warrant for claiming at least two, Ballou and Pace, as either contributors or editors. There were however a number who had been genuine contributors to "Aiton's Encyclopaedia", but who had done nothing later. How much of this earlier work went into the two later ones cannot be definitely ascertained, but it was the basis of them, and it seems to us not "unfair" to [697] announce as contributors to the derived work those who had been contributors to the original. This clause ought therefore to be modified or clarified by excepting from the prohibition contributors to "Aiton's Encyclopaedia".

The eighth and ninth clauses were related; they concerned testimonials used as advertisements. For the eighth, which forbade the use of such testimonials which had not been given by the person whose name was used, we have been able to find no support in the evidence; and we are referred to none except the conclusions of one, Nixon, which are outweighed by her identification of the handwriting of the person whose name was used. The ninth forbade the use of testimonials, which, though really given, had been garbled so as to be substantially untrue. There was evidence in support of this, and the clause was proper.

The tenth and last clause forbade representing the course of instruction as a "Special Introductory Enrollment," offered at a reduced price. There was no reduced price and so much of the clause was proper; but as to the rest it does not seem to us that the phrase indicated a selected class in the sense that particular qualifications were necessary to join it. The finding in support of this declared as well that agents had represented that the class was to be confined to ten students; and had this been included in the order, it would have been valid *pro tanto*; but it was not included, and it gives no support to what was.

The respondents argue as to this, and as to several other of the practices condemned, that they were traced only to agents of the companies. So far as the companies themselves are concerned this clearly made no difference; the agents did not act beyond the scope of their authority; the nineteenth finding contained no suggestion that they had been instructed not to make them. Some of them were indeed discharged because of what they said, but that does not prove that they had acted beyond the scope of their authority. The remedy is civil; responsibility may be imputed as in other civil cases. On the other hand the agents were not agents of Stanford and Ward, who are therefore responsible only for what can be traced to them personally. This consideration however affects at best only the second, sixth, seventh, ninth and tenth clauses of the order, for certainly both Stanford and Ward must have directed what was covered by the fourth and fifth. As to the second and sixth, the practice of the agents was so universal that it seems to us that the Commission was justified in assuming that they would not have acted as they did without some direction at least from Ward, the sales manager. We are disposed to say also that, considering the centering of control in two men only, it was permissible to associate Stanford with him. Stanford was amply connected with the practices in the seventh and ninth clauses, for they appear to have been his special concern; we cannot see however that Ward was involved. As to the tenth, the evidence of the practice is very meagre and in our judgment scarcely justified a finding that either of these men personally directed the statements about the cost of the course. Therefore Stanford should not be included in the tenth clause, nor Ward in the seventh, ninth, and tenth.

Finally, the respondents allege that as they had already abandoned some of the practices forbidden before the complaint was served, no order should go against them. We have already mentioned this factor in connection with the fifth clause. It has, however, often been decided—certainly when the respondent continued to oppose the order on its merits—that this is no defense to an order to cease and desist. *Sears Roebuck & Co. v. Federal Trade Commission*, 258.

Fed. 307, 310 (C. C. A. 7); *Guaranty Veterinary Co. v. Fed. Trade Com.*, *supra*, 859, 860 (285 Fed. 853); *Fox Film Co. v. Fed. Trade Com.*, 296 Fed. 353, 357 (C. C. A. 2); *Arkansas Wholesale Grocers Assoc. v. Fed. Trade Com.*, 18 F. (2d) 866 (C. C. A. 8); *Fed Trade Com. v. Wallace*, 75 F. (2d) 733, 738 (C. C. A. 8); *Armand Co. v. Fed. Trade Com.*, 78 F. (2d) 707, 708 (C. C. A. 2). In *Winston v. Fed. Trade Com.*, *supra* (3 F. (2d) 901), the respondent had not only abandoned the practices, but stipulated not to resume them.

The order will be modified as follows and otherwise affirmed. It will be reversed in toto as to all the respondents so far as it forbade the practices described in the first, third and eighth clauses; as to the tenth it will be reversed except as to the representations regarding price. The seventh will be modified so as to exclude from its terms contributors to "Aiton's Encyclo[698]poedia." The order will be also reversed so far as it included Stanford in the tenth clause, and Ward in the seventh, ninth and tenth; and it will be altogether reversed as to Greener. The answer of the Commission contained in its brief will be stricken. After the order has been amended in accordance with the foregoing, the proceeding will be remitted to the Commission as special master to hear and report whether the respondents have complied with the provisions which are affirmed. The cause will await in this court the return of that report for further proceedings.

Order to cease and desist modified in accordance with the foregoing; cause referred as aforesaid.

FEDERAL TRADE COMMISSION v. EVANS FUR COMPANY
ET AL.¹

No. 6099

(Circuit Court of Appeals, Seventh Circuit. January 4, 1937)

Application of Commission to enforce its order in *Evans Fur Company et al.*, Docket 2227, 20 F. T. C. 300, directing respondents to desist misrepresentation in connection with sale of fur garments, dismissed pursuant to joint motion of the parties, and without prejudice.

Before EVANS and SPARKS, Circuit Judges.

PER CURIAM.

Now comes the petitioner by its counsel and presents a joint motion of petitioner and respondent that this petition for enforcement of order of Federal Trade Commission be dismissed. On consideration whereof it is ordered and adjudged by this court that this

¹ Reported in 88 F. (2d) 1008.

petition for enforcement of order by Federal Trade Commission be, and the same is hereby dismissed without prejudice to the right of said Federal Trade Commission, at its option and in its discretion, at any time or times hereafter, to file in this Court or other Court, said petition or a like petition, or such petition or papers as said Commission may elect, or to do such other acts as said Commission shall deem to be in the public interest.

FEDERAL TRADE COMMISSION v. ARMY AND NAVY
TRADING COMPANY¹

No. 6793

(United States Court of Appeals for the District of Columbia.
January 4, 1937)

FINDINGS OF COMMISSION—WHERE SUPPORTED BY EVIDENCE.

Findings of Federal Trade Commission in hearing before it, if supported by evidence, are conclusive (Federal Trade Commission Act, sec. 5, as amended, 15 U. S. C. A., sec. 45).

UNFAIR METHODS OF COMPETITION—TRADE NAMES—"ARMY AND NAVY" FOR CONCERN, ONLY TEN PER CENT OF STOCK OF WHICH, SUCH.

Use by company of words "Army and Navy" in its name to impress public with fact that its stock consisted of goods purchased from Army and Navy departments held an unfair method of competition, where percentage of such goods in its stock had declined to about 10 per cent. of total inventory.

UNFAIR METHODS OF COMPETITION—IN GENERAL—MISREPRESENTING AS TO ORIGIN AND NATURE OR QUALITY.

False and misleading representations as to origin of a commodity and as to its nature or quality constitute an unfair method of competition.

[777] UNFAIR METHODS OF COMPETITION—TRADE NAMES—"ARMY AND NAVY" FOR CONCERN, ONLY TEN PER CENT OF STOCK OF WHICH, SUCH—QUALIFYING WORDS AS CURING.

Where the use of words "Army and Navy" in trade-name constituted an unfair method of competition because of diminishing quantity of Army and Navy goods handled by company, elimination of deception required that company cease using such words, and could not be effected by use of qualifying phrases which merely indicated that company was not connected with the Army and Navy, or with the government, and that it did not handle such goods exclusively.

UNFAIR METHODS OF COMPETITION—TRADE NAMES—"ARMY AND NAVY" FOR CONCERN, ONLY TEN PER CENT OF STOCK OF WHICH, SUCH—QUALIFYING WORDS AS CURING—"WE DO NOT DEAL IN," ETC.

Use of qualifying words, "we do not deal in Army and Navy goods," held not proper means of eliminating unfair competition resulting from use of

¹ Reported in 88 F. (2d) 776. The case before the Commission is reported in 21 F. T. C. 541.

words "Army and Navy" in trade-name of company with only small percentage of Army and Navy goods in its stock, since trade-name and qualifying clause would be contradictory.

UNFAIR METHODS OF COMPETITION—TRADE NAMES—"ARMY AND NAVY" FOR CONCERN, ONLY TEN PER CENT OF STOCK OF WHICH, SUCH—USE WORDS FOR MERCHANDISE IN FACT MADE FOR.

Trading company ordered to cease and desist from using words "Army and Navy" in its trade-name *held* entitled to use such words in connection with any particular lot of merchandise which it might handle which had been made for Army or Navy Departments, provided words specified origin of that particular lot.

(The syllabus, with substituted captions, is taken from
88 F. (2d) 776)

On application for enforcement of order of Commission, order affirmed, as modified, and respondent ordered to comply therewith.

Mr. Martin A. Morrison and *Mr. James W. Nichol*, both of Washington, D. C., for petitioner.

Mr. Joseph B. Stein, of Washington, D. C., for respondent.

Before MARTIN, C. J., and ROBB, VAN ORSDEL, GRONER, and STEPHENS, JJ.

STEPHENS, Judge:

This is a proceeding brought under Section 5 of the Federal Trade Commission Act, 38 Stat. 719, by the petitioner, the Federal Trade Commission, hereafter called the Commission, to enforce an order issued by it on November 26, 1935, requiring the respondent, the Army and Navy Trading Company, hereafter called the Trading Company, to cease and desist from using the words "Army and Navy," or either of them, in connection with its corporate name.

