

FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

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MEMBERS OF THE FEDERAL TRADE COMMISSION
AS OF NOVEMBER 30, 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

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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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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.

⁵ For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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 superdecree 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.

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

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²⁹ For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

³⁰ For interlocutory order, see "Memoranda," 20-742 or S. & D. 716.

³¹ For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JUNE 1, 1937, TO NOVEMBER 30, 1937

IN THE MATTER OF

WILLIAM F. ALLEN, CHARLES H. WOLF, EDWARD M. MULLEN, AND CHARLES H. CLARK, INDIVIDUALLY, AND DOING BUSINESS AS MILLER, BAIN, BEYER & COMPANY

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

Docket 3095. Complaint, Apr. 3, 1937—Decision, June 2, 1937

Where partners engaged in the purchase of blankets and bedspreads from the manufacturers and in selling same to wholesale and retail dealers and to clubs, fraternal organizations, hospitals, charitable institutions, and associations, for resale and distribution to purchasing public—

Advertised, through printed cards, circulars, and letters, and sold said products for resale under, a "Club Plan," under which each week, in accordance with weekly drawings, one of a fixed number of members who obligated themselves to some small weekly payment for a specified number of weeks, received, as determined by the name drawn by chance, article of merchandise involved, without further payments or further compliance with original undertaking, from which he was thus absolved, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their products in accordance with aforesaid sales plan, and aided and abetted, through aforesaid advertising, in inducing organizations, associations, and the like to purchase and dispose of their said products through lottery, gift enterprise, or game of chance, in violation of public policy, as long recognized in the common law and criminal statutes, and of an established public policy of the United States Government, and in competition with many makers and sellers of blankets and bedspreads, unwilling to offer or sell their said products together with a sales plan or method involving a lottery, game of chance or gift enterprise, and who refrain therefrom, and with many unwilling to adopt and use said or any method involving a game of chance or sale of a chance to win by chance or any other method contrary to public policy;

With result that purchasing public was induced and persuaded to buy their said products in preference to those offered and sold by competitors, by reason of said lottery or game of chance, and of inducing, through said advertisements, circulars, and the like, purchase of their said products by aforesaid organizations and distribution thereof to consuming public

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through such sales plan, and with result that many dealers, associations, societies, and ultimate purchasers of blankets and bedspreads, attracted by said plan or method and element of chance involved in sale thereof, as above set forth, were thereby induced to buy such articles, sold and distributed by them, in preference to like merchandise offered and sold by aforesaid competitors who do not use same or equivalent method, and with tendency and capacity, by reason of said game of chance, to divert to them trade and custom from their said competitors who do not use such or an equivalent practice or method, to exclude from trade in question all competitors who are unwilling to and do not use same as unlawful, to lessen competition therein and tend to create a monopoly in themselves and such other distributors as do use same or equivalent practice, and deprive purchasing public of benefit of free competition in trade in question, and to eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not 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.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, 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 William F. Allen, Charles H. Wolf, Edward M. Mullen, and Charles H. Clark, individually and as copartners doing business under the firm name and style of Miller, Bain, Beyer & 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:

PARAGRAPH 1. The respondents are individuals doing business as a copartnership under the firm name and style of Miller, Bain, Beyer & Company, with their principal office and place of business located at 1001 Filbert Street, in the city of Philadelphia, State of Pennsylvania. Respondents are now, and for several years last past have been engaged in the business of buying blankets and bedspreads from the manufacturers thereof and in selling the same to wholesale and retail dealers and to clubs, fraternal organizations, hospitals, charitable institutions, and associations, for resale and distribution to the purchasing public. Respondents' customers are located at points in the various States of the United States, and respondents cause said

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products when sold to be transported from their place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof in the State of Pennsylvania and 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 blankets and bedspreads between and among the States of the United States. In the course and conduct of their said business, respondents are in competition with other partnerships and with corporations and individuals engaged in the sale and distribution of similar or like merchandise 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 have offered for sale and sold their said blankets and bedspreads to purchasers, as described in paragraph 1 hereof, along with a sales plan or method by which the said blankets and bedspreads are to be resold to the purchasing public. Said sales plan or method involves the use of a lottery scheme or gift enterprise in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondents have advertised their said merchandise and their said sales plan or method by means of printed cards, circulars, and letters. The sales plan or method as suggested and advertised by respondents, is as follows:

The sales plan or method is described as a "Club Plan." Each club has a fixed number of members, usually sixty or a hundred. Each member of a club pays a fixed amount each week, usually 25¢, for a period not to exceed a given number of weeks, usually twenty or twenty-four weeks. At the end of the first week a drawing is held, and the member whose name or number is drawn receives one of the articles of merchandise being distributed for the payment of one week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed, and thus one member receives an article of merchandise for the payment of one week's dues, another for two weeks' dues, another for three weeks' dues, and so to the end of the fixed period. At that time all remaining members receive one of the articles of merchandise, but such members have paid the full value of such merchandise. Thus by means of the sales plan or method offered by respondents the amount which an ultimate purchaser pays for an article of merchandise is determined wholly by lot or chance.

PAR. 3. The dealers and purchasers to whom respondents sell their blankets and bedspreads expose said blankets and bedspreads for sale and sell the same to the purchasing public in accordance with the

aforesaid sales plan or method. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The purchasing public is induced and persuaded to purchase respondents' said products in preference to blankets and bedspreads offered for sale and sold by respondents' competitors because of said lottery or game of chance.

PAR. 4. The advertisements and circulars as distributed by respondents aid and abet in inducing organizations, associations and the like to purchase respondents' products and to dispose of the same by means of a lottery, gift enterprise, or game of chance. The purpose of respondents in so distributing their advertising material and circulars describing the sales plan above mentioned is to induce organizations, associations and the like to purchase respondents' said products, and the distribution of said advertisements, circulars and the like has the effect of inducing the purchase of respondents' products by such organizations and the distribution of the same to the consuming public by means of said sales plan.

PAR. 5. The sale of blankets and bedspreads to the purchasing public in the manner above alleged involves a lottery, game of chance, or a gift enterprise.

The use by respondents of said sales plan or method in the sale of their merchandise, and the sale by and through the use thereof and by the aid of said sales plan or 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 sales plan or method has the tendency to unduly hinder competition or create monopoly.

Many persons, firms, and corporations who make and sell blankets and bedspreads in competition with the respondents, as above alleged, are unwilling to offer for sale or sell their said blankets and bedspreads together with a sales plan or method which involves a lottery, game of chance, or a gift enterprise as above alleged, and such competitors refrain therefrom.

PAR. 6. Many dealers, associations, societies, and ultimate purchasers of blankets and bedspreads are attracted by respondents' said sales plan or method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase blankets and bedspreads sold and distributed by respondents in preference to like merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said sales plan or method by re-

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spondents 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 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 trade and to tend to create a monopoly in respondents and such other distributors as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by the respondents has the tendency and capacity to eliminate from said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

PAR. 7. 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. 8. 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, 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 3, 1937, issued and served its complaint in this proceeding upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On May 20, 1937, the respondents filed their answer, in which answer they admitted all the material allegations of fact in said complaint to be true, and stated that they waived hearing on the charges set forth in said complaint, and consented that the Commission might, without trial, without the taking of further 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 complaint which constitute violations of Section 5 of the said Federal Trade Commission Act.

Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and the answer thereto, and the Commission, having duly considered the same and being now fully advised in the premises, finds 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 are individuals doing business as a copartnership under the firm name and style of Miller, Bain, Beyer & Company, with their principal office and place of business located at 1001 Filbert Street, in the city of Philadelphia, State of Pennsylvania. Respondents are now, and for several years last past have been, engaged in the business of buying blankets and bedspreads from the manufacturers thereof and in selling the same to wholesale and retail dealers and to clubs, fraternal organizations, hospitals, charitable institutions, and associations, for resale and distribution to the purchasing public. Respondents' customers are located at points in the various States of the United States, and respondents cause said products when sold to be transported from their place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof in the State of Pennsylvania and 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 blankets and bedspreads between and among the States of the United States. In the course and conduct of their said business, respondents are in competition with other partnerships and with corporations and individuals engaged in the sale and distribution of similar or like merchandise 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 have offered for sale and sold their said blankets and bedspreads to purchasers, as described in paragraph 1 hereof, along with a sales plan or method by which the said blankets and bedspreads are to be resold to the purchasing public. Said sales plan or method involves the use of a lottery scheme or gift enterprise in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondents have advertised their said merchandise and their said sales plan or method by means of printed cards, circulars, and letters. The sales plan or method, as suggested and advertised by respondents, is as follows:

The sales plan or method is described as a "Club Plan." Each club has a fixed number of members, usually sixty or a hundred. Each member of a club pays a fixed amount each week, usually 25¢, for a period not to exceed a given number of weeks, usually twenty or twenty-four weeks. At the end of the first week a drawing is held, and the member whose name or number is drawn receives one of the articles of merchandise being distributed for the payment of one week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed, and thus one member receives an article of merchandise for the payment of one week's dues, another for two weeks' dues, another for three weeks' dues, and so to the end of the fixed period. At that time all remaining members receive one of the articles of merchandise, but such members have paid the full value of such merchandise. Thus by means of the sales plan or method offered by respondents the amount which an ultimate purchaser pays for an article of merchandise is determined wholly by lot or chance.

PAR. 3. The dealers and purchasers to whom respondents sell their blankets and bedspreads expose said blankets and bedspreads for sale and sell the same to the purchasing public in accordance with the aforesaid sales plan or method. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The purchasing public is induced and persuaded to purchase respondents' said products in preference to blankets and bedspreads offered for sale and sold by respondents' competitors because of said lottery or game of chance.

PAR. 4. The advertisements and circulars as distributed by respondents aid and abet in inducing organizations, associations and the like to purchase respondents' products and to dispose of the same by means of a lottery, gift enterprise, or game of chance. The purpose of respondents in so distributing their advertising material and circulars describing the sales plan above mentioned is to induce organizations, associations and the like to purchase respondents' said products, and the distribution of said advertisements, circulars and the like has the effect of inducing the purchase of respondents' products by such organizations and the distribution of the same to the consuming public by means of said sales plan.

PAR. 5. The sale of blankets and bedspreads to the purchasing public in the manner above found involves a lottery, game of chance, or a gift enterprise. The use by respondents of said sales plan or method in the sale of their merchandise, and the sale by and through the use thereof and by the aid of said sales plan or method, is a prac-

tice 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 sales plan or method has the tendency to unduly hinder competition or create monopoly. Many persons, firms and corporations who make and sell blankets and bedspreads in competition with the respondents, as above found, are unwilling to offer for sale or sell their said blankets and bedspreads together with a sales plan or method which involves a lottery, game of chance, or a gift enterprise, as above found, and such competitors refrain therefrom.

PAR. 6. Many dealers, associations, societies and ultimate purchasers of blankets and bedspreads are attracted by respondents' said sales plan or method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase blankets and bedspreads sold and distributed by respondents in preference to like merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said sales plan or 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 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 trade and to tend to create a monopoly in respondents and such other distributors as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by the respondents has the tendency and capacity to eliminate from said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

PAR. 7. Many of said competitors of respondents are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondents, William F. Allen, Charles H. Wolf, Edward M. Mullen, and Charles H. Clark, individually and as copartners doing business under the firm name and style of Miller, Bain, Beyer & Company, are to the prejudice of

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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 matter coming on to be heard by the Commission on the complaint filed herein on April 3, 1937, and the answer of the respondents filed May 20, 1937, in which answer the respondents state that they desire to waive hearing on the charges set forth in said complaint and that for the sole purpose of avoiding the trouble and expense incident to further continuance of this proceeding they refrain from contesting the proceeding and admit that all the material allegations of fact in said complaint are true, but 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," and not within the intent and meaning of any other law of the United States, and further state that such answer does not constitute an admission of any conclusions of law and does not constitute an admission of fact for any other purpose than for the disposition of this proceeding and is not to be used against them in any other proceeding, suit or action, and in which answer respondents consent that the Commission may, without trial, without the taking of further 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 said complaint which constitute violations of Section 5 of the said Federal Trade Commission Act; and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of said Federal Trade Commission Act.

It is ordered, That the respondents, William F. Allen, Charles H. Wolf, Edward M. Mullen, and Charles H. Clark, individually and as copartners doing business under the firm name and style of Miller, Bain, Beyer & Company, their agents, representatives and employees, in connection with the sale and offering for sale and distribution in interstate commerce of blankets, bedspreads, or other merchandise, do cease and desist from:

1. Offering for sale and selling blankets, bedspreads, or other merchandise, to purchasers together with a sales plan or method involving the use of a lottery scheme or gift enterprise by which said

blankets, bedspreads, or other merchandise, are to be or may be resold to the purchasing public.

2. Advertising by means of printed cards, circulars, letters, or by any other means, the sale of blankets, bedspreads, or other merchandise, under any plan involving the use of a lottery scheme or gift enterprise.

3. Aiding and inducing the purchasers of such blankets, bedspreads, or other merchandise, to dispose of the same by means of any lottery, gift enterprise, or game of chance.

It is further ordered, That the respondents and each of them 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

PENN DRY GOODS COMPANY, AND GEORGE J. NOTH-
NAGEL TRADING AS THE STANLEY STORE AND AS
AGENT OF PENN DRY GOODS COMPANY

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

Docket 3098. Complaint, Apr. 6, 1937—Decision, June 2, 1937¹

Where an individual engaged in the purchase of blankets and bedspreads from the manufacturers or their selling agents, and in selling same to clubs, fraternal organizations, hospitals, charitable institutions, and associations, for resale and distribution to the purchasing public—

Advertised, through printed cards, circulars, and letters, and sold said products for resale under, a "Club Plan," under which each week, in accordance with weekly drawings, one of a fixed number of members who obligated themselves to some small weekly payment for a specified number of weeks, received, as determined by the name drawn by chance, article of merchandise involved, without further payments or further compliance with original undertaking, from which he was thus absolved, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of his products in accordance with aforesaid sales plan, and aided and abetted, through aforesaid advertising, in inducing organizations, associations, and the like to purchase and dispose of his said products through lottery, gift enterprise, or game of chance, in violation of public policy, as long recognized in the common law and criminal statutes, and of an established public policy of the United States Government, and in competition with many makers and sellers of blankets and bedspreads, unwilling to offer or sell their said products together with a sales plan or method involving a lottery, game of chance, or gift enterprise, and who refrain therefrom, and with many unwilling to adopt and use said or any method involving a game of chance or sale of a chance to win by chance or any other method contrary to public policy:

With result that purchasing public was induced and persuaded to buy his said products in preference to those offered and sold by competitors, by reason of said lottery or game of chance, and of inducing, through said advertisements, circulars, and the like, purchase of his said products by aforesaid organizations and distribution thereof to consuming public through such sales plan, and with result that many dealers, associations, societies, and ultimate purchasers of blankets and bedspreads, attracted by said plan or method and element of chance involved in sale thereof, as above set forth, were thereby induced to buy such articles, sold and distributed by him, in preference to like merchandise offered and sold by aforesaid competitors who do not use same or equivalent method, and with tendency and capacity, by reason of said game of chance, to divert to him trade and custom from his said competitors who do not use such or an equivalent practice or method, to exclude from trade in question all competitors who are unwill-

¹ Modified order published as of July 2, 1937.

Complaint

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ing to and do not use same as unlawful, to lessen competition therein and tend to create a monopoly in him and such other distributors as do use same or equivalent practice, and deprive purchasing public of benefit of free competition in trade in question, and to eliminate therefrom all actual, and exclude therefrom all potential, competitors, who do not 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.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Herman Hurowitz, of Philadelphia, Pa., for Penn Dry Goods Co. and *Wright, Gordon, Zachry & Parlin*, of New York City, for George J. Nothnagel.