Following the usual procedure under the Act, the Commission issued a complaint against the Trading Company charging that the words "Army and Navy" in its name were misleading, and that their use was to the injury of competitors and the public. The Trading Company answered denying this. A hearing was had before an examiner of the Commission, and then before the Commission itself. Thereupon the Commission made findings of fact which, so far as here pertinent, were in substance and effect that: The Trading Company, a Maryland corporation, has, since its organization in 1922, maintained its principal place of business in Washington, D. C., and carried on business there. It was organized chiefly for the purpose of buying from the Army and Navy Departments of the United States Government certain surplus, reject and refuse goods and reselling the same. From 1922 until about 1927, between 85% and 90% of the merchandise offered for sale by

the Trading Company was procured from the Army and Navy Departments, either directly or indirectly, there being during those years opportunity to secure large lots of various kinds of merchandise from the Departments. About 1927 the Departments began sharply to curtail the quantity of goods offered for sale, and since 1932 have offered virtually none. They were offering none at the time of the Commission's order. In 1932 the stock of merchandise of the Trading Company contained only about 15% to 18% of goods purchased from the Army and Navy Departments. The Trading Company causes its corporate name "Army and Navy Trading Company" to be displayed in large signs about its mercantile establishment, and in trade journals and circulars, and in advertisements and in daily newspapers and other periodicals, with the words "Army and Navy" as prominently featured therein as other portions of the name. Various members of the purchasing public, upon observing such use of the words "Army and Navy," have been led into the belief that [778] the goods to be purchased in the Trading Company's store were substantially all, if indeed not all, procured from the Army and Navy Departments, and into the belief that they were of the quality and nature used by those Departments and that a substantial bargain with reference to price and quality would be obtained at the Trading Company's store; and a substantial number of such members of the purchasing public have been induced by such beliefs to make purchases from the Trading Company. The use by the Trading Company of the words "Army and Navy" as above described causes a diversion of trade from competitors of the Trading Company who offer for sale merchandise which, like the bulk of the stock of the Trading Company, is procured from ordinary markets, but who do not use the words "Army and Navy" in connection with their trade names; and the use of the words "Army and Navy" by the Trading Company causes substantial injury to substantial competition within the District of Columbia.

From the facts thus found by the Commission it concluded that the use of the words "Army and Navy" in the Trading Company's name is to the prejudice and injury of competitors and the public and an unfair method of competition in commerce and a violation of Section 5 of the Act.

The Commission ordered the Trading Company to cease and desist from:

(1) Using in connection with its corporate name the words "Army and Navy" or either of them.

(2) Advertising or causing to be advertised in any circulars, trade journals, daily newspapers, or other periodicals the words "Army and Navy" or either of them, descriptive of or in connection with any merchandise to be sold or offered for sale to the public, unless in fact

the words "Army and Navy" be used specifically in connection and conjunction with particular merchandise actually procured from the Army and Navy Department of the United States Government.

Provided, however, that for a period of two years from the date of the service of this order upon respondent, the respondent shall be permitted to use in connection with such corporate or trade name as it might assume the words:

"Formerly Army and Navy Trading Company."

The only issue raised by the Trading Company's answer to the Commission's complaint was that respecting the misleading character and effect of the use of the words "Army and Navy" in the Company's name, and the finding of fact adverse to the Trading Company on this issue is the only finding attacked by it.

The findings of the Commission if supported by evidence are conclusive. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483; *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67. We have examined the record. There is evidence therein to support the finding attacked. We shall not assume to review the evidence in detail, but it is worthy of comment that it was made to appear through the testimony of the secretary and treasurer of the Trading Company itself that the name "Army and Navy Trading Company" was selected for the corporation in order to impress the public with the fact that the stock consisted principally of articles purchased from the Army and Navy Departments—that being so at the time of incorporation—and that there was a response, advantageous to the Trading Company, to this impression; and further that while the percentage of Army and Navy goods in the Trading Company's stock was as high as 90% up to about 1926, there was a rapid decline in the percentage thereafter, and at the time of the hearing before the Examiner, in 1935, only about 10% of the total inventory was of such goods; and further, that purchases of stock at that time were principally made in the open market from commercial manufacturers catering to department stores and various concerns. It is also worthy of comment that several members of the purchasing public testified that in purchasing from a so-called Army and Navy store they expected to find lower prices and better quality merchandise, and to get Army and Navy refuse or salvage goods or goods made up to Army and Navy specifications.

The first of the two issues of law in the case is whether the conclusion of the Commission that the use of the words "Army and Navy" in the Trading Company's name is an unfair method of competition is justified. It is. The Supreme Court has ruled that false and misleading representations as to the origin of a commodity constitute an unfair method of competition. *Federal Trade Commission v. Royal*

Milling [779] *Co.*, 288 U. S. 212. It has ruled similarly in respect of false and misleading representations as to the nature or quality of an article. *Federal Trade Commission v. Winsted Hosiery Co.*, *supra*; *Federal Trade Commission v. Algoma Lumber Co.*, *supra*. Accord: *Federal Trade Commission v. Civil Service Training Bureau*, 79 F. (2d) 113.

The second issue of law is whether the cease and desist order of the Commission is too broad. The Trading Company contends that the Commission cannot lawfully order suppression of a trade name where the use of qualifying words will eliminate the deception and preserve the rights of competitors and the public, and it asserts that the Commission's order should be modified so as to permit the use of, and it offers to use, in connection with its full trade name "Army and Navy Trading Company," one or more of the following qualifying phrases: "Not Connected with the Army and Navy," "Not Connected with the Government," "Not a Government Store," "Not affiliated with the United States Government," "We Do Not Handle Exclusively Army and Navy Goods." The Trading Company urges *Federal Trade Commission v. Royal Milling Co.*, *supra*; *N. Fluegelman & Co. v. Federal Trade Commission*, 37 F. (2d) 59; *Federal Trade Commission v. Good-Grape Co.*, 45 F. (2d) 70; and *Federal Trade Commission v. Cassoff*, 38 F. (2d) 790. These cases justify the proposition that the Commission's "orders should go no further than is reasonably necessary to correct the evil and preserve the rights of competitors and public." These were the words of the Supreme Court in the *Royal Milling Co.* case. There the word "Milling" imported the grinding of wheat into flour, when in truth the Royal Milling Company only mixed and blended flours purchased from others engaged in grinding. The continued use of the trade name if used together with such qualifying words as "Not Grinders of Wheat" was permitted. In *N. Fluegelman & Co. v. Federal Trade Commission*, the use of the words "Satinmaid" and "Satinized," which signified a fabric with a satin weave and a silk content, whereas the product in question was of a satin weave but of a cotton content, was permitted provided there was also used the phrase "a cotton fabric," "a cotton satin," "no silk," or equivalent modifying terms. In *Federal Trade Commission v. Good-Grape Co.*, it was held that the name "Good-Grape" and the slogan "Fruit of the Vine," might be used if qualified by words making it appear that the product was an imitation, artificially colored and flavored. In *Federal Trade Commission v. Cassoff*, the word "shellac," in the trade name "White Shellac" and "Orange Shellac," deceptively imported a product composed solely of genuine shellac gum dissolved in alcohol. The court permitted use of the word "shellac" if there was also used in con-

nection therewith the phrase "shellac substitute" or "imitation shellac," accompanied by the statement that the product was not 100% shellac.

But it will be noted that in these cases the selection of qualifying words effective to eliminate deception was feasible because the names involved made separate and distinct representations in respect of the origin and characteristics of single products, some of which representations were true and some of which were untrue.¹ Therefore, qualifying words could be chosen which would eliminate any deceptive representations and leave standing the truthful ones alone. Thus in *Federal Trade Commission v. Royal Milling Co.*, the qualifying words "Not Grinders of Wheat" indicated definitely that the grain from which the flour is made did not originate with, *i. e.*, was not ground by, the Royal Milling Company, but left standing the representation that the flour was mixed and blended by that Company; and in the other three cases, the qualifying words clearly eliminated the deceptive representations of what the charac[780]teristics of the products were not, but left standing the true representations as to what the characteristics were. The qualifying words suggested for use in the instant case would not have the effect of wholly eliminating the deception. Use with the trade name "Army and Navy Trading Company" of the phrase "Not Connected with the Army and Navy" would still leave an implication that the Trading Company's goods are purchased from the Army and Navy Departments or are of the character or quality of Army and Navy goods. The same is true of the phrase "Not Connected with the Government," and of the phrase "Not a Government Store," and of the phrase "Not Affiliated with the United States Government." The phrase "We Do Not Handle Exclusively Army and Navy Goods" would imply that a substantial portion of the goods are Army and Navy goods. We think it not feasible to select qualifying words for use with the name "Army and Navy Trading Company" which will be effective to eliminate deception. The stock of goods of the Trading Company is in only an insubstantial portion, if at all, in any sense Army and Navy goods. But the phrase "Army and Navy" in the name "Army and Navy Trading Company" makes

¹ Thus in *Federal Trade Commission v. Royal Milling Co.*, the representation of the word "Milling" as to mixing and blending of the flour was true, but the representation as to the origin of the flour, *i. e.*, as to by whom it was ground, was untrue. In *N. Fluegelman & Co. v. Federal Trade Commission*, the representation of the words "Satinmaid" and "Satinized" that the fabric had a satin weave was true, but the representation that it had a silk content was not. In *Federal Trade Commission v. Good Grape Co.*, the representation of the phrases "Good-Grape" and "Fruit of the Vine" that the product was like grape juice in color and flavor was true, but the representation that it was made of natural grape juice was untrue. In *Federal Trade Commission v. Cassoff*, the representation of the phrases "White Shellac" and "Orange Shellac" that the product was composed solely of genuine shellac gum dissolved in alcohol was untrue, but the representation that it was like shellac, or that it could be used for the purpose of shellac, was true.

the single representation that at least the major portion of the merchandise offered for sale is in some sense Army and Navy goods. This single representation being untrue, it cannot be qualified; it can only be contradicted. The cases urged by the Trading Company and above discussed justify qualification of a trade name where qualification is possible; they do not justify contradiction.

In a supplemental memorandum filed before the Commission the Trading Company offered to use with the name "Army and Navy Trading Company" the "qualifying" words "We do not deal in Army and Navy Goods." This phrase is not discussed in the Trading Company's brief filed in this court, and we take it, therefore, that the offer to use it has been abandoned. If not, however, it is clear that it cannot be used because it is contradictory.

In one particular we think the order of the Commission is too broad. It cannot be concluded that because at the time of the hearing there was little or no opportunity for the Trading Company to purchase goods in some sense Army and Navy goods, there will not be such opportunity in the future; and the Trading Company ought not be forbidden to tell the exact truth, whatever it may be, concerning the origin or character of any particular lot of goods. Paragraph (2) of the Commission's order forbids the use of the words "Army and Navy" "unless in fact the words 'Army and Navy' be used specifically in connection and conjunction with particular merchandise actually procured from the Army or Navy Department of the United States Government." The Trading Company may at some time procure a particular lot of goods not purchased by it actually from the Army or Navy Department, but from a jobber or broker who purchased therefrom; or it may procure from a manufacturer or jobber or broker a particular lot of goods made for the Army or Navy Department but rejected for lack of compliance with specifications in some respect although satisfying them in others. Paragraph (2) of the order should, therefore, be modified so as to permit the use of the words "Army and Navy," or either of them, in connection with a particular lot of merchandise, provided such words are used in a manner exactly specifying the origin or character of that particular lot.