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 Penn Dry Goods Company, a corporation, and George J. Nothnagel, an individual trading under the firm name and style of The Stanley Store and as agent of the Penn Dry Goods 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:

PARAGRAPH 1. The respondent, Penn Dry Goods Company, is a corporation organized and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 731 Arch Street, in the city of Philadelphia, State of Pennsylvania. The respondent, George J. Nothnagel, is an individual trading under the firm name and style of The Stanley Store, with his principal place of business located at 734 Haddon Avenue, in the city of Collingswood, State of New Jersey. The respondent Nothnagel does business in his own name and right and as agent for the respondent, Penn Dry Goods Company.

The respondent, Penn Dry Goods Company, is now, and for several years last past has been, engaged in the business of buying blankets and bedspreads from the manufacturers thereof, or from manufacturers' agents, and selling the same to wholesale and retail dealers and to clubs, fraternal organizations, hospitals, charitable institutions, and associations for resale and distribution to the purchasing public.

The respondent, George J. Nothnagel, trading under the firm name and style of The Stanley Store, is now, and for some time last past

has been, engaged in the business of buying blankets and bedspreads from the manufacturers thereof, or their selling agents, and in selling the same to clubs, fraternal organizations, hospitals, charitable institutions, and associations for resale and distribution to the purchasing public. The respondent Nothnagel has also, as agent for the respondent, Penn Dry Goods Company, been engaged in the business of taking orders for and selling blankets and bedspreads to clubs, fraternal organizations, hospitals, charitable institutions, and associations, and forwarding said orders to the said respondent, Penn Dry Goods Company.

Respondents' customers are located at points in the States of Pennsylvania, New Jersey, Maryland, and Delaware, and the respondents cause said merchandise when sold to be transported from their place of business in the city of Philadelphia, State of Pennsylvania, or the city of Collingswood, State of New Jersey, to the purchasers thereof at their respective places of business in the States above mentioned; and there is now, and has been for some time last past, a course of trade and commerce by said respondents in such blankets and bedspreads between and among the States of the United States.

In the course and conduct of their said business, respondents are in competition with other corporations and with other individuals and with partnerships engaged in the sale and distribution of similar or like merchandise 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 have offered for sale and sold their said blankets and bedspreads to purchasers, as described in paragraph 1 hereof, along with a sales plan or method by which the said blankets and bedspreads are to be resold to the purchasing public. Said sales plan or method involves the use of a lottery scheme or gift enterprise in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondents have advertised their said merchandise and their said sales plan or method by means of printed cards, circulars, and letters. The sales plan or method, as suggested and advertised by respondents, is as follows:

The sales plan or method is described as a "Club Plan." Each club has a fixed number of members, usually sixty or a hundred. Each member of a club pays a fixed amount each week, usually 25¢, for a period not to exceed a given number of weeks, usually twenty or twenty-four weeks. At the end of the first week a drawing is held, and the member whose name or number is drawn receives one of the articles of merchandise being distributed for the payment of one week's dues, and such winner or member then is dropped from the

club. Each succeeding week the same procedure is followed, and thus one member receives an article of merchandise for the payment of one week's dues, another for two weeks' dues, another for three weeks' dues, and so to the end of the fixed period. At that time all remaining members receive one of the articles of merchandise, but such members have paid the full value of such merchandise. Thus by means of the sales plan or method offered by respondent the amount which an ultimate purchaser pays for an article of merchandise is determined wholly by lot or chance.

PAR. 3. The dealers and purchasers to whom respondents sell their blankets and bedspreads expose said blankets and bedspreads for sale and sell the same to the purchasing public in accordance with the aforesaid sales plan or method. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products in accordance with the sales plan hereinabove set forth. The purchasing public is induced and persuaded to purchase respondent's said products in preference to blankets and bedspreads offered for sale and sold by respondents' competitors because of said lottery or game of chance.

PAR. 4. The advertisements and circulars as distributed by respondents aid and abet in inducing organizations, associations and the like to purchase respondents' products and to dispose of the same by means of a lottery, gift enterprise, or game of chance. The purpose of respondents in so distributing their advertising material and circulars describing the sales plan above mentioned is to induce organizations, associations, and the like to purchase respondents' said products, and the distribution of said advertisements, circulars and the like has the effect of inducing the purchase of respondents' products by such organizations and the distribution of the same to the consuming public by means of said sales plan.

PAR. 5. The sale of blankets and bedspreads to the purchasing public in the manner above alleged involves a lottery, game of chance, or a gift enterprise.

The use by respondents of said sales plan or method in the sale of their merchandise, and the sale by and through the use thereof and by the aid of said sales plan or 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 sales plan or method has the tendency to unduly hinder competition or create monopoly.

Many persons, firms, and corporations who make and sell blankets and bedspreads in competition with the respondents, as above alleged,

are unwilling to offer for sale or sell their said blankets and bedspreads together with a sales plan or method which involves a lottery, game of chance, or a gift enterprise, as above alleged, and such competitors refrain therefrom.

PAR. 6. Many dealers, associations, societies, and ultimate purchasers of blankets and bedspreads are attracted by respondents' said sales plan or method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase blankets and bedspreads sold and distributed by respondents in preference to like merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said sales plan or 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 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 trade and to tend to create a monopoly in respondents and such other distributors as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by the respondents has the tendency and capacity to eliminate from said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

PAR. 7. 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. 8. 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, 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, 1937, issued and served its

complaint in this proceeding upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On May 15, 1937, the respondent, Penn Dry Goods Company, a corporation, filed its answer denying the allegations of said complaint, and on May 24, 1937, the respondent George J. Nothnagel, filed his answer, in which answer he stated that he desired to waive hearing on the charges set forth in the complaint and admitted that all the material allegations in said complaint, except as in said answer expressly denied, were true and consented that the Commission might, without further evidence and without any other proceeding, make and enter its findings as to the facts and serve upon him an order to cease and desist from any methods of competition alleged in the complaint which constitute violations of Section 5 of the said Federal Trade Commission Act.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers thereto, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. Respondent, Penn Dry Goods Company, is a corporation organized and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 731 Arch Street, in the city of Philadelphia, State of Pennsylvania.

Respondent, George J. Nothnagel, is an individual trading under the firm name and style of The Stanley Store, with his principal place of business located at 734 Haddon Avenue, in the city of Collingswood, State of New Jersey.

Respondent, George J. Nothnagel, trading under the firm name and style of The Stanley Store, is now and for sometime last past has been engaged in the business of buying blankets and bedspreads from the manufacturers thereof or their selling agents, and in selling the same to clubs, fraternal organizations, hospitals, charitable institutions, and associations, for resale and distribution to the purchasing public. Customers of the respondent, George J. Nothnagel, are located at points in the States of Pennsylvania, New Jersey, Maryland, and Delaware, and the respondent Nothnagel causes said merchandise when sold to be transported from his place of business in

the city of Collingswood, State of New Jersey, to the purchasers thereof at their respective places of business in the States above mentioned; and there is now and has been for sometime last past a course of trade and commerce by said respondent in such blankets and bedspreads between and among the States of the United States. In the course and conduct of his business, respondent Nothnagel is in competition with other individuals and with corporations and partnerships engaged in the sale and distribution of similar or like merchandise 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 Nothnagel has offered for sale and sold his said blankets and bedspreads to purchasers, as described in paragraph 1 hereof, along with the sales plan or method by which the said blankets and bedspreads are to be resold to the purchasing public. Said sales plan or method involves the use of a lottery scheme or gift enterprise in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondent has advertised his said merchandise and his said sales plan or method by means of printed cards, circulars, and letters. The sales plan or method, as suggested and advertised by respondent, is as follows:

The sales plan or method is described as a "Club Plan." Each club has a fixed number of members, usually sixty or a hundred. Each member of a club pays a fixed amount each week, usually 25¢, for a period not to exceed a given number of weeks, usually twenty or twenty-four weeks. At the end of the first week a drawing is held, and the member whose name or number is drawn receives one of the articles of merchandise being distributed for the payment of one week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed, and thus one member receives an article of merchandise for the payment of one week's dues, another for two weeks' dues, another for three weeks' dues, and so to the end of the fixed period. At that time all remaining members receive one of the articles of merchandise, but such members have paid the full value of such merchandise. Thus by means of the sales plan or method offered by respondent Nothnagel the amount which an ultimate purchaser pays for an article of merchandise is determined wholly by lot or chance.

PAR. 3. The dealers and purchasers to whom respondent Nothnagel has sold his blankets and bedspreads have exposed said blankets and bedspreads for sale and have sold the same to the purchasing public in accordance with the aforesaid sales plan or method. Respondent Nothnagel has thus supplied to and has placed 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. The purchasing public has been induced and persuaded to purchase respondent's said products in preference to blankets and bedspreads offered for sale and sold by respondent's competitors because of said lottery or game of chance.

PAR. 4. The advertisements and circulars as distributed by respondent Nothnagel aided and abetted in inducing organizations, associations and the like to purchase respondent's products and to dispose of the same by means of a lottery, gift enterprise, or game of chance. The purpose of respondent in so distributing his advertising material and circulars describing the sales plan above mentioned has been to induce organizations, associations and the like to purchase respondent's said products, and the distribution of said advertisements, circulars, and the like has had the effect of inducing the purchase of respondent's products by such organizations and the distribution of the same to the consuming public by means of said sales plan.

PAR. 5. The sale of blankets and bedspreads to the purchasing public in the manner above found involves a lottery, game of chance, or a gift enterprise. The use by respondent of said sales plan or method in the sale of his merchandise, and the sale by and through the use thereof and by the aid of said sales plan or 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 sales plan or method has had the tendency to unduly hinder competition or create monopoly. Many persons, firms, and corporations who make and sell blankets and bedspreads in competition with respondent Nothnagel, as above found, are unwilling to offer for sale or sell their said blankets and bedspreads together with a sales plan or method which involves a lottery, game of chance, or a gift enterprise, as above found, and such competitors refrain therefrom.

PAR. 6. Many dealers, associations, societies and ultimate purchasers of blankets and bedspreads have been attracted by respondent's said sales plan or method and by the element of chance involved in the sale thereof in the manner above described, and have been thereby induced to purchase blankets and bedspreads sold and distributed by respondent Nothnagel, in preference to like merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said sales plan or method by respondent has had 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 trade 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 trade and to tend to create a monopoly in respondent Nothnagel and such other distributors as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by respondent Nothnagel has had the tendency and capacity to eliminate from said trade actual competitors and to exclude therefrom potential competitors who do not adopt and use said method or an equivalent method.

PAR. 7. Many of said competitors of respondent Nothnagel are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of respondent, George J. Nothnagel, individually and trading as The Stanley Store, have been 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."

MODIFIED ORDER TO CEASE AND DESIST ¹

This matter comes on to be heard by the Federal Trade Commission on the complaint filed herein on April 6, 1937, the answer of the respondent, Penn Dry Goods Company, a corporation, filed May 15, 1937, and the answer of respondent, George J. Nothnagel, an individual trading under the firm name and style of The Stanley Store, filed herein on May 24, 1937.

The answer of respondent, George J. Nothnagel, as aforesaid, states that he desires to waive hearing on the charges set forth in the complaint, and that for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding he refrains from contesting this proceeding, and admits that all the material

¹ The effect of said order issued as of July 2, 1937, is to add to the third and last numbered paragraph of the original order the following qualification, namely: "this provision not applying to sales of merchandise not accompanied by any acts of respondent aiding or inducing disposition thereof under any plan involving a lottery, gift enterprise, or game of chance."

facts alleged in said complaint, except that he is or acts as agent for the Penn Dry Goods Company, are true, but within the intent and meaning of Section 5 of the Federal Trade Commission Act only and not within the intent and meaning of any other law of the United States, such answer not constituting an admission of fact for any other purpose nor to be used against him in any other proceeding, suit or action; and that said respondent Nothnagel consents that the Commission may, without trial, without the taking of further evidence, and without any other proceeding, make and enter its findings as to the facts and issue and serve upon him an order to cease and desist from any methods of competition alleged in the complaint which constitute violations of Section 5 of the said Federal Trade Commission Act.

The answer of respondent, Penn Dry Goods Company, a corporation, denies that it has indulged in the practices complained of in said complaint, and denies that the said respondent Nothnagel is or has been its agent, representative, or employee.

The Commission, on June 2, 1937, having made its findings as to the facts and conclusion that said respondent Nothnagel has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and the Commission, on June 2, 1937, having entered its order to cease and desist against the respondent, George J. Nothnagel, and the matter now coming on for reconsideration upon the request of counsel for the respondent, George J. Nothnagel, dated June 25, 1937, requesting a modification of said order to cease and desist, and the Commission having duly considered the said request and being now fully advised in the premises.

It is ordered, That the order to cease and desist heretofore entered on June 2, 1937, be, and the same hereby is, vacated and set aside.

It is further ordered, That the respondent, George J. Nothnagel, an individual trading under the firm name and style of The Stanley Store, his agents, and employees, in connection with the offering for sale, sale and distribution in interstate commerce of blankets, bedspreads, or other merchandise, do cease and desist from:

1. Offering for sale and selling blankets, bedspreads, or other merchandise, to purchasers together with a sales plan or method involving the use of a lottery scheme or gift enterprise by which said blankets, bedspreads, or other merchandise, are to be or may be resold to the purchasing public.

2. Advertising by means of printed cards, circulars, letters, or by any other means, the sale of blankets, bedspreads, or other mer-

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chandise, under any plan involving the use of a lottery scheme or a gift enterprise.

3. Aiding and inducing the purchasers of such blankets, bedspreads, or other merchandise, to dispose of the same by means of any lottery, gift enterprise, or game of chance; this provision not applying to sales of merchandise not accompanied by any acts of respondent aiding or inducing disposition thereof under any plan involving a lottery, gift enterprise, or game of chance.

It is further ordered, That the respondent, George J. Nothnagel, individually and trading as The Stanley Store, 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.

It is further ordered, That the said complaint, insofar as it relates to the respondent, Penn Dry Goods Company, a corporation, be and the same is hereby dismissed without prejudice.

IN THE MATTER OF
HADDORFF PIANO COMPANY

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

Docket 3041. Complaint, Jan. 27, 1937—Decision, June 5, 1937

Where a corporation engaged in the manufacture of pianos and in sale and distribution thereof to retailers for resale, in competition with those who make and sell such products similar to its so-called "Vertichord Grand" type and not in any way represent their respective products as having mechanical features and other properties similar to grand pianos, and thus designate their respective products, and in competition with others who make pianos with same mechanical features and other qualities possessed by grand pianos and do thus designate same; in advertising aforesaid type, among others made and dealt in by it, in periodicals and trade journals of general circulation, and in pamphlets, folders, suggested sales talks and other advertising literature circulated to its customers and prospective customers—

Made use of word "Grand" in trade name "Vertichord Grand" to designate and describe its aforesaid type, and represented that said piano possessed same mechanical or operating features as those of the type generally designated and referred to as grand pianos, through such statements as "* * * designed to * * * maintain grand piano tone quality," "* * * volume and tone of a fine grand without taking up a grand's space," "All the advantages of a large grand piano," "* * * deep mellow tone of a large grand piano," and urged, in its said suggested sales talks, use of name "Vertichord Grand" to describe said product, and, in pamphlets distributed to retailers for members of the purchasing public, emphasized economy of space along with featured characteristics of the grand, notwithstanding fact it did not have, among distinctive operating or mechanical features different from and in some cases superior to those of pianos of other types, strings placed horizontally, gravity action of hammers and shifting soft pedal, and, while possessing tonal qualities comparable to those of baby grand, it did not possess such qualities comparable to those of the large or concert size grand piano;

With tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that its said pianos, thus designated, possessed same operating or mechanical features as present in grand pianos, as long designated, described and known to piano trade and purchasing public, and preferred by many users, and into purchase of its so-called "Vertichord Grand" type piano by reason of such belief, and with result of thereby placing in the hands of retailers instrument and means whereby they might misrepresent the operating or mechanical features and other properties of said products and induce members of purchasing public to buy the same by reason thereof, and with result that trade was diverted to it from competitors, likewise engaged in distribution and sale of pianos, who have not made use of like or similar statements and representations in sale of their respective products in commerce:

Complaint

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

Mr. J. T. Welch for the Commission.

Mr. Axel A. Hofgren, 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 Haddorff Piano 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, Haddorff Piano 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 1900 Harrison Avenue, in the city of Rockford, State of Illinois. Respondent is now, and has been for a number of years, engaged in the business of manufacturing, distributing, and selling pianos to retail dealers for resale, in commerce as herein set out.

PAR. 2. Respondent, being engaged in business as aforesaid, causes said pianos, 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 the 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 pianos 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 the 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 pianos, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. One of the various types of pianos manufactured and distributed in commerce as hereinabove set out by the respondent is designated and described by it as the "Vertichord Grand." Upon each of the pianos of this type there is imprinted upon the center of the

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front panel thereof the words "Haddorff Vertichord Grand." In the course of the operation of said business, and for the purpose of inducing customers and prospective customers to purchase said pianos, the respondent has, from time to time, caused advertisements to be inserted in periodicals and trade journals 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, pamphlets, folders, suggested sales talks, and other advertising literature, some of which literature is designed and intended to be used by the retailers purchasing said pianos in the offering for sale and sale of respondent's pianos. In said advertising literature above referred to, the respondent has caused its corporate name, Haddorff Piano Company, to be prominently and conspicuously displayed, together with such statements as follows:

Cleverly designed to take much less space than a grand and yet to maintain grand piano tone quality.

Tone of a parlor grand.

It solves the problem of creating a piano that literally has the volume and tone of a fine grand without taking up a grand's space.

Haddorff's ingenious piano engineers have devised a way of using longer strings in less space (and we can prove the paradox) thus giving full, rounded grand piano tone.

All the advantages of a large grand piano.

It has the deep mellow tone of a large grand piano.

In its suggested sales talk distributed to retailers appear such statements as:

In conversation there is a tendency to shorten this to just "Vertichord". "Vertichord" indicates "vertical strings" or "vertically strung", but that by itself is not a complete description of the instrument. It is a horizontal piano, vertically strung. Vertichord Grand is therefore an accurate and proper name. Its constant use in full has been proved to have a very favorable effect in the promotion and sale of the instrument.

In pamphlets which it distributes to its retailers for distribution to members of the purchasing public in connection with the offering for sale and sale of its pianos appear such statements as:

The name chosen for the new instrument, Vertichord Grand, is descriptive of the new form. In its main mass and main effect the piano is horizontal (grand), but at that point in the structure of an ordinary grand where the curve in the rim begins, the strings are up-ended (which is the significance of "Vertichord"). The result is a piano which combines the grace and decorative charm of the old spinet, with the string length, sounding board area, and general tonal character of a sizeable grand of excellent quality, projects into the room only twenty-five and one-half inches, and costs much less than any other piano of the same style, appeal and a comparable musical quality.

All of said statements, together with other similar statements not herein set out, purport to be descriptive of the type of pianos manufactured and distributed by the respondent under the name "Vertichord Grand." In all of said advertising literature, in the statements above set out, and in many other statements, the respondent represents, either directly or through implication, that the type of pianos referred to in said statements is the same as or is comparable to and has the same operating or mechanical features, tonal qualities and other merits as the type of pianos generally known to and designated by the trade and public generally as Grand pianos.

PAR. 5. For a period of many years, one type of piano has been designated, described and known, both to the trade and to the purchasing public, as a Grand piano. Many users of pianos have expressed, and actually have, a preference for pianos of this type. Pianos of this type possess distinctive operating or mechanical features and tonal qualities different from and superior to the operating or mechanical features and tonal qualities of pianos of any other type. Among these features and tonal qualities are horizontal stringing, gravity action of hammers, placement and resonance of sounding board, shifting soft pedal, superior touch and, in many pianos, the presence of a true sostenuto pedal. When members of the purchasing public purchase pianos designated, described and referred to as Grand pianos, they expect to receive pianos possessing the operating or mechanical features and tonal qualities above referred to.

PAR. 6. The pianos manufactured and distributed by the respondent, in commerce as herein set out, and designated as "Vertichord Grand" pianos do not possess the same operating or mechanical features and tonal qualities as are possessed by the type of pianos generally known and referred to as Grand pianos. The so-called "Vertichord Grand" pianos do not possess horizontal stringing of the chords or strings and do not have sounding boards that are placed horizontally or that have the same resonance and tonal qualities as sounding boards found in the type of pianos generally known and referred to as Grand pianos. The so-called "Vertichord Grand" pianos do not have a gravity action of hammers that strike the strings or chords and do not have the superior touch found in pianos of the type commonly known as Grand pianos. The respondent's so-called "Vertichord Grand" pianos do not have shifting soft pedals and do not have sostenuto pedals. The general mechanical features and tonal qualities of the so-called "Vertichord Grand" pianos are not comparable to the mechanical features and tonal qualities of that type of pianos hereinabove referred to as Grand pianos.

PAR. 7. There are among respondent's competitors those who manufacture and sell in commerce, as herein set out, pianos having many of the same mechanical features and tonal qualities as respondent's "Vertichord Grand" pianos and having a similar general appearance to said pianos, who do not, in any way, misrepresent the character and quality of their respective pianos or the mechanical features and tonal qualities thereof and who do not designate their respective pianos of this type as being Grand pianos. There are also among respondent's competitors those who manufacture pianos designated by them as Grand pianos which do have the same mechanical features and tonal qualities possessed by the type of pianos hereinabove referred to as Grand pianos and who truthfully designate their pianos as Grand pianos and truthfully advertise and represent the true character and nature of their respective products.

PAR. 8. The acts and practices of the respondent in using the aforesaid statements and representations in its advertising literature and in advertising literature furnished by it to retailers, in offering for sale and selling its so-called "Vertichord Grand" pianos have had, and now have, the tendency and capacity to mislead and deceive members of the purchasing public into the false and erroneous belief that said pianos possess the same operating or mechanical features and tonal qualities present in pianos of the type generally known and designated as Grand pianos and into the purchase of respondent's so-called "Vertichord Grand" pianos on account of said belief induced as aforesaid. The acts and practices of the respondent as hereinabove set out also place in the hands of retail dealers an instrument and a means whereby said retail dealers may misrepresent the operating or mechanical features and tonal qualities thereof and induce members of the purchasing public to buy said pianos on account of such misrepresentations. As a result thereof, trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling pianos who truthfully advertise and represent the nature and character 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. 9. 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, en-

titled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on January 27, 1937, issued and served its complaint in this proceeding upon respondent Haddorff Piano 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 Haddorff Piano Company is a corporation existing and doing business under and by virtue of the laws of the State of Illinois. Its principal office and place of business are located at 1900 Harrison Avenue, in the city of Rockford, State of Illinois. For a number of years, respondent has been engaged in the business of manufacturing pianos. It sells and distributes its pianos to retail dealers for resale.

PAR. 2. Respondent causes its pianos, when sold, 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. Respondent now maintains, and has for several years last past maintained, a constant current of trade in the pianos 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 pianos to retail dealers for resale in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The respondent manufactures pianos of various types including pianos commonly designated as Grand pianos and also pianos commonly designated as Upright pianos. In addition to the pianos of the types above referred to, the respondent manufactures another type of piano which has been designated and described as "Vertichord Grand." Upon each of the pianos of this type, there has been imprinted upon the center of the front panel thereof the words "Haddorff Vertichord Grand."

In the course of the operation of its business, and for the purposes of inducing customers and prospective customers to purchase its pianos of this type, the respondent has caused advertisements to be inserted in periodicals and trade journals of general circulation throughout the United States. It has also printed and circulated throughout the several States, to its customers and prospective customers, pamphlets, folders, suggested sales talks, and other advertising literature. Some of the above mentioned literature is designed and intended to be used by the retailers in the offering for sale and sale of respondent's pianos to retail customers. In the advertisements and advertising literature above referred to, the respondent has caused its corporate name, Haddorff Piano Company, to be prominently and conspicuously displayed, together with such statements as the following:

Cleverly designed to take much less space than a grand and yet to maintain grand piano tone quality.

Tone of a parlor grand.

It solves the problem of creating a piano that literally has the volume and tone of a fine grand without taking up a grand's space.

Haddorff's ingenious piano engineers have devised a way of using longer strings in less space (and we can prove the paradox) thus giving full, rounded grand piano tone.

All the advantages of a large grand piano.

It has the deep mellow tone of a large grand piano.

In its suggested sales talks distributed to retailers appear such statements as:

In conversation there is a tendency to shorten this to just "Vertichord." "Vertichord" indicates "vertical strings" or "vertically strung," but that by itself is not a complete description of the instrument. It is a horizontal piano, vertically strung.

Vertichord Grand is therefore an accurate and proper name. Its constant use in full has been proved to have a very favorable effect in the promotion and sale of the instrument.

In pamphlets which it distributes to its retailers for distribution to members of the purchasing public in connection with the offering for sale and sale of its pianos appear such statements as:

The name chosen for the new instrument, Vertichord Grand, is descriptive of the new form. In its main mass and main effect the piano is horizontal (grand), but at that point in the structure of an ordinary grand where the curve in the rim begins, the strings are up-ended (which is the significance of "Vertichord"). The result is a piano which combines the grace and decorative charm of the old spinet, with the string length, sounding board area, and general tonal character of a sizable grand of excellent quality, projects into the room only twenty-five and one-half inches, and costs much less than any other piano of the same style, appeal and a comparable musical quality.

All of said statements, together with other similar statements not herein set out, purport to be descriptive of the type of pianos manufactured and distributed by the respondent under the name "Vertichord Grand." In all of said advertising literature, in the statements above set out, and in many other statements, the respondent represents, either directly or through implication, that the type of pianos referred to in said statements is the same as or is comparable to and has the same operating or mechanical features, tonal qualities, and other merits as the type of pianos generally known to and designated by the trade and public generally as Grand Pianos.

PAR. 5. For a period of many years, one type of piano has been designated, described and known, both to the piano trade and to the purchasing public, as a Grand piano. Many users of pianos have expressed, and actually have, a preference for pianos of this type. Pianos of this type possess distinctive operating or mechanical features different from and in some cases superior to the operating or mechanical features of pianos of any other type. Among these features are: horizontal stringing, gravity action of hammers, placement of sounding board, and shifting soft pedal. In many pianos of the type generally designated and described as Grand pianos, there is also the additional feature of a true sostenuto pedal. The tonal qualities of pianos are determined to a large extent by the quality, character and placement of the sounding board, the size of the string plate and the length and number of strings. Some pianos of the type generally designated and known as Grand pianos, especially those of large or concert size, do have tonal qualities superior to the tonal qualities of any other type piano. When members of the purchasing public purchase pianos designated, described and referred to as

Grand pianos, they expect to receive pianos possessing the operating or mechanical features above referred to.

PAR. 6. The pianos manufactured, distributed and sold by the respondent in commerce as herein described and designated as "Vertichord Grand" pianos do not possess the same operating or mechanical features as are possessed by the type of pianos generally known and referred to as Grand pianos. The so-called "Vertichord Grand" pianos do not have a gravity action of hammers that strike the strings or chords. They do not have shifting soft pedals and do not have sostenuto pedals.

The sounding boards in respondent's "Vertichord Grand" pianos are not comparable in placement and tonal resonance to the sounding boards used in large or concert size Grand pianos. The size of the string plate and the length and number of strings in respondent's "Vertichord Grand" pianos are not comparable to those of the large or concert size Grand pianos. Consequently, the tonal qualities of respondent's "Vertichord Grand" pianos are not comparable to those of the large or concert size Grand pianos.

Because of the reduction in the size of the sounding board and in the size of the string plate and the length and number of strings necessitated in Grand pianos of the smaller sizes often referred to as "Baby Grand" pianos, the tonal qualities of respondent's "Vertichord Grand" pianos are comparable to the tonal qualities of such pianos.

PAR. 7. There are among respondent's competitors those who manufacture and sell in commerce as herein set out pianos having many of the same mechanical features and tonal qualities as respondent's "Vertichord Grand" pianos and having a similar general appearance to said pianos who do not, in any way, represent that their respective pianos have mechanical features and other qualities similar to Grand pianos and do not designate their respective pianos of this type as being Grand pianos. There are also among respondent's competitors those who manufacture pianos which do have the same mechanical features and other qualities possessed by the type of pianos hereinabove referred to as Grand pianos and who designate such pianos as Grand pianos.

PAR. 8. The respondent changed the name of its pianos of this type from "Vertichord Grand" pianos to "Vertichord" on or about October 15, 1936. Since that time, it has not designated its pianos of this type as being Grand pianos. It has already eliminated from its advertisements and advertising literature similar to that described in paragraph 4 hereof any reference to pianos of this type as Grand pianos.

PAR. 9. The acts and practices of the respondent in using the aforesaid statements and representations in its advertising literature and in advertising literature furnished by it to retailers, in offering for sale and selling its "Vertichord Grand" pianos have had the tendency and capacity to mislead members of the purchasing public into the erroneous and mistaken belief that said pianos so designated possess the same operating or mechanical features as are present in pianos of the type generally known and designated as Grand pianos and into the purchase of respondent's so-called "Vertichord Grand" pianos on account of such belief. The acts and practices of the respondent as hereinabove set out also place in the hands of the retail dealers an instrument and a means whereby said retail dealers may misrepresent the operating or mechanical features and other qualities of said pianos and induce members of the purchasing public to buy said pianos on account of such misrepresentations. As a result thereof, trade has been diverted to the respondent from competitors likewise engaged in the business of distributing and selling pianos who have not made use of like or similar statements and representations in the sale of their respective products in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent Haddorff Piano 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 by the 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 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, Haddorff Piano Company, its officers, representatives, agents, and employees, in connection with the

offering for sale, sale and distribution of vertically strung pianos formerly designated as "Haddorff Vertichord Grand" and now designated as "Haddorff Vertichord" in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) The use of the word "Grand," alone or in conjunction with any other word or words, as a trade name by which to designate or describe any piano not having its strings placed horizontally, gravity action of hammers, and shifting soft pedal, and not possessing those tonal and other qualities associated by the trade and the general public with Grand pianos;

(2) Representing that said pianos possess the same mechanical or operating features as are possessed by pianos of the type generally designated and referred to as Grand pianos;

(3) Representing that said pianos possess the same or comparable tonal qualities as pianos of the type generally designated and referred to as Grand Pianos, except as to the smaller sizes or Baby Grand pianos.