Subject to such modification, the order of the Commission is affirmed and the respondent is ordered to comply therewith.

FEDERAL TRADE COMMISSION v. F. A. MARTOCCIO COMPANY, TRADING AS HOLLYWOOD CANDY COMPANY¹

No. 401

(Circuit Court of Appeals, Eighth Circuit. January 23, 1937)

UNFAIR METHODS OF COMPETITION—LOTTERY SCHEMES—PUNCH BOARDS OR PUSH CARDS—PLANS UNDER WHICH ALL RECEIVE.

The sale of candy by means of punch boards or push cards enabling some buyers to receive several times the amount paid for involves such an element of chance as authorizes the Federal Trade Commission to prohibit the manufacturer from supplying push cards with its candy, though each buyer receives candy worth the amount paid (Federal Trade Commission Act, Sec. 5, 15 U. S. C. A. sec. 45).

UNFAIR METHODS OF COMPETITION—LOTTERY SCHEMES—PUNCH BOARDS OR PUSH CARDS—PUBLIC INTEREST, WHERE ASSERTED OR POSSIBLE ECONOMIC ADVANTAGES IN PLAN.

The sale of candy through push cards involves such public interest, as required by the statute, and such injury to the public as authorizes the Federal Trade Commission to prohibit manufacturer from supplying cards with its candy, notwithstanding alleged benefits in providing economical method of advertising, increased volume of sales, and opportunity to buyer to procure more than his money value.

UNFAIR METHODS OF COMPETITION—LOTTERY SCHEMES—PUNCH BOARDS OR PUSH CARDS—PUBLIC POLICY—OPTIONAL FEATURE—WHETHER INTERSTATE COMMERCE AFFECTED IN VIEW OF.

The Federal Trade Commission could prohibit manufacturer of candy from furnishing push cards therewith, for use in connection with the sale of the candy, as against contention that, as use of the card is optional, any violation of public policy is a purely local matter not affecting interstate commerce.

UNFAIR METHODS OF COMPETITION—LOTTERY SCHEMES—PUNCH BOARDS OR PUSH CARDS—CUSTOM AND PUBLIC UNDERSTANDING AS PRECLUDING COMMISSION ACTION.

That, as claimed, sale of candy through use of push cards is old and well-established method of sale and well understood and fully approved by the public does not preclude Federal Trade Commission from ordering manufacturer not to supply push cards with its candy.

UNFAIR METHODS OF COMPETITION—SUPREME COURT DECISION *Re* PUBLIC INTEREST AND UNFAIRNESS—SIMILAR SITUATIONS—SCOPE AND EFFECT.

The Supreme Court having determined that a certain situation is within the Federal Trade Commission Act as affecting public interest and constituting unfair method of competition, the basis and reason for such inclusion are binding as to all similar situations subject to such basis and reasoning.

¹Reported in 87 F. (2d) 561. The case before the Commission is reported in 22 F. T. C. 583. Petition for certiorari denied May 3, 1937, 301 U. S. 691.

UNFAIR METHODS OF COMPENSATION—LOTTERY SCHEMES—PUSH CARD PLANS—GIFTS FOR ADVERTISING, AS JUSTIFYING.

That there is no evil in giving away candy for advertising purposes does not prevent the Federal Trade Commission from ordering a manufacturer not to supply push cards with its candy, as the sales method is a game of chance.

UNFAIR METHODS OF COMPETITION—LOTTERY SCHEMES—COMPETITORS' VIEWS AND PUBLIC POLICY.

Action by the Federal Trade Commission in prohibiting unfair method of competition cannot rest solely upon the moral or ethical views of competitors, but it may rest on the public view and public policy against gambling and games of chance.

ENFORCEMENT APPLICATION—EVIDENCE—COURT'S DUTIES—WHERE INFERENCES AND LAW ONLY ISSUES.

On application by the Federal Trade Commission for enforcement of a cease and desist order, the court need not determine whether it may examine the evidence for itself and determine whether the evidence supports the findings of the Commission when there is no dispute as to the facts, but only as to the inferences from facts and as to the rules of law.

SECTION 5—VALIDITY—AS COMBINING FUNCTIONS OF COMPLAINANT, PROSECUTOR AND JUDGE.

Statute as to unfair methods of competition is not invalid as combining in the Federal Trade Commission the functions of complainant, prosecutor, and judge.

(Syllabus, with substituted captions, is reported in 87 F. (2d) 561.)

On application by Commission for enforcement of order against the F. A. Martoccio Candy Company, in its own name and right and trading as Hollywood Candy Company, enforcement ordered, and petition to set aside order denied.

Mr. Martin A. Morrison, Assistant Chief Counsel, Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, Chief Counsel, Federal [562] Trade Commission, and *Mr. Henry C. Lank* and *Mr. James W. Nichol*, Special Attorneys, Federal Trade Commission, all of Washington, D. C., on the brief), for petitioner.

Mr. Arnold L. Guesmer, of Minneapolis, Minn., for respondent.

Before **STONE, SANBORN, and WOODROUGH**, Circuit Judges.

STONE, Circuit Judge:

This is a proceeding brought by the Federal Trade Commission for the enforcement of a "cease and desist" order entered by it against the respondent.

Respondent is a manufacturer of candy selling its product, in interstate commerce, to wholesalers and jobbers. The candy was packed in cartons, each containing a large number of uniform small candy bars, a smaller number of one-quarter pound bars, a yet smaller num-

ber of one-half pound bars and a "push card". The candy is of good quality. The smallest bars are of the size and kind usually retailing for five cents each. A push card is a stiff pasteboard card with covered holes in each of which is a concealed number. On the card is set forth certain numbers which entitle the purchaser (who uncovers one of them) to a quarter-pound bar and certain other numbers entitling to a half-pound bar. For five cents, any purchaser may uncover a number on the card. He may secure a number calling for one of the two larger size bars. If he does not, he gets a five-cent bar which is reasonably worth what he pays. The purchaser may buy a five-cent bar and pay no attention to the card. There is no requirement that the purchaser use the card in buying the small bars. These cartons of candy are sold by the wholesalers and jobbers to retailers who may use the card or not in selling the candy.

The essential portions of the "cease and desist" order are as follows:

(1) Selling and distributing to wholesale dealers and jobbers, for resale to retail dealers, candy so packed and assembled that sales of said 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 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, wholesale dealers and jobbers assortments of candy together with a device, commonly called a "punch board" or "push card", for use, or which may be used, in distributing or selling said candy to the public at retail;

(4) Furnishing to wholesale dealers and jobbers a device, commonly called a "punch board" or "push card", either with packages or assortments 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.

Respondent has filed here its "petition to set aside Commission's order" wherein it presents thirty-four challenges to the findings, the conclusions or the order of the Commission.

For convenience, we treat the case by consideration of the grounds and reasons advanced by respondent in its brief why the order of the Commission should not be enforced but should be set aside. At the threshold of our inquiry we are faced with a decision of the Supreme Court upon a situation so near to this one before us that the heavy burden is upon respondent to distinguish that case from this one. In fact, this is the main task of respondent in this litigation and we find

it convenient to treat most of respondent's arguments in connection therewith.

The case of *Federal Trade Commission v. R. F. Keppel & Brother, Incorporated*, 291 U. S. 304, involved against a candy manufacturer using a candy sales plan known as the "break and take", which is described in the opinion (p. 307), as follows:

The break and take assortments are so arranged and offered for sale to consumers as to avail of the element of chance as an inducement to the retail purchasers. One assortment, consisting of 120 pieces retailing at 1 cent each, includes four pieces, each having concealed within its wrapper a single cent, so that the purchasers of those particular pieces of candy receive back the amount of the purchase price and thus obtain the candy without cost. Another contains 60 pieces of candy, each having its retail price marked on a slip of paper concealed within its wrapper; 10 pieces retail at 1 cent each, 10 at 2 cents, and 40 at 3 cents. The price paid for each piece is that named on the price ticket, ascertained only after the purchaser has selected the candy and the wrapper has been removed. A third assortment consists of 200 pieces of candy, a few of which have concealed centers of different colors, the remainder having white centers. The purchasers of the candy found to have colored centers are given prizes, packed with the candy, consisting of other pieces of candy or a package containing lead pencils, penholder and ruler. Each assortment is accompanied by a display card, attractive to children, prepared by respondent for exhibition and use by the dealer in selling the candy, explaining the plan by which either the price or the amount of candy or other merchandise which the purchaser receives is affected by chance. The pieces of candy in the break and take packages are either smaller than those of the competing straight goods packages, which are sold at a comparable price without the aid of any chance feature, or they are of inferior quality.

After stating "that the practice complained of is a method of competition in interstate commerce and that it is successful in diverting trade from competitors who do not employ it" (p. 308) and that "a practice so widespread and so far reaching in its consequences is of public concern" (p. 308), that Court discussed and determined the unfairness of the method. After stating that the case of *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, had decided that "A method of competition which casts upon one's competitors the burden of the loss of business unless they will descend to a practice which they are under a powerful moral compulsion not to adopt, even though it is not criminal, was thought to involve the kind of unfairness at which the statute was aimed" (p. 313), the Court continued (p. 313), as follows:

The practice in this case presents the same dilemma to competitors, and we can perceive no reason for distinguishing between the element of chance as employed here and the element of deception involved in labelling cotton goods "Natural Wool," as in the *Winsted* case. It is true that the statute does not authorize regulation which has no purpose other than that of relieving merchants

from troublesome competition or of censoring the morals of businessmen. But here the competitive method is shown to exploit consumers, children, who are unable to protect themselves. It employs a device whereby the amount of the return they receive from the expenditure of money is made to depend upon chance. Such devices have met with condemnation throughout the community. Without inquiring whether, as respondent contends, the criminal statutes imposing penalties on gambling, lotteries and the like, fail to reach this particular practice in most or any of the states, it is clear that the practice is of the sort which the common law and criminal statutes have long deemed contrary to public policy. For these reasons a large share of the industry holds out against the device, despite ensuing loss in trade, or bows reluctantly to what it brands unscrupulous. It would seem a gross perversion of the normal meaning of the word, which is the first criterion of statutory construction, to hold that the method is not "unfair." See *Federal Trade Comm'n v. Royal Milling Co.*, *supra*, at 217; *Federal Trade Comm'n v. Algoma Lumber Co.*, *supra*, at 81.