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
KOLYNOS COMPANY

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

Docket 3074. Complaint, Mar. 11, 1937—Decision, June 5, 1937

Where a corporation engaged in sale and distribution of a toothpaste or dentifrice known as "Kolynos," in substantial competition with others engaged in sale and distribution of dentifrices, and including those who do not in any manner misrepresent the ingredients or efficacy of their respective products; in advertising its said "Kolynos" in newspapers of general circulation—

- (a) Falsely represented that it conquered or removed "Bacterial Mouth," caused, as asserted, by germs which sweep in with every breath and attack tooth and gum, and killed germs which were known cause of most gum troubles, and contained important germicidal ingredients exceptional to it;
- (b) Falsely represented that it cleaned and polished teeth down to the naked white enamel without injury and erased stain and tartar, and gave teeth a double cleansing that could not be obtained with ordinary or other toothpastes or dentifrices, and contained "essential ingredients" which remove tartar, and cleaned teeth down to the natural white enamel and gave them sparkling whiteness, and restored their natural whiteness, and made them look shades lighter almost at once, and gleam like pearls; and
- (c) Falsely represented that it did what ordinary toothpaste could not do, and contained properties not found in ordinary pastes and powders, and was new and totally different, and was "the approved" toothpaste and "the" antiseptic dental cream, and that dentists throughout the world recommended it because of its ability to remove tartar;

With result that a substantial number of the consuming public, as a consequence of its said false and misleading representations, purchased substantial volume of its said preparation and thereby unfairly diverted substantial volume of trade and business to it which would otherwise have gone to competitors who have not made use of such unfair methods:

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

Mr. Wm. T. Chantland for the Commission.

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 Kolynos 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, Kolynos Company, is a Connecticut corporation, which has its principal office and place of business in the city of New Haven, State of Connecticut. Respondent is now, and has been for some time, engaged in the business of distributing and selling, in commerce as herein set out, a certain tooth paste, known as "Kolynos."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said tooth paste, when sold, to be transported from its office and place of business in the State of Connecticut to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondent now maintains a constant current of trade in commerce in said product, distributed and sold by it, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling tooth pastes and kindred preparations in commerce among and between the various States of the United States and in the District of Columbia.

In the course and operation of said business, and for the purpose of inducing the purchase of said tooth paste, respondent has made use of advertisements carried in newspapers, magazines, and periodicals having a general circulation throughout the various States of the United States and has also made use of other types of advertising generally circulated to purchasers and prospective purchasers located in all of the States. In all of said advertisements, respondent has caused its name to be prominently displayed, together with such statements as the following:

Teeth whiten 3 shades in 3 days when you remove Bacterial-Mouth.

Within 3 days teeth will look whiter—fully 3 shades.

Germs sweep into the mouth with every breath and attack tooth and gum. They cause the condition known as Bacterial-Mouth but Kolynos quickly conquers this foe * * *.

It cleans and polishes teeth down to the naked white enamel without injury.

Erases stain and tartar.

KOLYNOS GIVES TEETH A DOUBLE-CLEANSING YOU CAN'T GET WITH ORDINARY TOOTH PASTE.

1. Foams into every crevice, over every tooth surface and kills millions of germs.

2. Erases dingy film and stain. Before you know it your teeth are cleaned right down to the beautiful, natural white enamel without injury.

* * * Kolynos does what ordinary toothpastes can't do. As it cleans up ugly stain and tarnish—it foams into every crevice and kills millions of germs that are the known cause of most tooth and gum troubles.

The dentist can stimulate the practice of oral hygiene in the home by explaining the relationship to the patient between mouth bacteria and tooth decay. The patient can aid in maintaining a healthy condition of the oral cavity, as established by the dentist, through the use of KOLYNOS DENTAL CREAM, which not only neutralizes the acid formed by mouth bacteria, but reduces the oral flora from 80% to 92% with each brushing.

Just one brushing with Kolynos in the unique Kolynos way—a half-inch of this amazing dental cream on a dry brush, use no water—and you'll see how important it is to use an antiseptic dental cream that kills germs always collecting on the teeth and disfiguring them.

IT'S EASY TO MAKE DULL, DINGY TEETH ATTRACTIVE. GIVE THEM SPARKLING WHITENESS!

New—and totally different—way of antiseptic cleaning transforms dull teeth in a hurry. * * *

This modern antiseptic dental cream contains properties not found in ordinary pastes and powders. It instantly kills 80% to 92% of the germs present in the mouth. Removes the ugly germ-spots, the stain and discoloration. Cleans every tooth surface, between the teeth, every tiny crevice. And gives to teeth a clearness and brilliance that is wonderful to see.

Now discover what more than 2,000,000 Americans already know. Start cleaning your teeth with antiseptic Kolynos.

Your teeth look shades lighter; they gleam like pearls.

* * * Makes them look shades lighter almost at once.

* * * Actually kills harmful germs in a few seconds and keeps teeth and mouth thoroughly clean and healthy.

Important ingredients exceptional to KOLYNOS actually kill the germs of dental decay in a few seconds.

The approved antiseptic and germicidal tooth paste.

* * * KOLYNOS Dental Cream * * * destroys from 80 to 90% of oral bacteria with each brushing * * *

KOLYNOS, the Antiseptic Dental Cream.

Dentists throughout the world recommend KOLYNOS because of its ability to remove unsightly stain and tartar.

Other essential ingredients remove unsightly stain and dissolve tartar.

Its action is exactly like that of a jeweler's polish on tarnished silver. It erases the yellowish colored coating that disfigures your teeth and restores their natural whiteness.

All of said statements, together with many other statements appearing in respondent's advertising literature, purport to be descriptive of respondent's product and its effectiveness in use. In all of its advertising literature, respondent represents, through the statements and representations hereinabove set out and other statements of similar import and effect that its tooth paste erases or removes stain and tartar; that it will whiten teeth several shades in a few days; that it cleans teeth down to the white enamel without injury; that it almost instantly kills millions of germs which cause most tooth and gum

troubles; that it keeps the teeth and mouth thoroughly clean and healthy on account of its germicidal and antiseptic properties; that it gives dull, dingy teeth sparkling whiteness; that said tooth paste will remove or conquer bacterial mouth; and that it accomplishes results which other tooth pastes cannot accomplish.

PAR. 4. The representations made by the respondent, as above set out, with respect to the effect, when used, of its said product, are grossly exaggerated, false, misleading and untrue. The truth and facts are that said tooth paste does not have any of the qualities, nor achieve any of the results thus represented and claimed. Respondent's tooth paste will not erase or remove all stain and tartar and it will not, in all cases, clean teeth to the natural white enamel without injury. It does not almost instantly kill millions of germs which are the cause of most tooth and gum troubles and it does not keep teeth and mouth thoroughly clean and healthy on account of germicidal and antiseptic properties or on any other account. Its use does not render all dull and dingy teeth sparkling white. Respondent's tooth paste does not accomplish results that cannot be accomplished by use of other tooth pastes.

PAR. 5. There are among respondent's competitors many who distribute and sell tooth pastes or dentifrices, or similar preparations, who do not in any way misrepresent the effectiveness of their respective products.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent as to the effectiveness of its said product, as hereinabove set out, in its advertising, in the course of distributing its products, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondent will be obtained by the purchasers thereof upon the use of said products. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and representations of respondent, as hereinabove set out, a substantial number of the consuming public has purchased a substantial volume of respondent's product with the result that trade has been unfairly diverted to the respondent from individuals, firms, and corporations likewise engaged in the business of distributing and selling similar products, who truthfully advertise their respective products and their respective effectiveness in use. 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. 7. The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and of respondent's competitors as aforesaid, and have been, and are, unfair methods of competition 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 11th day of March 1937, issued and served its complaint in this proceeding upon said respondent, Kolynos Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter on May 19, 1937, 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 finding as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Kolynos Company is a corporation duly organized and existing under the laws of the State of Connecticut, with its office and principal place of business in the city of New Haven, Conn. Respondent is now and for some time has been engaged in the business of selling and distributing in interstate commerce a tooth paste or dentifrice known as "Kolynos."

PAR. 2. Respondent, being engaged in business as aforesaid, causes said preparation, when sold, to be transported from its place of busi-

ness in the State of Connecticut to the purchasers thereof located at various points in States of the United States other than the State from which shipments are made. Respondent now maintains a constant current of trade in commerce in said product distributed and sold by it between and among the various States of the United States.

PAR. 3. Respondent is now and has been, in the course and conduct of its said business, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling tooth pastes or dentifrices in commerce among and between the various States of the United States.

PAR. 4. Respondent, in the course and conduct of its business in said commerce, for the purpose of inducing the purchase of its said product, Kolynos tooth paste, caused advertisements to be placed in newspapers having a general circulation in the various States of the United States and in the District of Columbia. These advertisements contained statements concerning the ingredients in and the efficacy of the product, Kolynos tooth paste, in the care, preservation, and treatment of the teeth and gums.

Prior to October 2, 1933, at which time respondent executed a stipulation with the Commission wherein it agreed to discontinue certain practices, the following statements were made in said advertisements:

Teeth whiten 3 shades in 3 days when you remove Bacterial-Mouth.
Within 3 days teeth will look whiter—fully 3 shades.

Germs sweep into the mouth with every breath and attack tooth and gum. They cause the condition known as Bacterial-Mouth but Kolynos quickly conquers this foe * * *.

It cleans and polishes teeth down to the naked white enamel without injury.
Erases stain and tartar.

None of the statements above set out have been so used since the date of the execution of said stipulation, except for such of said statements as were in outstanding advertising copy on that date, and none have been used at all since January 1, 1934, except a statement which was inadvertently included in certain advertisements placed in newspapers circulated in the State of Alabama, to the effect that the product, Kolynos tooth paste, would remove tartar from the teeth. Upon discovery of the inclusion of such statement in said advertisements, the respondent, by letter dated February 10, 1937, and prior to the issuance of the complaint herein, ordered said statement removed from such advertisements.

PAR. 5. Subsequent to January 1, 1934, and up to date of the issuance of the complaint herein, March 11, 1937, respondent in said

newspaper advertisements made in substance the following statements concerning the efficacy of the product, Kolynos tooth paste, in the care, preservation, and treatment of the teeth and gums: that "Kolynos gives teeth a double-cleansing you can't get with ordinary tooth paste"; that "Kolynos does what ordinary tooth pastes can't do"; that "This modern antiseptic dental cream contains properties not found in ordinary pastes and powders"; that by the use of Kolynos teeth are cleaned down to the natural "white" enamel; that the use of Kolynos gives teeth "sparkling whiteness"; that its use restores to teeth "their natural whiteness"; that Kolynos kills germs that are the known cause of "most gum troubles"; that "Kolynos is new—and totally different"; that using Kolynos makes "your teeth look shades lighter," "gleam like pearls" and "look shades lighter almost at once"; that Kolynos contains important ingredients, "exceptional to Kolynos," which kill germs; that Kolynos is "the approved" tooth paste and is "the" antiseptic dental cream and that dentists "throughout the world recommend Kolynos because of its ability to remove * * tartar," and that other "essential ingredients" found in Kolynos remove tartar.

PAR. 6. The use of Kolynos tooth paste will not whiten teeth "3 shades within 3 days." Kolynos does not "conquer the condition known as bacterial-mouth caused by germs which sweep into the mouth with every breath and attack tooth and gum." It does not "clean and polish teeth down to the naked white enamel without injury." It does not "erase or remove tartar"; nor does it "erase or remove stains" other than superficial stains. It does not give teeth a "double cleansing" not obtainable from ordinary tooth paste. Its use does not give teeth which are naturally discolored "sparkling whiteness" nor "restores" to such teeth their natural whiteness. It does not kill germs that are "the known cause of most gum trouble." Kolynos is not "new" nor is it "totally" different from other tooth pastes. Its use will not make teeth "look shades lighter almost at once" nor will it make teeth "gleam like pearls." It does not contain important ingredients "exceptional to Kolynos" which kill germs. It is not "the approved" tooth paste or "the" antiseptic dental cream in the sense that it has been approved or recommended by dentists or the purchasing public to the exclusion of other tooth pastes.

PAR. 7. Among the competitors of the respondent above mentioned are many who do not in any manner misrepresent the ingredients in or the efficacy of their products in selling and distributing the same in said commerce and as a result of respondent's said false and misleading representations a substantial number of the consuming public has purchased a substantial volume of respond-

ent's preparations and so unfairly diverted a substantial volume of trade and business to respondent which would otherwise have gone to competitors who have not used such unfair methods.

CONCLUSION

The aforesaid acts and practices of the respondent, Kolynos 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 stipulation as to the facts filed herein on May 19, 1937, whereby respondent admits all the material allegations of the complaint to be true, and waives 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, Kolynos Company, its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of Kolynos toothpaste in interstate commerce or in the District of Columbia, do forthwith cease and desist from directly or indirectly representing:

1. That Kolynos toothpaste conquers or removes bacterial mouth allegedly caused by germs which sweep into the mouth with every breath, and attack tooth and gum.

2. That Kolynos toothpaste kills germs that are allegedly the cause of most gum troubles, or that it contains ingredients exceptional to Kolynos that kill germs.

3. That Kolynos toothpaste cleans and polishes teeth down to the naked white enamel without injury.

4. That Kolynos toothpaste erases and removes tartar, or erases and removes stains other than superficial stains.

5. That Kolynos toothpaste restores all teeth to sparkling whiteness, or natural whiteness, or makes teeth shades lighter almost at once, or makes teeth gleam like pearls.

6. That Kolynos toothpaste gives teeth a double-cleansing that can't be obtained with ordinary or other toothpastes or dentifrices.

7. That Kolynos toothpaste does for the teeth and gums what ordinary or other toothpastes or dentifrices cannot do.

8. That Kolynos toothpaste is new, or totally different from other toothpastes or dentifrices.

9. That Kolynos toothpaste is "the approval" toothpaste or "the" antiseptic dental cream, in the sense of having been approved or recommended by dentists or the purchasing public to the exclusion of other toothpastes and dentifrices;

or from making any other representations of similar meaning, 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.

IN THE MATTER OF
PROVINCIAL DISTILLERIES, LTD., 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 2404. Complaint, May 22, 1935—Decision, June 8, 1937

Where a corporation engaged in rectifying and bottling, at its rectifying plant and under rectifier's permit, whiskies, gins, and other spirituous 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 selling its aforesaid various products to wholesalers and distributors in various States other than State of origin and in 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 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 in rectifying plants and under rectifiers' permits, and in similarly selling same, and including among its said competitors those who, as manufacturers and distillers by original and continuous distillation of mash, wort, or wash through closed pipes and vessels until manufacture is complete, of whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names and on their stationery and advertising and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, and bottling such various products in their respective rectifying plants and under their rectifiers' permits, do not use aforesaid words as above set forth—

Represented, through use of word "Distilleries" 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 them with the means of representing to their vendees, both retailers and 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 own, operate, or control any place or places where such beverages are made by process of original and continuous distillation from mash, wort, or wash, as long definitely understood from word "Distilleries" when used in connection with liquor industry and products thereof, by trade and ultimate purchasing public, as meaning place where spirituous liquors are made by original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, and was not a distiller, requirements of which, in the way of bond, plant, etc., are more exacting and extensive than in case of rectifier, and for the

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

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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 or distilling company in the ordinarily accepted sense thereof, and that the whiskies, gins, and other 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 tendency to give 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 the packages of alcoholic liquor offered to retailer, and in turn to consumer, as a distillery-bottled package, and 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. R. E. Joyce, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Provincial Distilleries Ltd., 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 York, with its office and principal place of business in the city of Brooklyn in said State. It is now, and since October 1934 has been, engaged in the business of manufacturing 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 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 distributors, some located within the State of New York 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 since October 1934 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 October 1934 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 re-distilled 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 re-distillation 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. 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 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 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 its competitors who do not by their corporate or trade name or in any

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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 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 since October 1934 has been, engaged in the business of manufacturing 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 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 distributors, some located within the State of New York 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 since October 1934 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 October 1934 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.

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

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increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry.

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

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

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

PAR. 7. The use by respondent of the word "Distilleries" in its corporate name, printed on 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 whiskies, gins, and other spirituous beverages from mash, wort, or wash and that the whiskies, gins, and other spirituous beverages by it 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 commerce in the manner set forth in paragraph 5 of count 1 hereof, are in violation of Section 3 of Title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on May 22, 1935, issued and on May 23, 1935, served its complaint in this proceeding upon respondent Provincial Distilleries, Ltd., 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 the 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 R. E. Joyce, 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 (no brief in opposition thereto having been filed and no oral argument 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, existing, and doing business under the laws of the State of New York, with its office and principal place of business at the city of Brooklyn in that State. It is now, and since October 1934, has been, engaged in the manufacturing and bottling of whiskies, gins, and other spirituous beverages in a rectifying plant under a rectifier's permit and in the sale thereof in the 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 distributors, located in various States of the United States other than the State of origin of said shipments, and in the District of Columbia. In the course and conduct of its business, as aforesaid, respondent is now, and since October 1934, 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 October 1934, 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.

Respondent's corporation was organized in December 1933, with \$50,000 fully paid in capital which was later increased to \$200,000, which has since all been paid in. Its plant is located at No. 1027 Forest Street and occupies an entire city block. It is equipped with very large modern equipment. Respondent has its own artesian well and distills all of the water used in its manufacturing. It has a very large warehouse and large stocks of whiskey which it purchases from various distilleries. Up to January 11, 1935, 95% of respondent's business consisted of the rectification of whiskies, and respondent specialized in five brands, namely: Sunny Ridge Straight, Provincial Maryland Straight Rye, City Athletic Club Blended, Provincial Blended, Auld Petrie Blended Scotch Whiskey.

Respondent's production of "Auld Petrie Blended Scotch Whiskey" is under the supervision of a Mr. L. R. Chambers, an official of Southard & Company, Ltd., of London, England, who is chairman of respondent's board of directors, and under an agreement which provides that the said scotch whiskey is to be made under a formula supplied by Southard & Company, and that Mr. Chambers will visit the United States at least once a year to supervise the manufacture and production of this product.

PAR. 2. Upon the premises of respondent 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. This gin still has a capacity of 2400 gallons, and there is also one registered 75-gallon still for cordials. There are upon said premises three storage tanks, each with a capacity of 2600 gallons, six storage tanks of 1100 gallons and three tanks of

1100 gallons each for bottling, in addition to six 50-gallon tanks for use in the manufacture of cordials. Up to January 11, 1935, no gin had been produced. Production of gin by the above described process began on the 15th day of March 1936, and during June, July, and August, 1936, respondent had produced approximately 6,858 proof gallons of gin, constituting approximately 81% of its total volume by gallons of spirits handled.

"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).

Many distillers operate a separate establishment 600 feet or more away from their distillery, known as a rectifying plant, wherein they operate in the same manner as described above, for a rectifier—sometimes exclusively with spirits of their own distillation and sometimes with spirits purchased from other distillers or both. Some distilleries have a tax paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery or at any rectifying plant, appear the words "bottled" or "blended" (as the case may be) "by the ----- Company." If the distilled spirits therein contained are bottled by a distiller either in his distillery or 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 on the bottle "blended 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, 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-62" 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. This number is placed on the bottle to identify the bottler. Subsequently to the issuance of the complaint herein, and, on the 6th day of February 1936, pursuant to proper application approved by the requisite governmental authorities, there was issued to respondent by the

Federal Alcohol Administration a basic distiller's permit, No. D-700, authorizing it to distill spirituous beverages from mash, wort or wash, but up to the present time respondent has not distilled any spirituous beverages and has not commenced operations under the aforesaid basic permit. Since the issuance of respondent's basic distiller's permit it can and may place the symbol "D-700" on the bottles in which it sells and ships its liquors, but it has not yet done so.

A distiller has a maximum bond of \$100,000, and is permitted to have untaxed liquors. The average bond of the rectifier is about \$5,000. A distiller must own the fee title to 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 and the rectifying plant; the premises are not locked, and general supervision is maintained over the bottling and rectification. 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 grain, alcohol, molasses, and fruits, but a rectifier produces no distilled spirits whatever and 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 must have the necessary weighing equipment, 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; and at the warehouse he must 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 without 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 among the general public. All whiskies, whether coming from a distillery or rectifier, are generally conceded to be "distilled" products.

It therefore is not possible to determine from the presence of the phrase "blended and bottled by" alone or the phrase "bottled by"

alone on the label whether the package was bottled by a rectifier who is a distiller, or by a rectifier who is not a distiller.

This respondent does not now and never has 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 authorizes 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.

The rectification of alcoholic spirits by this respondent as aforesaid in the production of its gin, does not make or constitute it 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, and the Commission finds 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 or by the general public. A large number of witnesses who were lay-members of the purchasing public, 22 in number, with few exceptions testified to the effect that from such terms as "distilling" or "distillery" or "distillers" used in the trade or corporate name of a concern handling alcoholic beverages, they understood such concern to be engaged in the initial distilling process of producing spirituous or alcoholic beverages from fermented grain or mash, and that they had 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 "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, the place where spirituous liquors are manufactured by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by the distillers.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the word "distilleries" in its corporate name, printed on its stationery, 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 in the sense in which such term 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 beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash, and therefore cannot truthfully designate itself as "Provincial Distillers."

PAR. 5. There are, among the competitors of respondent, engaged in the sale of spirituous beverages as mentioned in Paragraph One hereof corporations, firms, partnerships, and individuals who manufacture or 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 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 name, nor on their stationery, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 6. The record discloses two instances where wholesale customers of respondent purchased liquors from respondent while they were under the impression from the name of respondent that respondent had a distillery in the sense above used, and one of them, a Mr. I. J. Rosbeck of Coughlin & Company testified that the use by respondent of such term in its name had a very definite influence upon the small business which that company had done with the respondent.

The Commission finds that 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 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.

PAR. 8. 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.

CONCLUSION

The aforesaid acts and practices of the respondent Provincial Distilleries, Ltd., 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

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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 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, brief filed herein by PGad B. Morehouse and DeWitt T. Puckett, counsel for the Commission (no brief having been filed on behalf of respondent, and no 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, Provincial Distilleries, Ltd., Inc., 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 "distilleries" in its corporate name, on its stationery, advertising or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word, or words of like import, (a) that it is a distiller of whiskies, gins, or other spirituous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

It is further ordered, That the said 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

MENASHA WOODEN WARE 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, AND OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 2650. Complaint, Dec. 10, 1935—Decision, June 8, 1937

Where five corporations and an individual engaged in the manufacture and sale of more than ninety percent of the total volume of new butter tubs sold in interstate commerce in the United States, and, prior to acts and practices hereinafter set forth, in active competition with one another in sale of said products in commerce among the several States—

- (a) Entered into a combination and conspiracy to restrict, restrain and suppress competition in interstate sale of said products by fixing and maintaining, pursuant to agreements and understandings, expressed or implied, uniform prices, terms, and discounts at which said tubs were to be sold to creameries and other customers located throughout the several States, and to enforce and maintain said fixed prices, terms, and discounts by exchanging, through their council, information as to prices, etc., at which they were selling and offering their said products; and in pursuance of said combination, etc., and incident thereto, and as a means of carrying out the same
- (1) Jointly or cooperatively fixed, adopted, and quoted uniform prices, terms, and discounts at which such tubs were to be sold, as above set forth, throughout the States, and thus enforced and maintained said fixed prices, etc., by exchanging information through said council as to prices, etc., at which they were selling and offering to sell butter tubs, as hereinabove stated;
- (2) Jointly or cooperatively exchanged with each other, directly or through the medium of their said council, future sales price information, including future prices in advance of the actual adoption, quotation or effective date thereof, and reports as to sales of butter tubs, together with prices, discounts, and terms at which sold or offered in interstate commerce;
- (3) Jointly or cooperatively adopted special lists of preferred customers to whom extra discounts on butter tubs were to be allowed, and thus exchanged with one another, directly or through their said council, future sales price information as aforesaid, including lists of preferred customers, jobbers or brokers; and
- (4) Jointly or cooperatively discriminated against a cooperative association which served some 400 to 450 customer creamery members and some 800 to 1,000 non members by purchase and sale in large quantities of various items of equipment and supplies used by creameries, did an annual business of about \$1,500,000, published a catalog listing 1,200 items, including butter tubs, and performed the usual services rendered by jobbers and which, except as below noted, received usual jobber's commissions on all items handled by it, by withholding therefrom the usual and customary jobber's discount on sales of butter tubs made by it; and

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Where said council, organized as hereinabove set forth—

(b) Cooperated with said corporate manufacturers and said individual manufacturer in enforcement and maintenance of aforesaid agreements, through acting as clearing house for exchange of information submitted by them, including reports as to prices, discounts and terms at which butter tubs were being sold or offered in interstate commerce;

With result of substantially lessening, restricting, restraining, and suppressing competition in sale of butter tubs throughout the several states and, more particularly, in prices quoted and discounts allowed, and with tendency to enhance prices of such tubs above those heretofore prevailing and which would prevail under normal and open competition:

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. Everett F. Haycraft and *Mr. Reuben J. Martin* for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., for respondents; together with—

Bouck, Hilton, Klurvin & Dempsey, of Oshkosh, Wis., for Menasha Wooden Ware Corp.;

Mr. Alfred W. Craven, of Chicago, Ill., for Creamery Package Manufacturing Co., Wisconsin Butter Tub Co., and, along with *Mr. R. H. Fryberger*, of Minneapolis, Minn. for trustee for Bousfield Wooden Ware Co.; and

Healy & Beverly, of Elgin, Ill. for Elgin Butter Tub Co.

COMPLAINT

I

Pursuant to the provisions of an Act of Congress approved September 26, 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 Menasha Wooden Ware Corporation, Creamery Package Manufacturing Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company and Storey City Butter Tub Company, hereinafter referred to as corporate respondents, and the Butter Tub Manufacturers Council, hereinafter referred to as the respondent association, and D. S. Hunter, individually, hereinafter referred to as individual 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. Said corporate respondent, Menasha Wooden Ware Corporation, is a corporation organized under the laws of the State of Wisconsin in 1926, with its principal office located in the city of Menasha within said State. Said corporate respondent since the date of its organization has been, and now is, engaged in the manufacture of butter tubs from ash and spruce lumber which it sells to jobbers and also creameries located in States other than the State of Wisconsin, causing said tubs, when sold, to be transported from the place of manufacture within said State of Wisconsin to the purchasers thereof located in States other than the State of Wisconsin. Said corporate respondent is the largest manufacturer and distributor of butter tubs in the United States and as such occupies a dominant position in the butter tub industry.

Said corporate respondent is now, and has been since September 1932, a member of said respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 2. Said corporate respondent, Creamery Package Manufacturing Company, is a corporation organized under the laws of the State of Illinois in 1887, with its principal office and place of business located at 1243 West Washington Boulevard, in the city of Chicago within said State. Said corporate respondent has been for more than ten years last past, and is now, engaged in the manufacture of butter tubs from ash and spruce lumber which it sells to jobbers and creameries located in States other than the State of Illinois, causing said tubs, when sold, to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

Said corporate respondent is now, and has been since September 1932, a member of said respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 3. Said corporate respondent, Elgin Butter Tub Company, is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located in the city of Elgin within said State. Said corporate respondent, since the date of its organization, has been, and now is, engaged in the manufacture of butter tubs from ash and spruce lumber which it sells to jobbers and creameries located in States other than the State of Illinois, causing said tubs, when sold, to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois.

Said corporate respondent is now, and has been since September, 1932, a member of said respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 4. Said corporate respondent, Wisconsin Butter Tub Company, is a corporation organized under the laws of the State of Wisconsin, with its principal office and place of business located in the city of Marshfield within said State. Said corporate respondent, since the date of its organization, has been, and now is, engaged in the manufacture of butter tubs from ash and spruce lumber which it sells to jobbers and creameries located in States other than the State of Wisconsin, causing said tubs, when sold, to be transported from the place of manufacture within said State of Wisconsin to the purchasers thereof located in States other than the State of Wisconsin.

Said corporate respondent is now, and has been since September, 1932, a member of said respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 5. Said corporate respondent, Bousfield Wooden Ware Company, is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business located at 2524 Marshall Avenue, Northeast in the city of Minneapolis, within said State. Said corporate respondent, since the date of its organization, has been, and now is, engaged in the manufacture of butter tubs from ash and spruce lumber which it sells to jobbers and creameries located in States other than the State of Minnesota, causing said tubs, when sold, to be transported from the place of manufacture within said State of Minnesota to the purchasers thereof located in States other than the State of Minnesota.

Said corporate respondent is now, and has been since September, 1932, a member of said respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 6. Said corporate respondent, Storey City Butter Tub Company, is a corporation organized under the laws of the State of Iowa, with its principal office and place of business located at Storey City within said State. Said corporate respondent, since the time of its organization, has been, and now is, engaged in the manufacture of butter tubs from ash and spruce lumber which it sells to jobbers and creameries located in States other than the State of Iowa, causing said tubs, when sold, to be transported from the place of manufacture

within said State of Iowa to the purchasers thereof located in States other than the State of Iowa.

Said corporate respondent is now, and has been since September, 1932, a member of said respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 7. Said corporate respondents, acting in cooperation with each other and through and in cooperation with said respondent association and said individual respondent, for more than one year last past, and particularly since September 1932, have entered into an understanding, agreement, combination or conspiracy among themselves and with and through said respondent association and said individual respondent to restrict, restrain and suppress competition in the sale and distribution of butter tubs to jobber customers and to creamery customers located throughout the several States of the United States, as aforesaid, by agreeing to fix uniform prices, terms, and discounts at which said butter tubs are to be sold and by cooperating with each other in the enforcement and maintenance of said fixed prices, terms, and discounts by exchanging information through said respondent association as to prices, terms, and discount at which said corporate respondents have sold, and are offering to sell, said butter tubs to said jobber customers and to said creamery customers.

PAR. 8. Said corporate respondents, in furtherance of their aforesaid understanding, agreement, combination, or conspiracy, in September, 1932, organized said respondent association, Butter Tub Manufacturers Council. Said respondent association, the aforesaid Butter Tub Manufacturers Council, is a voluntary, unincorporated association composed of butter tub manufacturers located throughout the several States of the United States and has as its principal members said corporate respondents named herein, which said corporate respondents manufacture and sell more than 90 percent of the total volume of butter tubs sold in interstate commerce in the United States. Said respondent association was organized in the city of Milwaukee within the State of Wisconsin and, since its organization, has acted as a clearing house for statistical information submitted by said corporate respondents, including daily reports as to the quantity of butter tubs sold, prices, discounts, and terms at which said butter tubs are sold. Since the organization of said respondent association, offices have been maintained at Cleveland, within the State of Ohio, and regular monthly meetings of the members of said respondent association have been, and now are, held in the city of Milwaukee within the State of Wisconsin, and in other convenient places, at which said meetings said corporate respondents discuss trade and com-

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petitive conditions in the Butter Tub Industry and agree upon and establish trade policies to be followed by said corporate respondents in the interstate sale and distribution of their butter tubs, and carry out and perform the acts and things hereinbefore alleged in paragraph 7.