From the above statements concerning the issues in and the above quotations from the Keppel case, appear two matters vital here. One of these is that the Court broadly asserted that "the element of chance as employed" there was an unfair method of competition within the Trade Commission Act. The other is that the "element of chance" there employed would seem to be not different in essentials from the method employed here. We now turn to consideration of the reasons advanced by respondent to distinguish this case.

(1) Respondent contends there is no element of "chance" in a true sense present in its method because there is no possibility of loss to the consumer, since he gets five cents' worth of good candy in any event and may get several times that amount for the same money. This distinction is not valid. Under the Keppel case, the vice of the method there condemned is that the element of chance is employed as a factor in competitive sales. While most gambling or chance games involve possible loss to the player as well as possible gain, it does not [564] change the character of the game as one of chance merely to remove the possibility of loss. In fact, to remove all possibility of loss would make more effective the incentive to play by removing the most forceful natural reason to refrain.

In connection with this same point, respondent argues this situation comes exactly within the statement in the Keppel case (p. 313) that "the statute does not authorize regulation which has no purpose other than that of relieving merchants from troublesome competition or of censoring the morals of businessmen." The answer to this argument is that the Keppel case determined that the use of elements of chance of this character in competitive merchandising comes within the statute.

(2) Two further contentions of respondent are related in thought and will be treated together. They are that even if the method were unethical it would not authorize proscription "regardless of conse-

quences" to the consuming public but that the Commission can act only when there is "commercial or financial injury to the consuming public." Essentially, this presents the question of "public interest" (required by the Act). It is obvious that no financial loss to *consumers* can result from the method employed by respondent. But the Keppel case seems to declare, or at least necessarily infer, that there is an injury to the consuming public through violation of the public policy opposing games of chance and to competitors through compelling them to participate in such violation or to lose business. We understand the Keppel case as holding that it is in the public interest to prevent sales based upon games of chance and we hold that the method here used involves such a game of chance (*Walter H. Johnson Candy Co. v. Federal Trade Commission*, 78 F. (2d) 717, 718, C. C. A. 7). In a closely related contention, respondent asserts that even if competitors would be benefited by the order, it should not be upheld if it would work a practical disadvantage to the public. By "public" respondent means small candy manufacturers, retailers and consumers. The argument is that this method of selling provides an economical and effective method of "advertising" which can be and is used by small manufacturing concerns which lack the financial resources to compete with large manufacturers in ordinary advertising methods, thus enabling the small concern to survive where it otherwise could not or only precariously. Further, that this method aids the retailer by increasing his volume of sales. Also, it benefits the consumer by always giving him full value (both in quality and quantity) for his expenditure and at the same time affording him an opportunity to secure more than his money value. This record abundantly establishes that the above advantages—financial and otherwise—are the natural results of this character of method of selling. However, we understand the main grounds for sustaining the order in the Keppel case to be the public interest and policy in suppressing games of chance and the harmful effect upon competitors flowing from the use of such in sales. If this view is sound, the above advantages are impotent to justify this method of selling which employs an element of chance (in the sense of a gambling chance).

(3) Under several headings, respondent argues that the element of chance involved here has no connection with interstate commerce and is, therefore, outside the jurisdiction of the Commission. It argues that the use or non-use of the push board is entirely within the control of the retailer after the carton has ceased to be an article of commerce and is a purely local transaction; that the board is entirely separate from the candy which can be and sometimes is sold without regard to the board; that interstate commerce insofar as

respondent is concerned ceased with receipt of the carton by the wholesaler or jobber; that if there is violation of public policy, it is purely local and is the affair solely of local authorities and not of the Commission. These arguments contain really two propositions: Interstate commerce and choice of use of the push board. Both are met by the language in *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, 494: "That a person is a wrongdoer who so furnishes another with the means of consummating a fraud has long been a part of the law of unfair competition." Also see *Reid, Murdoch & Co. v. H. P. Coffee Co.*, 48 F. (2d) 817, 819-820 (C. C. A. 8); *Andrew Jergens Co. v. Bonded Products Corporation*, 21 F. (2d) 419, 424 (C. C. A. 2); *Coca-Cola Co. v. Gay-Ola Co.*, 20 Fed. 720, 722, (C. C. A. 6); *Von Mumm v. Frash*, 56 Fed. 830, 836 (C. C. N. Y.); *New England Awl & Needle Co. v. Marlborough Awl & Needle Co.*, 168 Mass. 154, 155.

[565] (4) A further contention is that this method of selling "is so old and well established and so well understood and so fully approved by the public" that an order destroying it should not be sustained.

The supporting argument is as follows:

"There is no bar through lapse of time to a proceeding in the public interest to set an industry in order by removing the occasion for *deception or mistake*, unless submission has gone so far that the occasion for misunderstanding, or for any so widespread as to be worthy of correction, is wholly at an end. Competition may then be fair irrespective of its origin." (Italics inserted by respondent.) *F. T. C. v. Algoma Lumber Co.*, 291 U. S. 67, 80.

In this instance, "the occasion for misunderstanding, or for any so widespread as to be worthy of action, is wholly at an end", even if there ever was any such occasion. The people have had over 25 years of experience with this simple selling and advertising method and thoroughly understand it, and approve it by patronage. It is with them an accepted thing.

In the retailing of goods various customs grow up, which the public does not want to have changed until it gets ready to make the change itself, which it then does without asking anybody's permission.

The customary use of this card-system of selling and advertising is similar to some other customs, new and old. It is like the New Orleans custom of giving lagnappe. There the retailer's customer expects him to give something extra with the purchase made. Here, instead of giving the something extra, the customer uses the board to determine whether he is going to get something extra by way of the larger piece.

We now hear, over the radio, announcements that every third person coming into a specified drugstore will get something free.

Merchants must do things to attract the public. They have to deal with the people as they are. They must give them what pleases them. The people have these matters in their own hands. It is not for someone else to tell them what they should want. They decide that. What they decide should not be vetoed or censored, unless it is substantially harmful, and then the public itself will act. The Supreme Court recognizes that practical factor.

"In such matters, the public is entitled to get what it chooses, though, the choice be dictated by caprice, or by fashion, or perhaps by ignorance." *F. T. C. v. Algoma Lumber Co.*, 291 U. S. 67, 78.

Many persons have no taste for commerce. Hence they enter other vocations or the government service. Being without experience as to what appeals to the public in merchandising, most of the rough and tumble things common to business offend the concepts which unfit them for business, and which they would have to get rid of if they were to hold a job with a commercial concern or were to succeed in a business of their own. If people in business give the public what it wants, they succeed; if they try to bring the public up to genteel ideals, they will fail and go broke. Experience has demonstrated that. Commercial men have to study closely the reactions of the public to their methods. If those not experienced in commercial work were to enter it, they would discover their error. They would learn to give the public what it reacts favorably to and approves, not what they think it ought to have. That is bound to be the case where people have individual liberty to follow their own inclinations. Bureaucrats think they can regiment the public and make people conform to their ideas; the merchant knows he must cater to the public. He must design his packages to appeal to the rank and file, though his designs may offend the artistic. He must use slogans and advertising matter that appeal to the rank and file, though they offend the literary. When by the use of the card customers get the big bar, the bargain becomes more strikingly realistic to them. The card serves to attract their attention and interest. As said by an experienced newspaper editor, "While we should like to confine our homage to the god of things as they ought to be, we cannot deny homage to the god of things as they are, the public."

What constitutes "public interest" and "unfair methods of competition" within the Act is a matter of definition through judicial inclusion and exclusion declared in the various situations in cases presented to the courts. Where the Supreme Court has determined that a certain situation is within the Act (as in the Keppel case) the basis and reasons for such inclusion stated by that Court are binding as to all similar situations subject to such basis and reasoning. [566] The reasons advanced in support of the contention just above stated do not distinguish the Keppel case.

(5) A further contention is that "there is no evil in spending for advertising some of the candy in the big pieces." The supporting argument is as follows:

It is said that those who get one of the big bars for 5¢, get more than the others do. That is true in the case of any bargain purchase. The consumer who gets one of the big bars is benefited; but the one who gets one of the small bars is *not hurt*, because he gets his money's worth. That lack of hurt to anyone is the crucial thing. Consumers are not "exploited".

If the big pieces were eliminated, then the consumers would not get the advertising expenditure and the other advantages of this method, such as getting the candy fresher, reduction of price by obviating waste and by increasing volume.

Then none of the candy would be devoted to advertising. All consumers would have to pay in money, which would go for advertising to someone else.

Is it to the public interest to reduce the opportunities and advantages of consumers, so that some consumers will get less than they would under the system in question?

If it were possible to get along without advertising, we should have an entirely different situation; and it would not then be necessary to use the big bars.

If it were not necessary to have advertising, to pay rent, or to pay taxes, no doubt everyone could be given still larger bars for 5¢ each. However, we have to deal with the situation as it is.

The retailer's customers know that some get the large bar for 5¢. Thus they are informed how much candy is devoted to advertising, a thing they could not know if other advertising methods were used.

The method is in all respects beneficial to the consumers. Hence, they like it and approve it.

The "evil", if it be such, of this selling method is not that the larger pieces of candy are given away but that the entire sales method is a game of chance and such method has been declared within the Act by the Supreme Court in the Keppel case.

(6) Another contention is that the "moral objection to including push cards in their cartons" by some manufacturers furnishes no ground for action by the Commission. Obviously, action by the Commission cannot rest solely upon moral or ethical views of competitors. However, there is here something beyond the mere views of others in the trade. There is the public view and public policy against gambling and games of chance and that public policy is given full force in the Keppel case (*Walter H. Johnson Candy Co. v. Federal Trade Commission*, 78 F. (2d) 717, 718, C. C. A. 7).

(7) Respondent urges that the Keppel (as well as other cases) is unlike this one in that it involved exploitation of consumers (particularly children) through under-size and under-quality candy. Undoubtedly, the exploitation of children by the underweight and inferior quality of candy was a consideration in the Keppel case opinion but we think the Supreme Court did not regard such consideration as essential to the result reached by it (*Hofeller v. Federal Trade Commission*, 82 F. (2d) 647, 648, C. C. A. 7).

REVIEW OF EVIDENCE

Respondent urges that it is the duty of this Court to examine the evidence before the Commission and to determine for itself whether such evidence "supports" (15 U. S. C. A., Section 45, p. 255) the findings of the Commission upon which its order is based. We find no necessity to determine this point of law. There is no dispute in the evidence as to the method of sales used by respondent nor as to any other fact necessary to full consideration of the various propositions and contentions advanced by respondent and treated hereinabove. The differences here are as to inferences from facts and as to rules of law.

VALIDITY OF ACT

Respondent challenges the validity of the Act. This it does under two headings. The first is really not a true challenge of the Act but rather a contention that the order is directed against actions which are no part of interstate commerce. Of course, if such actions were intrastate purely, as contended, they would be outside the Act itself. Hereinbefore, we have determined such actions to be within interstate commerce.

The other and accented challenge is that the Act is invalid because it combines in the Commission the functions of complainant, prosecutor and judge. This matter has been determined against the posi[567]tion of respondent in several cases (*Federal Trade Commission v. Klesner*, 280 U. S. 19, 27; *Chamber of Commerce v. Federal Trade Commission*, 280 Fed. 45, 48, C. C. A. 8; *Federal Trade Commission v. McLean & Son*, 84 F. (2d) 910, 912, C. C. A. 7; *National Harness Mfrs. Ass'n v. Federal Trade Commission*, 268 Fed. 705, 707, C. C. A. 6; *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307, 311, C. C. A. 7).

We conclude that this case is ruled by the Keppel case. We so conclude since we construe the Keppel case to determine that a method of sale which employs the element of chance as an essential feature is against public interest because it is in the nature of a gambling game and that such a method is unfair competition because it places competitors in the position where they must unwillingly adopt such method or run the risk of losing business if they refrain from so doing. Since we are unable to distinguish, in essentials, the situation in this case from the one presented in the Keppel case, the enforcement of the order of the Commission here involved will be ordered and the petition to set aside the order will be denied.

 FEDERAL TRADE COMMISSION v. JAMES KELLEY ¹

No. 104

(Circuit Court of Appeals, Second Circuit. February 3, 1937)

Order of Commission as modified on June 15, 1935 and reported in 20 F. T. C. 409 et seq., requiring respondent, his representatives, etc., in connection with the sale of pens, pencils and specialties, to cease and desist from a variety of misrepresentations *re* being manufacturer of said products, being large mail order concern, use name "Iridium", use fictitious price tags, etc., as in said order specified, affirmed *per curiam* in open court on Commission's application to enforce.

¹ Reported in 87 F. (2d) 1004. The case before the Commission is reported in 13 F. T. C. 284 and order modifying in 20 F. T. C. 409.

(Reported in 87 F. (2d) 1004)

Mr. W. T. Kelley, Mr. Martin A. Morrison and Mr. James W. Nichol, of Washington, D. C., for petitioner.

Mr. James Kelley, pro se.

Before MANTON, AUGUSTUS N. HAND, and CHASE, Circuit Judges.

PER CURIAM.

Order affirmed in open court.

FEDERAL TRADE COMMISSION v. NATIONAL BISCUIT COMPANY¹

(District Court, S. D. New York. February 16, 1937)

INVESTIGATIONS OF COMMISSION—INQUISITORIAL POWERS—JOINT RESOLUTIONS—DEMANDS RELEVANT TO CONTEMPLATED LEGISLATION—WHERE INFORMATION DEMANDED, NOT RELATED TO BREACHES OF LAW.

Joint resolution authorizing Federal Trade Commission to investigate financial and economic conditions of agricultural producers engaged in interstate commerce, with a view to legislation to prevent evasion of income tax and burdening of interstate and foreign commerce, *held* to authorize Commission to compel disclosure of information relevant to subjects on which legislation was contemplated, though unrelated to breaches of law, in view of pre-existing power of Commission to demand information relating to breaches of law (Joint Res. Aug. 27, 1935, 49 Stat. 929, 930, 931; Federal Trade Commission Act, sec. 6 (a, b), 15 U. S. C. A., sec. 46 (a, b), sec. 9, 15 U. S. C. A., sec. 49; Const. Amend. 4).

INVESTIGATIONS OF COMMISSION—INQUISITORIAL POWERS—JOINT RESOLUTIONS—DEMANDS RELEVANT TO CONTEMPLATED LEGISLATION—WHETHER IN VIOLATION OF SEARCH AND SEIZURE PROVISIONS OF FOURTH AMENDMENT.

Fourth Amendment is not violated by congressional inquiry compelling production of testimony concerning matters on which it is essential that Congress be informed in order to frame legislation.

INVESTIGATIONS OF COMMISSION—INQUISITORIAL POWERS—JOINT RESOLUTIONS—DEMANDS RELEVANT TO CONTEMPLATED LEGISLATION—WHERE INTRASTATE INQUIRES NOT CLEARLY UNRELATED TO INTERSTATE COMMERCE.

Under joint resolution authorizing Federal Trade Commission to investigate financial and economic conditions of agricultural producers engaged in interstate commerce, with a view to legislation to prevent evasion of income tax and burdening of interstate and foreign commerce, inquiries not clearly unrelated to interstate commerce and related to intrastate commerce *held* within power of Commission.

¹ Reported in 18 F. Supp. 667.

INVESTIGATIONS OF COMMISSION—INQUISITORIAL POWERS—JOINT RESOLUTIONS—WHETHER DEMANDS RELATED TO INTERSTATE COMMERCE—INITIAL DETERMINATION OF, WHERE RELATION NOT CLEARLY NON-EXISTENT.

As respects investigation of corporation's affairs relating to interstate commerce, whether certain matters were of such character was for Congress to decide, at least in the first instance, unless relation was clearly non-existent.

(Syllabus, with substituted captions, is taken from 18 F. Supp. 667)

Mandamus proceeding by Commission against National Biscuit Co., writ allowed.

Mr. Lamar Hardy, U. S. Attorney, of New York City, and *Mr. Russell Hardy*, Special Assistant to the Attorney General, for petitioner.

Davis, Polk, Wardwell, Gardiner & Reed, of New York City (*Mr. John W. Davis*, of New York City, of counsel), for respondent.

GODDARD, *District Judge*:

The Federal Trade Commission on September 2, 1936 filed a petition praying for an alternative writ of mandamus commanding the respondent, the National Biscuit Company, to furnish and file with the Federal Trade Commission, the petitioner, [668] certain information regarding its business. After notice to respondent and a hearing, the writ was issued on September 16, 1936. The writ commanded the National Biscuit Company to show cause why it should not furnish the Federal Trade Commission with the information called for in certain blank forms, schedules and questionnaires which were attached to and made a part of the writ. On the return of the writ, the respondent filed its answer and objections to the petition with its reasons for refusing to furnish the information and the Commission filed and served its objections to respondent's answer and objections in the form of a general demurrer.

It appears from the papers filed that the Federal Trade Commission bases its authority and demand for the information sought on a resolution passed by both Houses of Congress and approved by the President on August 27, 1935 (Public Resolution 61—74th Congress) "Authorizing the Federal Trade Commission to make an investigation with respect to agricultural income and the financial and economical conditions of agricultural producers generally," for the purpose of enabling Congress "to consider whether new legislation should be enacted or existing legislation amended on any of the subjects referred to." The resolution is somewhat lengthy and it is unnecessary to set it forth here in full. It required the Commission to make an investigation to ascertain the facts with regard to the causes of the unequal distribution between the farmer and others of the income from the

principal farm products, particularly as to the existence of certain supposed causes of this condition which are described in the resolution as concentration of control, combinations and monopolies, price fixing and manipulation. Included in the preamble of the resolution is the following:

Whereas it is charged that through the payment of high and excessive salaries and other devices said middlemen, warehousemen, processors, manufacturers, packers, and others escape just taxation by the United States, that said salaries tend unduly to diminish the tax revenues of the United States and tend to burden and restrain interstate and foreign commerce in farm products, and to divert and conceal the earnings and profits of the concerns paying said salaries, and that by various devices those receiving said salaries escape their just share of Federal taxation * * *.

and the Commission was directed to investigate and report upon the salaries received by the officers of such companies and

The extent to which said corporations avoid income taxes, if at all, and the extent to which officers receiving such salaries paid income taxes thereon. (Section 1, 49 Stat. 930.)

On September 19, 1935 the Federal Trade Commission, purporting to act pursuant to the authority of this Resolution, resolved to "investigate and report at the next session of Congress" upon the matters referred to in the Resolution, and on February 4, 1936 the National Biscuit Company received from the Federal Trade Commission two questionnaires designated as Schedule A-7 and Schedule B. At the head of each of these schedules was the following:

This schedule is called for under the terms of Section 6 (a) of the Federal Trade Commission Act, copy of which is annexed, and of S. J. Resolution 9, 74th Congress, First Session, approved August 27, 1935, authorizing and directing the Federal Trade Commission to investigate and report at the next session of Congress the extent of the increases or decreases in recent years in the income of principal corporations engaged in the sale, manufacturing, warehousing, and/or processing of the principal farm products and of other principal sellers * * * compared with the decline in agricultural income including the amount and percentage of such changes, etc., copy of which is enclosed.

Your attention is directed to Section 10 of the Federal Trade Commission Act providing penalties for false reports and for failure to file reports.

No charge of any violation of law by the National Biscuit Company was made in either of the questionnaires which was the only notice respondent received as to the subject and purpose of the inquiry.

The petition alleges and the return admits "that National Biscuit Company directly and through numerous corporations owned and controlled by it, has been purchasing, producing, manufacturing, selling, distributing, transporting, and shipping, in, from, to and through the several States in and in connection with commerce among the States, substantial quantities of food products, farm products, and products made from farm products, that is to say, wheat, flour, sugar,

molasses, milk, butter, cheese, [669] eggs, raisins, peanuts, bread, biscuits, cakes, crackers, and other bakery products and other commodities to petitioner unknown." But in the return respondent alleges "that in addition to the business therein described a large and substantial portion of respondent's business, such as, the manufacturing and processing of the commodities and products which it sells and the sales of products within the confines of a single State, is purely intrastate in character and has no direct effect upon intrastate commerce or the interstate business conducted by respondent."