PAR. 9. Said individual respondent, D. S. Hunter, is now, and since September 1932, has been, the commissioner of said respondent association and as such commissioner has had, and now has, full and complete charge of the activities of said respondent association, conducting said monthly meetings of said members of said respondent association and collecting said statistical information from the members of said respondent association and compiling and disseminating the same to the said members aforesaid, all in pursuance and furtherance of the object and aims of said respondent association, as hereinbefore set forth in paragraph 8.

PAR. 10. The result of the acts and conduct of the said corporate respondents and the said respondent association and said individual respondent, as set out in paragraphs 7, 8, and 9 herein, has been, and now is, to unduly tend to substantially lessen, restrict and suppress competition in the interstate sale of butter tubs throughout the several States, particularly in the prices quoted and discounts allowed by said corporate respondents, and to enhance the prices of said butter tubs above the prices which had theretofore prevailed and which would prevail under normal, natural and open competition between said corporate respondents; and also to tend to create a monopoly in the said corporate respondents in the manufacture and sale of butter tubs in interstate commerce.

PAR. 11. The foregoing alleged acts and practices of the said corporate, association and individual respondents have been, and still are, to the prejudice of the buying public generally, and customers of said corporate 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, and entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

II

Pursuant to the provisions of an Act of Congress approved October 15, 1914 (The Clayton Act—C. 323, 38 Stat. 730, 731) entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" the Federal Trade Commission having reason to believe that the Menasha Wooden Ware Corporation, Creamery Package Manufacturing Company, Elgin Butter Tub

Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company and Storey City Butter Tub Company, herein referred to as corporate respondents, and the Butter Tub Manufacturers Council, herein referred to as the respondent association, and D. S. Hunter, individually and as Commissioner of the Butter Tub Manufacturers Council, herein referred to as individual respondent, have been, and are, violating the provisions of Section 2 of said Act, issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. That the several recitals in paragraphs 1 to 6 inclusive and 8 and 9 of count I hereof are hereby charged as fully and completely as though the several paragraphs were repeated verbatim.

PAR. 2. Said corporate respondents, acting in cooperation with each other and in cooperation with and through said respondent association, with the knowledge and consent of said individual respondent, for more than one year last past, and particularly since September 1932, have agreed, combined or conspired among themselves to restrict, restrain and suppress competition in the interstate sale and distribution of butter tubs at wholesale to jobber customers and to creamery customers located throughout the several States of the United States, as aforesaid, by discriminating in price and are now discriminating in price between the different purchasers of their said products by giving and allowing certain favored jobber customers and certain favored creamery customers lower prices than given or allowed other jobber customers and other creamery customers of said products competitively engaged in their respective lines of commerce, and said discriminations in price have not been made, and are not now made, on account of differences in the grade, quantity, or quality of the commodity sold, nor have said discriminations made only due allowance, and they do not now make only due allowance, for a difference in the cost of selling or transportation, nor have said discriminations in price been made in the same or different communities in good faith to meet competition.

PAR. 3. The effect of said discrimination in price made by said corporate respondents, as set forth in paragraph 2 herein, may be to substantially lessen competition in the interstate sale and distribution of butter tubs for use by butter manufacturers; and the effect of said discriminations also may be to tend to create a monopoly in a line of commerce, namely, the interstate sale and distribution of butter tubs, and said discriminations are in violation of Section 2 of an Act of Congress approved October 15, 1914 (The Clayton Act, C. 323, 38 Stat. 730, 731) entitled, "An Act to supplement existing laws against unlawful restraint and monopolies, 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 10 and 12, 1935, issued and served its complaint in this proceeding upon the respondents, charging said respondents with the use of unfair methods of competition in commerce, in violation of the provisions of said act, and with violation of the provisions of Section 2 of an Act of Congress approved October 15, 1914 (the Clayton Act, C. 323, 38 Stat. 730-31), entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes." Thereafter answers were duly filed by said respondents in the office of the Commission on January 31, 1936. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and evidence in support of the allegations of said complaint were introduced by Everett F. Haycraft and Reuben J. Martin, attorneys for the Commission, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and in defense of the allegations of the complaint by Spencer Gordon and Alan C. Maxwell, attorneys for the respondent; and said testimony and evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto, the testimony and evidence, exceptions to the examiner's findings filed on behalf of the Commission and on behalf of the respondents, and briefs in support of the said exceptions and briefs in support of the complaint and in defense thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said corporate respondent Menasha Wooden Ware Corporation is a corporation organized under the laws of the State of Wisconsin in 1926, with its principal office located in the city of Menasha, within said State. Said corporate respondent, since the date of its organization, has been, and now is, engaged in the manufacture from spruce lumber of butter tubs which it sells to jobbers and also to creameries located in States other than the State of Wisconsin, causing said tubs, when sold, to be transported from the

place of manufacture within said State of Wisconsin to purchasers thereof located in States other than the State of Wisconsin. Said respondent Menasha Wooden Ware Corporation is the largest manufacturer and distributor of butter tubs in the United States. Said respondent Menasha Wooden Ware Corporation is now, and has been since October 27, 1932, a member of Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 2. Respondent The Creamery Package Mfg. Company is a corporation organized under the laws of the State of Illinois in 1887, with its principal office and place of business located at 1243 West Washington Boulevard, in the city of Chicago, within said State. Said corporate respondent has been for more than ten years last past, and now is, engaged in the manufacture, from ash and spruce lumber, of butter tubs, which it sells to jobbers and creameries located in States other than the State of Illinois. Said corporate respondent causes said tubs, when sold, to be transported from the place of manufacture to purchasers thereof located in States other than the State of manufacture. Said respondent The Creamery Package Mfg. Company is now, and has been since October 27, 1932 a member of the respondent association, Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 3. Respondent Elgin Butter Tub Company is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located in the city of Elgin, within said State, and since the date of its organization has been, and now is, engaged in the manufacture, from ash and spruce lumber, of butter tubs, which it sells to jobbers and creameries located in States other than the State of Illinois, causing said butter tubs, when sold, to be transported from the place of manufacture within said State of Illinois to the purchasers thereof located in States other than the State of Illinois. Said corporate respondent Elgin Butter Tub Company is now, and has been since October 27, 1932, a member of said respondent association Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 4. Respondent Wisconsin Butter Tub Company is a corporation organized under the laws of the State of Wisconsin, with its principal office and place of business located in the city of Marshfield, within said State. Said corporate respondent, since the date of its organization, has been, and now is, engaged in the manufacture of wooden butter tubs, which it sells to jobbers and creameries located in States other than the State of Wisconsin, causing said tubs, when sold, to be transported from the place of manufacture within said State to purchasers thereof located in States other than the State of

Wisconsin. Said corporate respondent is now, and has been since October 27, 1932, a member of said respondent association Butter Tub Manufacturers Council, and has been represented at the meetings of said council.

PAR. 5. Respondent Bousfield Wooden Ware Company is a corporation organized under the laws of the State of Minnesota, with its principal place of business formerly at 2524 Marshall Avenue, N. E., in the city of Minneapolis, within said State. Said corporate respondent, from the date of its organization up to July 1935, was engaged in the manufacture, from spruce lumber, of butter tubs, which it sold to jobbers and creameries located in States other than the State of Minnesota, causing said butter tubs, when sold, to be transported from the place of manufacture within the State of Minnesota to purchasers thereof located in States other than the State of Minnesota. Said corporate respondent was from October 27, 1932 to July 29, 1935 a member of the respondent association Butter Tub Manufacturers Council, and during that period was represented at meetings of said council. Said corporate respondent Bousfield Wooden Ware Company, in the month of July 1935, ceased doing business and resigned from the respondent association Butter Tub Manufacturers Council, and since that date has not engaged in the manufacture or sale of butter tubs; it has sold its plant, raw materials, and finished goods, and its only assets are accounts which are now in the process of liquidation.

PAR. 6. Respondent Storey City Butter Tub Company, is the trade name for a business conducted by Bert S. Hill, who maintains his office and place of business at Storey City, Iowa. Said respondent Bert S. Hill, trading as Storey City Butter Tub Company, has been, and now is, engaged in the manufacture, from ash and spruce lumber, of butter tubs, which he sells to jobbers and creameries located in the State of Iowa and States other than the State of Iowa. Said respondent Bert S. Hill, trading as Storey City Butter Tub Company, is now, and has been since January 25, 1934, a member of the respondent association, Butter Tub Manufacturers Council, and has attended most of the meetings of said council since that date.

PAR. 7. In the course and conduct of their respective businesses, the said respondents Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, and Bert S. Hill, trading as Storey City Butter Tub Company, were, prior to November 1932, in active competition with each other in the sale of butter tubs in commerce among the several States of the United States. Said respondents manufacture and sell more than 90 percent

of the total volume of new butter tubs in interstate commerce in the United States. Butter tubs are made in various styles and sizes of spruce and ash lumber, and are used for containing butter. There are other butter containers, besides tubs of the type manufactured by the respondents, which are used by creameries, among which are fibre boxes, wooden boxes, corrugated fibre boxes, and wire baskets. About 75 percent of the butter tubs produced are sold in the States of Illinois, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin.

For some time prior to September 1932, competitive conditions in the butter tub industry had been very severe. No standards of quality were maintained in the industry. Some of the manufacturers, in order to meet price competition, were selling seconds. Some of the manufacturers had established branch factories, or plants, in the various dairying centers and quoted delivered prices, whereas previously delivered prices had not been quoted. There was no statistical information as to the total number of tubs sold by the industry available to manufacturers of butter tubs.

PAR. 8. The said respondents Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, and Bert S. Hill, trading as Storey City Butter Tub Company, at meetings held in the City of Milwaukee, in the State of Wisconsin, in the month of September 1932, and periodically thereafter, as more particularly hereinafter set forth, entered into a combination and conspiracy to restrict, restrain, and suppress competition in the interstate sale of butter tubs by fixing and maintaining, pursuant to agreements and understandings, expressed or implied, uniform prices, terms, and discounts at which said butter tubs were sold, and are to be sold, to creameries and other customers located throughout the several States of the United States; and to enforce and maintain said fixed prices, terms, and discounts by the exchange of information with each other, through said respondent Butter Tub Manufacturers Council, as to the prices, terms, and discounts at which said respondents have sold, and are offering to sell, said butter tubs in interstate commerce to said creameries and other customers, located as aforesaid. Pursuant to, and in carrying out, said combination or conspiracy, each and all of the said respondent corporations, cooperating together and with and through said respondent Butter Tub Manufacturers Council, have performed the following acts:

(a) At a meeting of representatives of the respondent manufacturers held in Milwaukee in the month of September 1932, a discussion was had with respect to the establishment of zones whereby

the respective butter tub manufacturers would quote uniform delivered prices to customers located in the same territory. Representatives of respondents The Creamery Package Mfg. Company and Menasha Wooden Ware Corporation, the two largest manufacturers of butter tubs in the industry, compared and exchanged ideas as to what territory should be included in the respective zones, and in the latter part of the month of September 1932, respondent The Creamery Package Mfg. Company furnished to the other members of the respondent Butter Tub Manufacturers Council, pursuant to their request, a zoning system which was thereupon adopted by each of the other members of said respondent council. On or about October 15, 1932, each of the respondent members, except respondent Elgin Butter Tub Company, which adopted the system in December 1932, issued price lists to the trade embodying said zoning system, said price lists being uniform as to delivered prices in each respective zone.

(b) On October 27, 1932, the said respondent butter tub manufacturers organized the said respondent Butter Tub Manufacturers Council, in the city of Milwaukee, in the State of Wisconsin, which now maintains offices in the city of Cleveland, State of Ohio. Said respondent Butter Tub Manufacturers Council was organized as an unincorporated association, and now has as its member the corporate respondents named herein, with the exception of the Bousfield Wooden Ware Company, which has now retired from business, and Bert S. Hill, trading and doing business as Storey City Butter Tub Company. Since its organization, said respondent Butter Tub Manufacturers Council has received information submitted by its members, and has sent out information and statistics to its members, including daily reports as to the quantity of butter tubs sold, prices, discounts, and terms at which said butter tubs are sold. Since its organization, said respondent Butter Tub Manufacturers Council has held regular monthly meetings of the members, which said meetings are held in the city of Milwaukee, Wis., and in other convenient places, and on the occasion of said meetings, representatives of said corporate respondents discuss trade conditions in the butter tub industry and enter into agreements and understandings as to future prices, terms, and discounts of butter tubs, as aforesaid.

(c) Since its said organization, as hereinbefore set out in paragraph (b), the respondent Butter Tub Manufacturers Council has been in charge of a paid employee known as the "Commissioner," who collects statistical information from the members of said respondent council and compiles and disseminates the same to the members of the said council as hereinafter set forth.

(d) On or about December 15, 1932, said members of respondent council, except respondent Elgin Butter Tub Company, began to submit daily reports to the commissioner of respondent council, in which said reports the said members were required to indicate the zone of origin and zone of destination of all sales and shipments of butter tubs, together with prices at which said tubs were sold; and said commissioner distributed to the members of said council, beginning December 15, 1932, and continuing thereafter, a consolidated daily report of all orders received and releases of contracts showing the net unit prices at which orders were received and the zones of origin and destination of each shipment. These said daily reports of members and of the said commissioner contained, in addition to the information just described, the dates of the orders, the business of the customer, the quantity shipped, the size of tubs, the kind of wood, the kind of hoop, the terms of payment, the conditions of delivery, and the date of contract under which shipments were made. The respondent Elgin Butter Tub Company began to submit said reports to the commissioner on or about June 10, 1933, and has continued to do so since said date.

(e) Effective January 1, 1933, each and every member of respondent council issued price lists to the trade containing uniform delivered prices in the respective zones theretofore adopted by them, which said prices were 2 cents higher than prices previously quoted by them during the year 1932; during the month of December 1932, and particularly on the occasion of meetings of the members of said council, representatives of members of said respondent council had discussed the prices of butter tubs and had agreed that they were being sold too low, and that the prices should be advanced; that subsequent to January 1, 1933, until the next price change, the uniform prices quoted by said members of said respondent council were maintained by them, being reported daily to the said commissioner of said respondent council and reported by him in consolidated form to said members.

(f) Effective April 28, 1933, each and every member of said respondent council issued a price list to the trade containing uniform delivered prices in the respective zones theretofore adopted by them, which prices were 2 cents higher on practically all sizes than the prices quoted by said members of respondent council effective January 1, 1933; that representatives of said members of respondent council, on the occasion of the meeting of said council on April 27, 1933, discussed the matter of increasing prices, expressing the opinion that the prices on tubs were too low, and the respondent Menasha

Wooden Ware Corporation, the largest manufacturer of butter tubs, was looked to as the leader by the other members of said respondent council; that upon the expression by officials of said respondent Menasha Wooden Ware Corporation that they would advance prices, the other members of said respondent council issued on the following day, concurrent with the respondent Menasha Wooden Ware Corporation, new price lists carrying the advance in prices as aforesaid; that subsequent to April 28, 1933, and until the next price change took place, the prices quoted by said members of said respondent council were uniformly maintained, being reported daily to the said commissioner of said council and reported daily by him to the said members in consolidated form as aforesaid.

(g) Effective August 25, 1933, each and every member of said respondent council issued price lists to the trade containing uniform delivered prices in the respective zones theretofore adopted by them, which prices were 2 cents higher than the prices quoted by them on April 27, 1933, as aforesaid; that on the occasion of a meeting of the said respondent council held on August 24, 1933, representatives of members of said respondent council discussed prices of butter tubs; that representatives of the respondent Menasha Wooden Ware Corporation advised the other representatives that it, the Menasha Wooden Ware Corporation, was going to advance its prices, and offered to, and did, furnish a list containing such advances to the other representatives present; that thereafter on the following day uniform prices were issued by said members of respondent council as aforesaid. Subsequent to August 25, 1933, and subsequent to said price change, the prices quoted by said members of respondent council were uniformly maintained by them in the sale of butter tubs, said prices being reported daily to the said commissioner of said respondent council, and reported daily by him to the members of the said respondent council in the consolidated daily form as aforesaid.

(h) Effective February 23, 1934, each and every member of said respondent council issued price lists containing uniform delivered prices in the respective zones theretofore adopted by them, which said prices were 2 cents higher than the prices theretofore quoted by them on August 25, 1933, as aforesaid; that on the occasion of a meeting of the said respondent council on February 22, 1934, butter tub prices were discussed with each other by representatives of the members of said respondent council, on which occasion the representative of the respondent Menasha Wooden Ware Corporation notified the other representatives present that the said Menasha Wooden Ware Corporation would advance its prices on butter tubs,

and furnished the representatives of the other members of said respondent council with a copy of the proposed price list; that thereupon the other members of the respondent council issued their uniform delivered price lists effective February 23, 1934. Subsequent to February 23, 1934, and until the next price change took place, the prices of the members of said respondent council were uniformly maintained, were reported daily by them to the said commissioner, and were reported daily by him to the said members in a consolidated report.

(i) Effective September 1, 1935, each and every member of said respondent council issued a price list containing uniform delivered prices in the respective zones theretofore adopted by them, which prices were 2 cents higher than prices theretofore quoted by them in the price lists of February 23, 1934; that on the occasion of a meeting of the respondent council on July 30, 1935, representatives of the members of said respondent council discussed butter tub prices; that on that occasion the representatives of the respondent Menasha Wooden Ware Corporation informed the representatives of the other members of said respondent council that the said respondent Menasha Wooden Ware Corporation would advance its prices on butter tubs 2 cents each on September 1, 1935; that thereafter on August 8, 1935, the respondent The Creamery Package Mfg. Company issued a new price list, replacing its price list of February 23, 1934, and becoming effective September 1, 1935, containing an advance of 2 cents per tub, and that respondent Elgin Butter Tub Company, on August 12, 1935, issued its said price list to the trade, notifying of a similar change of price effective September 1, 1935, and all of the other members of respondent council issued price lists carrying similar changes in price and becoming effective on September 1, 1935.

PAR. 9. Subsequent to September 1, 1935, to the date of taking of testimony in this proceeding, the said delivered prices quoted by members of said respondent council have been uniformly maintained. The said prices have been reported daily by said members to the said commissioner, and reported by him to the said members daily in consolidated form. Since December 1932 with very few minor exceptions, the delivered prices charged by the said members of respondent council for butter tubs of equal quality and size have been uniform when sold to the same class of trade.

PAR. 10. Further pursuant to said combination and conspiracy set forth in paragraph 8 hereof, each and all of the said corporate respondents and Bert S. Hill, trading and doing business as Storey City Butter Tub Company, cooperating together and with and

through said respondent Butter Tub Manufacturers Council, have entered into agreements and understandings, expressed or implied, to restrict, restrain, and suppress competition in the interstate sale of butter tubs by adopting preferred lists of customers and by discriminating in price between purchasers of butter tubs and by discriminating in the amount of discount to be allowed jobber customers in the sale of butter tubs in interstate commerce, and pursuant to said agreement and understanding, have performed the following acts:

(a) At the time of the adoption of the said zoning system by the said members of respondent council on or about October 15, 1932, certain large users of butter tubs, consisting principally of packers and centralizers of butter tubs, were granted by the members of said respondent council a discount of 1 cent from the quoted list prices. A confidential list of said preferred buyers was adopted by the members of the said respondent council at the time said zoning system was adopted; said preferred buyers had been, prior to December 1932, accustomed to receive from said manufacturers discounts as great as 3 cents from the recognized retail list prices of the members of said respondent council.

(b) Land O'Lakes Creameries, Inc., is a cooperative association organized under the laws of the State of Minnesota, with its principal place of business at Minneapolis within said State of Minnesota. There is included in the activities of the Land O'Lakes Creameries, Inc., the purchase and sale in large quantities of various items of equipment and supplies used by creameries. These supplies are sold by the Land O'Lakes Creameries, Inc., to member creameries, and also to nonmember creameries. For this purpose it employs two salesmen who devote their entire time to this work, and about twenty other employees of the association devote part of their time to the work. Land O'Lakes Creameries, Inc., has between 1,200 and 1,500 customers, 400 to 450 of which are members, and the rest nonmembers, and it does an annual business of about \$1,500,000, with approximately \$800,000 to \$900,000 of its sales to members. It publishes a catalog which lists approximately 1,200 items handled by it, and included in these articles sold by it are butter tubs. Land O'Lakes Creameries, Inc., performs the usual services rendered by jobbers, and receives the usual jobber's commissions on all items handled by it, with the exception of butter tubs. Land O'Lakes Creameries, Inc., has been supplied with butter tubs by the respondents Menasha Wooden Ware Corporation and Elgin Butter Tub Company, and was supplied with butter tubs by the Bousfield Wooden Ware Com-

pany until its liquidation. The Creamery Package Mfg. Company and Wisconsin Butter Tub Company have never sold butter tubs to Land O'Lakes Creameries, Inc. The majority of sales made to Land O'Lakes Creameries, Inc., by Menasha Wooden Ware Corporation and Elgin Butter Tub Company were as a result of the activities of the salesmen of said Menasha Wooden Ware Corporation and said Elgin Butter Tub Company, which salesmen secured the orders direct from the creameries, and then shipped the tubs direct to the creameries and billed Land O'Lakes Creameries, Inc., for the shipment.

(c) Prior to January 1, 1928, Land O'Lakes Creameries, Inc., was allowed the usual jobber's discount on butter tubs, amounting to $1\frac{1}{2}$ cents per tub, by the Menasha Wooden Ware Corporation. Beginning with January 1, 1928, this discount was increased by $\frac{4}{10}$ cent per tub, making a total allowance of $1\frac{9}{10}$ cents per tub, which was received by the Land O'Lakes Creameries, Inc., from Menasha Wooden Ware Corporation. Due to competitive conditions, it was necessary for Land O'Lakes Creameries, Inc., to pass on to its customers out of this discount of $1\frac{9}{10}$ cents per tub the sum of 1 cent per tub, leaving a net discount to Land O'Lakes Creameries, Inc., of $\frac{9}{10}$ cent per tub. On July 1, 1931, Land O'Lakes Creameries, Inc., was requested by Menasha Wooden Ware Corporation, as a temporary arrangement necessitated by competitive conditions existing at that time to reduce its discount to $\frac{9}{10}$ cent per tub, which said request Land O'Lakes Creameries, Inc., granted, and thereupon Land O'Lakes Creameries, Inc., discontinued allowing the discount of 1 cent per tub to its customers. Thereafter repeated efforts on the part of Land O'Lakes Creameries, Inc., to regain the customary and usual jobber's discount of $1\frac{1}{2}$ cents per tub from Menasha Wooden Ware Corporation have met with no success. Land O'Lakes Creameries, Inc., has made request to be allowed the usual jobber's discount of $1\frac{1}{2}$ cents per tub on all sales of butter tubs made by or through it from the Menasha Wooden Ware Corporation, the Wisconsin Butter Tub Company, and the Elgin Butter Tub Company, but the request for the allowance was refused by said respondents, who advised the Land O'Lakes Creameries, Inc., that they could allow a commission of only $\frac{9}{10}$ cent per tub.

(d) In June, 1933, the matter of selling butter tubs to Land O'Lakes Creameries, Inc., as a jobber, and allowing $1\frac{1}{2}$ cents discount, was discussed at a regular meeting of the respondent council, at which time the commissioner of said council, acting as chairman, pointed out that the Land O'Lakes Creameries, Inc., was a collective buying outfit which had to return to its members or stockholders whatever

revenue it derived from such method of purchasing, and that this developed an unfair discrepancy as between members and stockholders of Land O'Lakes Creameries, Inc., and independent operators who might be located in the same territory, and that if any such special concession were given to Land O'Lakes Creameries, Inc., in his opinion, the same concession would have to be given to other users.

(e) On August 3, 1934, the attention of said commissioner was called by the attorney for the National Cooperative Milk Producers Federation to the inability of the Land O'Lakes Creameries, Inc., to obtain a jobber's discount from the manufacturers of butter tubs, and a statement was requested as to the position of the respondent council relative to this matter; that on August 7, 1934, the executive secretary of respondent council advised the attorney for the National Cooperative Milk Producers Federation that the matters referred to in his letter of August 3 would be taken up with the manufacturers at the next meeting; that on September 4, 1934, the said commissioner of respondent council notified the attorney for the National Cooperative Milk Producers Federation that the manufacturers who were selling Land O'Lakes Creameries, Inc., stated that for a number of years the competitive situation had been such that it had been necessary for them to solicit the business direct through their own salesmen from the creameries and bill the goods through Land O'Lakes Creameries, Inc., making allowance for credit service, and that, in his opinion, there had not been any discrimination; that the situation seemed to be entirely between Land O'Lakes Creameries, Inc., and the manufacturers, individually, who were soliciting the business; that on September 18, 1934, the said commissioner of said respondent council submitted a copy of the letter of September 4, 1934, just described, to the president of respondent Menasha Wooden Ware Corporation with the statement, "We are attaching hereto copy of a letter sent to Mr. Donald Keene. This is in accord with the minutes of the last butter tub meeting." That representatives of members of the respondent council, upon being solicited by Land O'Lakes Creameries, Inc., to be given a jobber's discount of 1½ cents, declined to do so, although some of them stated that they would be willing to do so provided the respondent Menasha Wooden Ware Corporation would do likewise; that on March 28, 1933, respondent Wisconsin Butter Tub Company advised the Land O'Lakes Creameries, Inc., that it seemed only fair that it should allow the creamery company the same commission as the creameries enjoyed from other butter tub manufacturers, and asked to be advised as to what discount Land O'Lakes Creameries, Inc., was receiving from the butter tub manufacturers

from whom it purchased; that on June 29, 1934, the Elgin Butter Tub Company, in a letter to Land O'Lakes Creameries, Inc., stated that it could not see how it would be justified in securing all of the creamery company's business by allowing a larger discount than that which the creameries received from other concerns.

(f) Since July 1, 1931, none of the said respondents Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, and Bert S. Hill, trading as Storey City Butter Tub Company, has allowed the usual and customary jobber's discount to Land O'Lakes Creameries, Inc., on sales of butter tubs made by said Land O'Lakes Creameries, Inc., and said respondents Menasha Wooden Ware Corporation, Elgin Butter Tub Company, and Wisconsin Butter Tub Company have refused, and still do refuse to allow said usual jobber's discount to said Land O'Lakes Creameries, Inc.

PAR. 11. The result of the acts and conduct of the said respondent corporations and the said Bert S. Hill, trading as Storey City Butter Tub Company, and the said respondent council, as hereinbefore set out, has been substantially to lessen, restrict, restrain, and suppress competition in the sale of butter tubs throughout the several States, particularly in the prices quoted and the discounts allowed by said respondent corporations and by said respondent Bert S. Hill, trading as Storey City Butter Tub Company; and tends to enhance the prices of said butter tubs above the prices which have heretofore prevailed and which would prevail under normal and open competition.

CONCLUSION

The aforesaid acts and practices of the respondents, Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, Bert S. Hill, trading as Storey City Butter Tub Company, and Butter Tub Manufacturers Council, are to the prejudice of the public and competitors of the respondents, 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." There is not sufficient proof submitted in the hearings to sustain the allegations in the complaint charging a violation of Section 2 of an Act of Congress known as the Clayton Act (Act, Oct. 15, 1914, C. 323, 38 St. 731 (Comp. St. sec. 8835 C.)).

Order

25 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers 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, briefs filed herein, and oral arguments by Everett F. Haycraft, counsel for the Commission and by Spencer Gordon, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents, Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, and Bert S. Hill, trading and doing business as Storey City Butter Tub Company, and Butter Tub Manufacturers Council, 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 Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, and Bert S. Hill, trading and doing business as Storey City Butter Tub Company, their respective officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of butter tubs in interstate commerce or in the District of Columbia, do forthwith cease and desist from entering into combinations, conspiracies, or agreements, express or implied, with each other and by and through said respondent association, Butter Tub Manufacturers Council, to restrict, restrain, and suppress competition in the interstate sale of butter tubs by

(a) Jointly or cooperatively fixing, adopting, and quoting uniform prices, terms, and discounts at which butter tubs are to be sold to creameries and to other customers located throughout the several States of the United States in interstate commerce;

(b) Jointly or cooperatively enforcing and maintaining said fixed prices, terms, and discounts by exchanging information through said Butter Tub Manufacturers Council as to the prices, terms, and discounts at which said respondents have sold, and are offering to sell, butter tubs in interstate commerce to creameries and other customers located throughout the several States of the United States;

(c) Jointly or cooperatively exchanging with each other, directly, or through the medium of said Butter Tub Manufacturers Council,

Order

or any other medium, information as to future prices in advance of the actual adoption, quotation, or effective date of said prices;

(d) Jointly or cooperatively adopting special lists of preferred customers to whom extra discounts on butter tubs are to be allowed;

(e) Jointly or cooperatively discriminating against Land O'Lakes Creameries, Inc., or any other purchaser of butter tubs in interstate commerce;

(f) Jointly or cooperatively exchanging with each other, directly or through Butter Tub Manufacturers Council, or any other medium, future sales price information, including lists of preferred customers, jobbers, or brokers, and reports as to the sales of butter tubs, together with prices, discounts, and terms at which said butter tubs are sold, or offered to be sold, in interstate commerce.

It is further ordered, That said Butter Tub Manufacturers Council, its officers, agents, and employees cease and desist from cooperating with said corporate respondents and with Bert S. Hill, trading and doing business as Storey City Butter Tub Company, by acting as a clearing house for the exchange of information submitted by said corporate respondents and by said Bert S. Hill, trading and doing business as Storey City Butter Tub Company, including reports as to prices, discounts, and terms at which said butter tubs are sold, or offered to be sold, in interstate commerce, in the enforcement and maintenance of said agreements aforesaid.

It is further ordered, That the respondents, Menasha Wooden Ware Corporation, The Creamery Package Mfg. Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bert S. Hill, trading and doing business as Storey City Butter Tub Company, and Butter Tub Manufacturers Council, shall within 30 days after the service upon them of this order file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
ALLURA, INC.

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

Docket 2854. Complaint, June 26, 1936—Decision, June 8, 1937

Where a corporation engaged in sale and distribution of eye lotion, sold under trade name "Allura", and consisting essentially of honey and water with extracts of plant drugs and small amounts of ammonium and potassium salts, and, as thus engaged, in substantial competition with those engaged in sale and distribution of eye glasses and other products for relief of diseases or ailments of the eye, and in competition with many who sell and distribute eye lotions and eye glasses without falsely representing the properties, capacities, or effects of their products—

- (a) Represented, in radio broadcasts and in pamphlets and other advertising matter distributed among prospective purchasers, that said preparation would relieve poor or cloudy vision or headache resulting from eye strain, and that use thereof would take the place of wearing glasses and relieve astigmatism and general weakness of the eyes and overcome irritating and painful conditions thereof;
- (b) Represented, as aforesaid, that it was nature's aid to the eyes and had no equal in keeping them clear, bright, and full of life, and was not injurious; and
- (c) Represented, as aforesaid, that it was a cure for cataract and was a remedy for eye troubles, and would cure or be beneficial in treatment of all cases of granulated lids, bloodshot eyes, focal disorders, weeping lids, weak lachrymal glands, and muscular atrophies, or contractions;

Notwithstanding fact preparation contained nothing of medical value in treatment of any eye disease, only possible value thereof would be equivalent to that of ordinary normal salt solution, it was not harmless, might be injurious, would not take place of glasses, relieve astigmatism or general weakness of the eyes, and other representations as hereinabove set forth were false;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that its said preparation had properties, capacities or effects set forth as hereinabove indicated, and that buying public, as a result of erroneous belief induced by such false and misleading representations, bought substantial volume of its said product, and trade was unfairly diverted to it from its competitors who truthfully represent nature and character of 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.