In its answer and objections to the petition, respondent alleges:

13. That the compulsory disclosure of the confidential information which petitioner seeks to exact from the respondent, including the dissemination in the trade of said information relating to respondent's business with particular customers and to respondent's total volume of business, would place respondent at a distinct disadvantage in competing with its business rivals and in dealing with its customers and would otherwise impose a great hardship on respondent in excess of the legitimate public purpose, if any, to be served by the disclosure of said information.

It is also alleged that respondent has been at all times and is now ready and willing to answer the questionnaires involved in this proceeding on the condition that the information in such answers would not be disclosed to the public or to competitors or customers of the respondent, but that the Federal Trade Commission has as yet been unable or unwilling to assure respondent that said information would be confidential.

The schedules received by the National Biscuit Company in substance called for the following information:

SCHEDULE A-7

(Bread and Bakery Products)

Question (1) The number of barrels of wheat flour purchased in the year 1935 from each of various types of distributors such as brokers, mill agents, wholesale grocers, jobbers, including own flour mills.

Question (2) The names and addresses of the five principal companies in each group from whom you purchased wheat flour during the period reported in Question (1).

Question (3) The amount of your purchases of wheat flour in the year 1935 in quantities and dollars from each of a list of companies including General Mills, Inc., Pillsbury Flour Mills and others, and then your purchases from all other companies, the total being your total wheat flour purchases in quantities and dollars.

Question (4) The quantity of bread in pounds and the net dollar sales of all other bakery products sold in the year 1935 to each of various types of customers including chain stores, cooperative and voluntary chains, etc., and then sales to all other types of consumers, the total being your total sales of bread and all other bakery products in the year 1935.

Question (5) The names and addresses of the five principal companies in each of certain groups of distributors to whom you sold wheat flour bread in the year 1935 and the amount of net sales in quantities and dollars sold to each.

On April 1, 1936 respondent supplied the Federal Trade Commission with the information requested in this schedule with the exception of that called for in Questions (4) and (5).

SCHEDULE B

(Manufacturers and/or Processors of Farm Products)

Question (1) List of all subsidiary companies included in your report.

Question (2) The quantity and dollar value of all wheat flour, other flour, wheat and other materials purchased in the year 1935 and the quantity and dollar value of the portion thereof resold without further processing.

Question (3) Net sales of bread, flour and wheat in quantities and dollars and the net dollar sales of all other products for the year 1935 divided according to whether sold without further processing or whether manufactured or processed by you.

Question 3 (A) Cost of products bought and resold without further processing or manufacturing and then your net cost of materials entering into manufactured products sold.

Question (4) Names of predecessor companies whose data are included in following questions 5 to 9 inclusive.

Question (5) Consolidated balance sheets of your company and subsidiaries for the years 1914, 1917, 1920, 1923, and 1926, and net sales for the same periods.

Question (6) Amounts of capital stock and bonds at par value issued in each of [670] the years from 1914 to 1935 inclusive and the purpose for which the same were issued.

Question (7) The amounts of additions to and deductions from surplus and the causes thereof in detail in each of the years 1914 to 1935 inclusive.

Question (8) Consolidated Assets and Liabilities in detail including all subsidiary companies, controlled companies and predecessor companies for the years 1928 to 1935 inclusive.

Question (9) Consolidated Income and Expense Statements in detail including all subsidiary companies, controlled companies and predecessor companies for the years 1929 to 1935 inclusive.

Question (10) Name, position, annual cash salary and other compensation paid to each officer of the corporation for the years 1929 to 1935 inclusive.

On May 8, 1936 respondent returned to the Federal Trade Commission Schedule B, having answered all the questions in that schedule except Questions (3) (3A), (5), and so much of Question (9) as called for information with respect to the amount of total sales and total cost of goods sold, and Question (10).

The respondent contends that the compulsory disclosure of information now demanded would constitute an unreasonable search and seizure in violation of the Fourth Amendment of the Constitution of the United States; that the Congress has not authorized the Federal Trade Commission to demand, or this court to compel the dis-

closure of this information involved in this proceeding; also that the questions which respondent have not answered have no direct connection with interstate commerce or with any violation of law, and that the questions concern respondent's intrastate as well as its interstate activities.

The respondent also takes the position that from the Commission's refusal to assure respondent that any of this information now sought will be used confidentially, it is to be inferred that the Commission will, or at least is likely, to publish all of it and that respondent knows of no means of preventing the Commission from doing so, if it obtains the information.

Taking up first the question whether Congress has authorized the Commission to compel the disclosures to be made. Section 4 of the Joint Resolution provides:

For the purpose of carrying out this resolution the Federal Trade Commission, the Attorney General, and the courts of the United States shall have and may exercise all of the powers and jurisdiction severally conferred upon them by 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.

Section 6 (a, b) of the Federal Trade Commission Act (15 U. S. C. A. § 46) provides that it shall have power—

Investigation of corporations.—(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, and its relation to other corporations and to individuals, associations and partnerships.

Reports by corporations.—(b) To require by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

Section 9 of the Act (Title 15 U. S. C. A. § 49) in the fourth paragraph provides—

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this subdivision of this chapter or any order of the commission made in pursuance thereof.

Respondent takes the position that the power of the commission to compel information must therefore be limited to disclosures relating to breaches of the law which occur in or which directly affect interstate commerce. This, I think, is not so. On the contrary, it seems to me that the Joint Resolution reflects the intention of the Congress to authorize the Commission to exercise similar powers for the purpose of securing the desired information relevant to the various named subjects on which legislation is contemplated. Unless the Congress intended to give the Commission additional power for the purpose of securing the information, Section 4 of the Joint Resolution was unnecessary, for the Commission already had authority to demand the facts relating to a breach of the law.

It was alleged in the petition and admitted in the answer that respondent was engaged in interstate commerce in a substantial degree in the various commodities.

The Fourth Amendment to the Constitution of the United States is not violated by Congress conducting an inquiry and compelling the production of testimony concerning matters on which it is essential that Congress be informed in order to frame legislation. *McGrain v. Daugherty*, 273 U. S. 135.

The Joint Resolution stated "that the Congress should consider whether new legislation should be enacted or existing legislation amended on any of the subjects hereinbefore described and in aid thereof should be informed on all of said subjects."

Certainly burdens on interstate commerce, monopolies and taxation referred to in the Joint Resolution, are subjects under the control of the Congress and upon which it is entitled to information. It is true that the facts requested do include some information regarding respondent's activities that are not solely interstate, but the presumption is that the Congress intends to make use of all the facts obtained in aid of legislation affecting interstate commerce only. In the judgment of the Congress the information requested does directly relate to interstate commerce and lack of such relation is not so clearly non-existent as to justify the court in saying to the contrary. This is a matter for the Congress to decide, at least in the first instance. *Stafford v. Wallace*, 258 U. S. 521.

To support its position respondent relies largely upon *Federal Trade Commission v. American Tobacco Co.*, 264 U. S. 298. But in that case the question was—has the Federal Trade Commission an unlimited right to obtain the books and records of a corporation with reference to a possible existence of unfair competition in violation of the Federal Trade Commission Act? Any question regarding the power of the Congress to obtain information for legislative purposes was eliminated, and the writs of mandamus seem to have been denied

on the ground that the demands were too broad and not only included records and papers that were relevant, but those which clearly were not. In the case at bar the demand is for information deemed by the Congress to be relevant to future legislation on subjects within its jurisdiction.

Accordingly, I think the writ of mandamus must be allowed.

FEDERAL TRADE COMMISSION v. GEORGE ZIEGLER
COMPANY¹

No. 6045

(Circuit Court of Appeals, Seventh Circuit. February 18, 1937)

Consent decree affirming Commission's order in 19 F. T. C. 394, requiring respondent to cease and desist use of lottery schemes in merchandising its candies, as in said order and decree below set forth

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Ass't Chief Counsel, *Mr. Henry C. Lank*, and *Mr. James W. Nichol*, Special Attorneys, for petitioner.

Mr. Leo W. Slensby, of Milwaukee, Wisc., for respondent.

SPARKS, *Circuit Judge*:

The Federal Trade Commission, petitioner herein, having filed with this Court on, to wit, October 3, 1936, its application for the enforcement of an order to cease and desist issued by it against the respondent, under date of November 20, 1934, under 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" (38 Stat. 719, 15 U. S. C. A. Sec. 45); and said petitioner, having also certified and filed herein, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered, including all the testimony taken and the report of said petitioner; and respondent having subsequently filed its answer to said application for enforcement, in which answer respondent stated it was not willing to contest said application for enforcement or the proceedings based thereon, and in which answer said respondent consented that this Court might, upon said application and respondent's answer thereto, and upon the pleadings, testimony, and proceedings set forth in the transcript aforesaid, make and enter its decree affirming said order to cease and desist and commanding respondent, its officers, agents, representatives, and employees, to comply therewith—

¹ Reported in 60 F. (2d) 1007.

Now, therefore, it is hereby ordered, adjudged and decreed, That said order to cease and desist, issued by the Federal Trade Commission, petitioner herein, under date of November 20, 1934, be and the same hereby is affirmed.

And it is hereby further ordered, adjudged and decreed, That the respondent, George Ziegler Company, its officers, agents, representatives, and employees, in the manufacture, sale, and distribution in interstate commerce of candy and candy products, do cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers, for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used, without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

(3) Packing or assembling in the same package or assortment of candy, for sale to the public at retail, pieces of candy of uniform size, shape, and quality, having centers of different colors, together with larger pieces of candy, which said larger pieces of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Packing or assembling in the same package or assortment of candy, for sale to the public at retail, bundles or packages of candy wafers of uniform size, shape, and quality, containing wafers of different colors, together with larger pieces of candy, which said larger pieces of candy are to be given as prizes to the purchaser procuring a bundle or package containing a wafer of a particular color.

(5) Packing or assembling in the same package or assortment of candy, for sale to the public at retail, pieces of candy of uniform size, shape, and quality, some of which contain within their wrappers printed slips bearing the word "winner", together with larger pieces of candy, which said larger pieces of candy are to be given as prizes to purchasers procuring a piece of candy containing said printed slip within the wrapper thereof.

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

(7) Furnishing to wholesale dealers, jobbers, and retail dealers, display cards or other printed matter for use in connection with [1008] the sale of its candy or candy products, which said advertising literature informs the purchasers and purchasing public:

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

(b) That upon the obtaining by the ultimate purchaser of a particular colored candy wafer, a larger piece of candy will be given free.

(c) That upon the obtaining by the ultimate purchaser of a piece of candy containing within the wrapper thereof a printed ticket, a larger piece of candy will be given free to said purchaser.

And it is hereby further ordered, adjudged and decreed, That the Respondent, George Ziegler Company, within 60 days after the service upon it of a copy of this decree, shall file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this decree.

NATIONAL SILVER COMPANY v. FEDERAL TRADE
COMMISSION ¹

No. 199

(Circuit Court of Appeals, Second Circuit. March 1, 1937)

CEASE AND DESIST ORDERS—FINDINGS OF COMMISSION—PETITIONS TO REVIEW—
COURT'S DUTY.

In proceeding to review and set aside a cease and desist order of the Federal Trade Commission, court must examine record to ascertain whether commission's findings are supported by evidence (Federal Trade Commission Act, sec. 5, 15 U. S. C. A. sec. 45).

CEASE AND DESIST ORDERS—PREREQUISITES TO VALIDITY—MERITS, COMMERCE AND
PUBLIC INTEREST.

To sustain cease and desist order of Federal Trade Commission, it is essential to find that methods used are unfair and that they are used in interstate commerce [426], and that the proceeding instituted for cessation thereof is in the interest of the public.

TERMINOLOGY—"SECTIONAL OVERLAY" FOR SILVERWARE.

Finding of Federal Trade Commission that term "sectional overlay" used in association with silverware means a quality mark denoting additional value in silverware *held* conclusive where supported by evidence.

¹ Reported in 88 F. (2d) 425. The case before the Commission is reported in 22 F. T. C. 730.

MISREPRESENTING—AS “UNFAIR METHOD OF COMPETITION.”

Misleading representation of product constitutes “unfair method of competition” within statute giving Federal Trade Commission power to prevent use of unfair methods of competition.

MISREPRESENTING “SECTIONAL OVERLAY” FOR SILVERWARE NOT OVERLAID—OF PURCHASER NOT PREJUDICED RE ACTUAL VALUE OR QUALITY.

Where term “sectional overlay” was stamped on silverware which was not overlaid, and purchasers were induced to purchase because product was represented as sectionally overlaid, statute regarding unfair method of competition was violated, even if purchaser did not lose actual value or quality by reason of the false representation.

MISREPRESENTING—“SECTIONAL OVERLAY” FOR SILVERWARE NOT OVERLAID—WHETHER CURED, IF PRESENCE OF ABSENCE EVIDENT TO EYE—PURCHASER’S DUTY OF CRITICAL INSPECTION.

Manufacturer’s stamping of term “sectional overlay” on pieces of silverware which were not overlaid, could not be condoned, even if sectional overlay is visible to naked eye, since purchaser is not by law charged with duty of making critical inspection of product to be guided by his own judgment.

MISREPRESENTING—“SECTIONAL OVERLAY” FOR SILVERWARE NOT OVERLAID—CUSTOM IN SETS, WHERE ONLY STAPLES OVERLAID, AS CURING.

Alleged recognized custom of stamping a set of silverware with word “overlay” where the staples only were in fact sectionally overlaid held insufficient excuse for manufacturer’s stamping of term “sectional overlay” on ornamental pieces which were not overlaid.

CEASE AND DESIST ORDERS—“SECTIONAL OVERLAY” FOR SILVERWARE NOT OVERLAID—ABANDONMENT OF PRACTICE—WHERE VALIDITY DISPUTED AND NO ASSURANCE OF PERMANENT ABANDONMENT.

Where manufacturer asserted legal right to use misleading designation “sectional overlay” on pieces of silverware which were in fact not overlaid, and did not give assurance that there would be permanent discontinuance of such practice, cease and desist order of Federal Trade Commission would be enforced notwithstanding manufacturer had discontinued practice.

CEASE AND DESIST ORDERS—ABANDONMENT OF PRACTICE—AS DEFENSE TO ENFORCEMENT.

A mere discontinuance of unfair competition method is not defense and is not sufficient to deny enforcement of cease and desist order, particularly where party ordered to cease and desist insists it has right to continue.

CEASE AND DESIST ORDERS—“SECTIONAL OVERLAY” FOR SILVERWARE NOT OVERLAID—PUBLIC INTEREST.

Proceeding by the Federal Trade Commission directing corporation engaged in the sale of silverware to cease and desist representing through the use of the term “sectional overlay” that silverware sold by the company had extra deposits of silver at points of wear, when such was not the case, held authorized under the act as in the public interest.

(The syllabus, with substituted captions, is taken from 88 F. (2d) 425).

On proceeding on petition of National Silver Co., to review cease and desist order of Commission, order sustained.

Brill, Bergenfeld & Brill, of New York City (*Mr. Abraham Brill, Mr. Frank F. Bergenfeld, and Mr. Herbert Baer Brill*, all of New York City, of counsel), for petitioner.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Assistant Chief Counsel, Federal Trade Commission, and *Mr. John Darsey and Mr. James W. Nichol*, Special Attorneys, all of Washington, D. C., for respondent.

Before MANTON, AUGUSTUS N. HAND, and CHASE, Circuit Judges.

[427] MANTON, *Circuit Judge*:

This petition seeks a review of an order by the respondent directing the petitioner, who is engaged in the sale of silverware, to cease and desist "Representing through the use of the term 'sectional overlay' or any term, word or phrase of like import or meaning, in advertisements or printed matter or in stamping or branding of its said silverware, or in any other manner whatsoever, that said silverware has extra deposits of silver at the points of wear, where such is not the case."

In this proceeding, pursuant to § 5 of the Federal Trade Commission Act (38 Stat. 719, 15 U. S. C. A. 45), the Commission found on sufficient evidence that "in promoting the sale of its 'Martha Washington' pattern of silverware, the respondent (petitioner) caused the quality mark or words 'sectional overlay' to be stamped on each and every piece of said pattern, when in truth and in fact the ornamental pieces of said sets of silverware did not have an extra deposit of silver at the points of wear so as to be properly represented, designed or referred to by the quality mark 'sectional overlay.'"

The Commission further found that through long usage, the term "sectional overlay" used in association with silverware had become known by the trade and purchasing public to mean an extra deposit of silver at the points of wear and that it indicated a quality mark denoting additional value in the silverware. It found that the practice of the petitioner in stamping the term "sectional overlay" upon its ornamental pieces of silverware was misleading, had the capacity and tendency to deceive purchasers into buying what they did not intend to buy. Moreover, that in so doing, the petitioner placed in the hands of wholesalers or retailers the means of deceiving ultimate purchasers; that the petitioner thus unfairly competed in trade in interstate commerce to the prejudice of the public in violation of § 5 of the Federal Trade Commission Act.

Pursuant to § 5, petitioner filed this petition seeking to set aside the order. Our duty therefore is to examine the record to ascertain whether the findings are supported by the evidence. *F. T. C. v. Curtis Pub. Co.*, 260 U. S. 568; *F. T. C. v. Paramount Famous-Lasky*

Corp., 57 F. (2d) (C. C. A. 2). To sustain the order of the Commission, it is essential to find that the methods used are unfair and that they are used in interstate commerce and that the proceeding instituted for a cessation thereof is in the interest of the public.

Petitioner admits it is engaged in interstate commerce. We therefore inquire into the evidence of unfair competition and public interest. The Commission found "sectional overlay" to mean in the trade a quality mark denoting additional value in silverware. This finding, supported by evidence, is conclusive. *F. T. C. Act*, § 5; *F. T. C. v. Winsted Hosiery Co.*, 258 U. S. 483; *F. T. C. v. Algoma Lumber Co.*, 291 U. S. 67. Misleading representation of a product constitutes an unfair method of competition within the intent of § 5. *F. T. C. v. Winsted Hosiery Co.*, supra; *Indiana Quartered Oak Co. v. F. T. C.*, 26 F. (2d) 340 (C. C. A. 2), cert. den. 278 U. S. 623.

On this record, it is established that the petitioner who sells silverware in interstate commerce caused its silver known as the "Martha Washington" pattern to be manufactured with all pieces stamped "sectional overlay." Its sets are known as staples and ornamental pieces. Its staples were in fact overlaid but its ornamentals were not. Letters and words stamped on ornamental pieces which are not overlaid tend to mislead purchasers. Buyers testified to being so misled. If a purchaser is induced to purchase because petitioner's product is represented as sectionally overlaid, that violates § 5 even if the purchaser did not lose actual value or quality by reason of the false representation. *F. T. C. v. Algoma Lumber Co.*, supra; *F. T. C. v. Balme*, 23 F. (2d) 620 (C. C. A. 2). Indeed, even where the purchaser benefits by the deception it is misleading. See *Pillsbury v. Pillsbury-Washburn Flour Mills Co.*, 64 Fed. 841 (C. C. A. 7). But it is shown by the evidence that the term "sectional overlay" indicated to the public additional value and increased use and permanency of the article. Petitioner's contention that the sectional overlay is visible to the naked eye is disputed. At any rate, each purchaser is not by law charged with the duty of making a critical inspection of the petitioner's product to be guided by his own judgment. *Indiana Quartered Oak [428] Co. v. F. T. C.*, supra. See *Florence Mfg. Co. v. Dowd*, 178 Fed. 73, 75 (C. C. A. 2).

An alleged recognized custom to stamp a set of silverware with the word "overlay" where the staples only were in fact sectionally overlaid is urged as an excuse. Witnesses, both dealers and purchasers, testified that, except in the instance of very few manufacturers, they did not stamp ornamental pieces "sectionally overlaid". The petitioner's conduct cannot be condoned. The petitioner argues that the custom was changed when the code authority under the N. I. R. A. established a new standard of industry and that since

December 1933 it has not stamped staples or ornamental pieces "sectionally overlaid". Even if this were so, since the petitioner asserts the legal right to use its misleading designation, it is the continuing duty of the Commission to issue and of the court to affirm and enforce an order to cease and desist. Here, there is no assurance that there would be a permanent discontinuance. *Sears, Roebuck & Co. v. F. T. C.*, 258 Fed. 307 (C. C. A. 7); *Fox Film Corp. v. F. T. C.*, 296 Fed. 353 (C. C. A. 2). A mere discontinuance of the unfair competition method is no defense nor is it sufficient to deny the enforcement order particularly where the petitioner insists it has the right to continue. *F. T. C. v. Wallace*, 75 F. (2d) 733 (C. C. A. 8); *Guarantee Veterinary Co. v. F. T. C.*, 285 Fed. 853 (C. C. A. 2).

Clearly this proceeding is in the public interest and well within the requirement of the Act. *F. T. C. v. Balme*, supra.

Order sustained.

FEDERAL TRADE COMMISSION v. PACIFIC STATES
PAPER TRADE ASSOCIATION ET AL.¹

No. 8227

(Circuit Court of Appeals, Ninth Circuit. March 17, 1937)

Order, on petition of Commission, for rule requiring Pacific States Paper Trade Association et al., to show cause why they should not be adjudged guilty of contempt and punished for violation of court's decree of May 2, 1927, in proceeding in *Pacific States Paper Trade Association et al. v. Federal Trade Commission*, No. 4217, and on arguments of counsel and stipulation *re* submission, that proceedings be dismissed as to certain respondents, that petition be modified, and that other respondents be adjudged guilty of contempt and fined, as in said *per curiam* order below set forth.²

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Assistant Chief Counsel, and *Mr. Walter B. Wooden*, all of Washington, D. C., for petitioner.

Mr. O. K. Cushing, *Cushing & Cushing*, *Mr. Philip S. Ehrlich*, and *Mr. H. Arthur Dunn, Jr.*, all of San Francisco, Calif., for respondents.

Before WILBUR, GARRECHT, and MATHEWS, *Circuit Judges*.

¹ Reported in 88 F. (2d) 1000. The case before the Commission is reported in 7 F. T. C. 155.

² See, *Pacific States Paper Trade Association v. F. T. C.*, 4 F. (2d) 457, and *F. T. C. v. Pacific States*, etc., 273 U. S. 52.

PER CURIAM:

Upon arguments of counsel, and stipulation re submission of matter, it is ordered that proceedings be dismissed as to respondents not served, that petition be modified, and that other respondents be adjudged guilty of contempt, and fined \$10,000, payable within 30 days, jointly and severally; upon payment of fine, rule to show cause to stand discharged; if fine not paid, execution to be issued against respondents.

NOTE.—The matter is reported in the Federal Reporter as above set forth. Order entered by Court was as follows:

ORDER

This matter came on to be heard on petition of Federal Trade Commission for a rule requiring Pacific States Paper Trade Association, et al., to show cause why they should not be punished for contempt, and on order to show cause heretofore issued:

On Consideration Whereof, *It is Now Here Ordered* by this Court that

Respondents United States Paper Company, Seattle, Washington; Wholesale Paper & Twine Company, Los Angeles, Calif.; E. R. McQuaid, Pacific States Paper Trade Association, 311 California St., San Francisco, Calif.; H. Arthur Dunn, Pacific States Paper Trade Association, 311 California St., San Francisco, Calif.; Paper Trade Conference of San Francisco and H. A. Dunn, its Secretary, 311 California St., San Francisco, Calif.; Oregon Paper Trade Conference and C. A. Bell, its Secretary, Mead Building, Portland, Ore., not served are stricken from the petition, and no further order is to be entered in this proceeding as against said respondents.

Respondents, E. W. Embree, C. H. Fricke, W. W. Huelat, G. O. Rogers, Vernon C. Scott, and A. P. Spitzko, be stricken from the petition in their individual capacities, but be inserted in the petition as officers of Pacific States Paper Trade Association during their terms of office as follows:

E. W. Embree, Vice-President, May 1935 to May 1936; C. H. Fricke, Vice-President, May 1934 to May 1935; President, May 1935 to May 1936; W. W. Huelat, Vice-President, May 1935 to May 1936; President, May 1936 to * * *; G. O. Rogers, Vice-President, May 1934 to May 1935; Executive Vice-President, May 1935 to May 1936; Vernon C. Scott, Vice-President, May 1935 to May 1936; A. P. Spitzko, Vice-President, May 1935 to May 1936.

Respondent Hellbronn Company of Manila, P. I., be stricken from the petition as not a material party.

Respondents:

Bonestell & Company, Carpenter Paper Company of Utah, Carter, Rice & Company, Corp., Dixon & Company, E. E. Embree, B. G. Ewing Paper Company, C. H. Fricke, General Paper Company, John W. Graham & Company, Ingram Paper Company, J. W. P. McFall, Osmund & Company, Pacific Coast Paper Company, Packer-Scott Company, Paper Trades Conference of Southern California and W. B. Reynolds, its secretary, G. O. Rogers, Seattle-Tacoma Paper Merchants Association, and E. L. Skeel, its Secretary, Sierra Paper Company, A. P. Spitzko, Spokane Paper & Stationery Company, Spokane Wholesale Paper Merchants Association, and H. M. Hamblen, its secretary, Standard Paper Company, Traverner & Fricke, Vernon C. Scott, Western Newspaper Union,

Zellerbach Paper Company, a Corporation, Blake, Moffitt & Towne, a Corp. under laws of California, Blake, Moffitt & Towne, a Corp, under laws of Oregon, Blake, Moffitt & Towne, a Corp., under laws of Washington, Tacoma Paper & Stationery Company, a Corp., W. W. Huelat

be, and each of them is hereby found guilty of contempt of this Court for violation of this court's decree of May 2, 1927, in the proceeding entitled *Pacific Paper Trade Association, et al., vs. Federal Trade Commission, No. 4217*, and that a fine of Ten Thousand Dollars (\$10,000.00) be, and hereby is assessed against said respondents, jointly and severally, and that said fine be paid within 30 days from date hereof, and if so paid, then this rule to show cause be discharged, and, if not so paid, then execution may issue against said respondents, or each of them for the full amount of said fine.

That the following words "from discussing uniform terms, discounts and prices," contained in line 6 of subdivision (e) of the description of the decree of this court as contained in paragraph 1 of the petition (incorporated by reference in paragraph 4 thereof) do not appear in the decree of this court of May 2, 1927, and the said words, therefore, be, and hereby are stricken from the petition.



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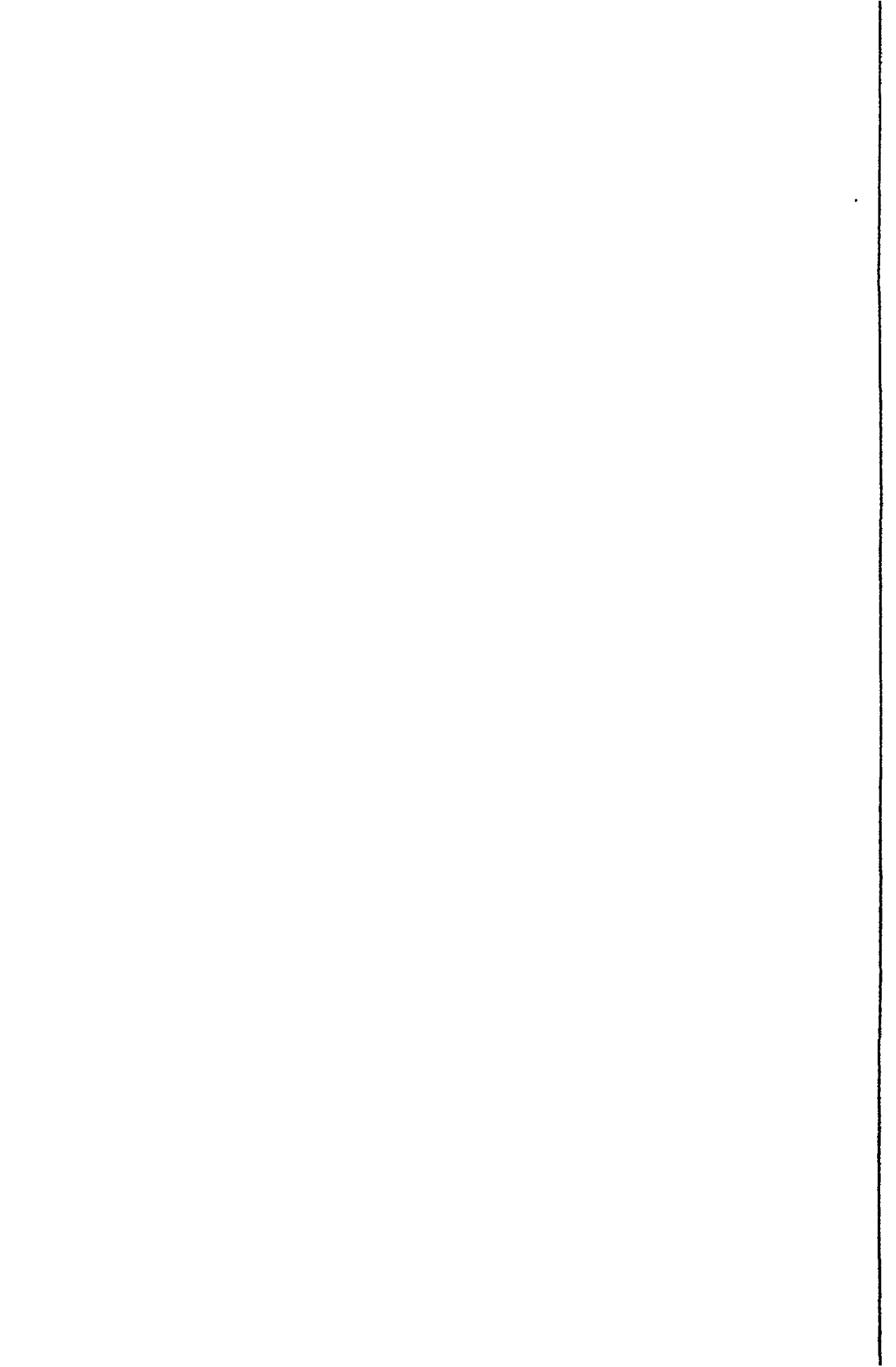
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