Before *Mr. Charles P. Vicini*, *Mr. John W. Norwood* and *Mr. Robert S. Hall*, trial examiners.

Mr. T. H. Kennedy, *Mr. P. C. Kolinski* and *Mr. J. T. Welch* for the Commission.

Mr. Darold D. DeCoe, of Sacramento, 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 Allura, 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, Allura, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business at 626 I Street, Sacramento, Calif. Respondent is, and for more than three years last past, has been engaged in the manufacture of an eye lotion, and has been engaged in the sale of said preparation under the trade name of "Allura" 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 California, or other places within the United States, to purchasers thereof, some located in the State of California and others located in 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 three 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 "Allura" 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 three years last past has, by means of radio broadcasts, pamphlets, advertising matter, testimonials, and otherwise, represented, and still represents, that its said product is harmless; will, when used, take the place of the wearing of glasses by the user; relieves astigmatism and general weakness of the eye; overcomes irritating and painful conditions of the eyes; has no equal in keeping eyes clear, bright, and full of life; is not injurious; will cure

cataract of the eye and is a remedy for any eye trouble; will relieve severe headaches from eye strain, poor and cloudy vision, or eye strain; is Nature's aid to the eyes; and respondent has recommended the use of "Allura" in cases of granulated lids, bloodshot eyes, weak lachrymal glands, weeping lids, muscular atrophies, muscular contractions, headaches from eye strain, and focal disorders.

Respondent has distributed radio texts or continuities and said pamphlets, advertising matter, and testimonials among its prospective customers and places the same in the hands of retailers 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 will cure or relieve any of the diseases or ailments above set forth.

In truth and in fact each and every said representation has been and is untrue or grossly exaggerated, and respondent's said product is not, nor has it ever been, harmless; a substitute for glasses; a relief for astigmatism and general weakness of the eyes; a cure for irritating and painful conditions of the eyes; without equal as an agent for keeping the eyes clear, bright, and full of life; free from injurious properties, capacities, or effects; a cure for cataract or a remedy for any eye trouble; an agent for relief of severe headaches from eye strain, poor and cloudy vision or eye strain; nor is it Nature's aid to the eyes. Said product is not a competent remedy for granulated lids, bloodshot eyes, weak lachrymal glands, weeping lids, muscular atrophies, muscular contractions, headaches from eye strain, and focal disorders.

There is a preference by a substantial number of retail dealers in products having properties, capacities, or 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 products, as hereinabove set forth.

The aforesaid representations by the 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 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 is still 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 26, 1936, issued and served its complaint in this proceeding upon respondent Allura, 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 and Peter C. Kolinski, attorneys for the Commission before Charles P. Vicini, John W. Norwood and Robert S. Hall, examiners of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Darold D. DeCoe, 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 sup-

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port 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, Allura, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, and has its principal place of business at Sacramento, Calif.

It is now, and for more than three years has been, engaged in the sale and distribution of an eye lotion under the trade name of "Allura." When orders are received for respondent's goods, it ships them from Sacramento, Calif., to purchasers thereof located at various points in the State of California and in other States in the United States. 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.

At all times during the last three years the respondent has been in substantial competition with other corporations and with individuals and partnerships likewise engaged in the sale and distribution of eye glasses and other products for the relief of diseases or ailments of the eye in commerce between and among the several States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business, the respondent through statements in radio broadcasts, and in pamphlets and other advertising matter distributed among prospective purchasers, represented that its preparation "Allura" is harmless; not injurious; will, when used, take the place of the wearing of glasses by the user; relieve astigmatism and general weakness of the eyes; overcome irritating and painful conditions of the eyes, and that it has no equal in keeping eyes clear, bright and full of life; will cure cataract of the eye; is a remedy for any eye trouble; will relieve severe headaches from eye strain, poor and cloudy vision; is nature's aid to the eyes; and has recommended the use of its preparation "Allura" in cases of granulated lids, bloodshot eyes, weak lachrymal glands, weeping lids, muscular atrophies, muscular contractions, headaches from eye strain and focal disorders. Among and typical of the representations used in radio broadcasts, pamphlets and other advertising matter are the following:

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Allura * * * dissolves the dust-laden film of mucous which makes eyes look dull and by its gentle astringent action removes bloodshot from the eyes.

Allura * * * is not injurious.

I have been using "Allura" for astigmatism and general weakness of the eyes and I have found the condition of my eyes greatly improved.

My son has used "Allura" for the past year with remarkable results. His vision was poor and he wore glasses. Prior to using your product his vision was faulty. For the past ten months he has read without glasses. We see continual improvement in his sight.

Many people report that after using "Allura" they have discarded their glasses permanently.

I have been using "Allura" just thirty days and it is not necessary for me to use my glasses now and each day I can notice my eyes becoming stronger.

PAR. 3. Respondent's product, "Allura," is not harmless, may be injurious, will not take the place of the wearing of glasses by the user, will not relieve astigmatism or general weakness of the eyes, nor will it overcome irritating or painful conditions of the eyes. It is not true that "Allura" has no equal in keeping the eyes clear, bright and full of life nor will it cure cataract of the eye. It is not a remedy for any eye trouble, nor will it relieve severe headaches from eye strain, poor and cloudy vision, nor is it nature's aid to the eyes. It will not relieve all cases of granulated lids, bloodshot eyes, weak lachrymal glands, weeping lids, muscular atrophies, muscular contractions, headaches from eye strain or focal disorders. Respondent's preparation "Allura" consists essentially of honey and water with extracts of plant drugs, together with small amounts of ammonium and potassium salts such as ammonium chloride, and potassium sulphate and is preserved with a salicylate. The preparation contains nothing of medical value in the treatment of any eye disease and the only possible value of it would be equivalent to that of ordinary normal salt solution.

PAR. 4. Many of respondent's competitors sell and distribute eye lotions and eye glasses in interstate commerce, who do not falsely represent the properties, capacities or effects of their products.

PAR. 5. Respondent's practice of representing its preparation "Allura," as possessing properties, capacities or effects as set forth in paragraph 2 hereof 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 its preparation "Allura," has the properties, capacities or effects set forth in paragraph 2 above. As a result of the erroneous belief induced by the false and misleading representations referred to above, the buying public has purchased a substantial volume of respondent's product, with the result that trade has been unfairly diverted to

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the respondent from its competitors who truthfully represent the nature and character of their respective products. Thereby substantial injury has been, and is now being done by the 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, Allura, 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 P. Vicini, John W. Norwood 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 filed herein by the attorney 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 Allura, Inc., its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of the preparation now known as, and sold under the name, "Allura" 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 "Allura," in interstate commerce or in the District of Columbia, do forthwith cease and desist representing directly or by implication:

1. That the use of said preparation will take the place of the wearing of glasses, relieve astigmatism and general weakness of the eyes, and overcome irritating and painful conditions of the eyes;
2. That said preparation has no equal in keeping eyes clear, bright and full of life;
3. That said preparation is not injurious;

4. That said preparation is a cure for cataract of the eye or that it is a remedy for eye troubles;

5. That said preparation will relieve poor or cloudy vision or headache resulting from eye strain;

6. That said preparation is nature's aid to the eyes;

7. That said preparation will cure, or is beneficial in the treatment of, all cases of granulated lids, bloodshot eyes, weak lachrymal glands, weeping lids, muscular atrophies, or contractions, and focal disorders.

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
L. MUSIL 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 2476. Complaint, June 28, 1935—Decision, June 9, 1937

Where a corporation engaged in the rectifying and bottling of whiskies, gins, and other spirituous beverages, in a rectifying plant and under a rectifier's permit, and in sale thereof to wholesalers and retailers in States other than State of origin of its shipments, and in District of Columbia, and 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 in trade and commerce among the various States and in the District of Columbia, and with those similarly 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 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 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 "Distilling" in its corporate name, on its stationery, mailing cards, and invoices, and on the labels attached to the bottles in which it sold and shipped its said products, that it was a producer of distilled spirits from raw materials, and thus represented 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 said whiskies and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, as above set forth, 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, 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, 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 and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash, and with capacity and tendency to induce dealers and purchasing public, acting in such beliefs, to buy the whiskies and other spirituous

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beverages bottled and sold by it, and with result 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 whiskies or other spirituous beverages; 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. Max W. Petacque, 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 L. Musil Distilling Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under the laws of the State of Wisconsin, with its office and principal place of business in the city of Racine, 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 "distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that 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 One hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not

use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of whiskies, gins, and other spirituous beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on June 28, 1935, issued and on July 1, 1935, served its complaint in this proceeding upon respondent L. Musil 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 the 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 said testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony or other evidence in opposition to the allegations of the complaint were introduced by

Messrs. Sabath, Pearlman, Goodman, and Rein, attorneys for the respondent. 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 (no brief in opposition thereto having been filed and no oral argument 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, existing, and doing business under the laws of the State of Wisconsin with its office and principal place of business at 1228 Buchanan Street, Racine, Wis. It was incorporated on June 14, 1934, with a capital stock of \$35,000.00 to engage in the distilled spirits rectifying industry with a charter containing sufficiently broad powers to enable it to operate as a distillery, but it never so operated. At one time it had a small experimental still for the purpose of analyzing products going into cordials by it compounded. It operated under basic permit No. R-541 from the Federal Alcohol Administration and prior to the organization of that Administration under basic permit No. R-56. It still maintains its corporate existence, though it has not engaged in business since July 1, 1936, and its future plans have not been determined.

At the time of the hearings held during October 1936, respondent had no stock of liquors on hand and its plant equipment had been sold. During the period in which it did business its sales amounted to approximately one million gallons of whiskey, all of which had been rectified.

Between the commencement of its business and July 1, 1936, it was engaged in the manufacturing and bottling of whiskies, gins, and other spirituous beverages in a rectifying plant under a rectifier's permit, and in the sale thereof in the constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business it caused its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in States of the United States other than the States of origin of said shipments and in the District of Columbia. Its products were sold mostly to wholesalers in the ter-

ritory west of Racine, Wis., and from California southeast to Louisiana.

In the course and conduct of its business as aforesaid, respondent, during said period was 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 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 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. "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).

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 distillers have a tax paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery or at any rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the _____ Company." If the distilled spirits therein contained are bottled by a distiller 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 on the bottle "Blended 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, viz, a "D" for a distiller and "R" for a rectifier, the number following said

letter corresponding with the distiller's or rectifier's permit. Thus, "R-541" 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. This number is placed on the bottle to identify the bottler.

Knowledge of these details is not widespread among the retail trade and is very limited among the general public. All whiskies, whether coming from a distillery or rectifier, are generally conceded to be "distilled" products. Therefore, it is not possible to determine from the presence of the phrase, "Blended and Bottled by" alone, or the phrase "Bottled by" alone on the label whether the package was bottled by a rectifier who is a distiller or by a rectifier who is not a distiller.

This respondent does not now and never has 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 authorizes 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.

PAR. 3. The evidence adduced in this case from approximately eight competitive trade witnesses (both rectifiers and distillers) and sixteen members of the purchasing public shows, and the Commission finds, that for a long period of time the word "distilling," when used in connection with the liquor industry and the products thereof, has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 4. This respondent by the use of the word "distilling" in its corporate name, on its stationery, mailing cards, invoices, and on the labels attached to the bottles in which it sold and shipped its products in interstate commerce, represented itself as a producer of distilled spirits from raw materials, and was so regarded, by virtue of said representations, by the trade and purchasing public. It thus represented to its customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it was a distiller and that the whiskies and

other spirituous beverages in said bottles contained were by it manufactured by the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not now and never was a distiller, does not now and never did distill the said whiskies or other spirituous beverages, by it so bottled, labeled, sold, and transported and does not now and never did own, operate, or control any place or places where such beverages are or 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, on their stationery or advertising, or on the labels attached to the bottles in which they sold and shipped their said products.

PAR. 6. Representations by the respondent as hereinabove set forth 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 and other spirituous beverages by it sold were manufactured and distilled by it from mash, wort, or wash, and had the capacity and tendency also to induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies 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 whiskies or other spirituous beverages. Thereby respondent did substantial injury to competition in interstate commerce.

PAR. 7. Respondent stated of record through its attorney that after discussing this matter with the officers of the company and the principal stockholders, should the company desire to resume operations, the word "distilling" in its corporate name would be abandoned, but wished it understood that it did not by this expression of

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its intention waive its right to use the word "distilling" in its corporate name, or admit that the Commission's position was correct. Under these circumstances this Commission can have no assurance that the aforesaid unfair acts and practices on the part of respondent will not at some future date be resumed.

CONCLUSION

The aforesaid acts and practices of the respondent, L. Musil Distilling Company, 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."

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, brief filed herein by PGad B. Morscheuse, counsel for the Commission (no testimony or other evidence having been offered on behalf of respondent, and no brief having been filed on behalf of respondent and no 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, L. Musil 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, 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,

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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
CAP ASSOCIATION OF THE UNITED STATES, 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 2530. Complaint, Aug. 29, 1935—Decision, June 10, 1937

Where two trade associations, composed, respectively, of some 100 cap manufacturers of all types, and of 27 uniform cap manufacturers; the officers of said associations; the aforesaid uniform cap manufacturer-members engaged in manufacture and sale of all types of headwear used or worn in conjunction with a uniform, and including products used by the military, naval, postal, and coast guard service of the United States, military service of the States, police and fire departments, railway employees, etc., and, prior to the hereinafter set forth acts and practices, engaged in offer and sale of their aforesaid products at competitive and frequently varying prices; and four manufacturers of visors and trimmings used in manufacture of uniform caps, makers and sellers in interstate commerce of about 60 percent of the total volume of such items used in the uniform cap manufacturing industry in the United States, and, up to not long theretofore, sole source of supply for aforesaid indispensable items necessary to manufacture of uniform caps, and making of which items himself is not practicable for the average uniform cap manufacturer; following a series of meetings, called by and presided over by officers of said association first named, and discussions and comparison of prices at which they were offering competitive uniform caps—

- (a) Entered into an agreement to fix, and did fix and abide by, prices which were uniform as among themselves for the offer and sale of aforesaid products;
- (b) Printed, in pursuance of their aforesaid agreement, price lists indicating jobber price, retail price, and contract price to uniform tailors of such products made and sold by the members, and circulated, through use of correspondence facilities of aforesaid association, such price lists, and, in pursuance of their said understanding, uniformly changed said prices and adhered to schedule thereof as revised;
- (c) Exacted and procured agreements of cooperation from said visor and trimming manufacturers, to the effect that they would support, adhere to and enforce the program hereinabove indicated, and procured from them agreements to cooperate with the aforesaid second association or trade organization of cap manufacturers;
- (d) Supplied to aforesaid visor manufacturers, in cooperation and confederation with one another and through use of the offices, stationery and secretarial facilities of said first association, lists containing names of uniform cap manufacturers who refused to sell their products at the prices suggested, as hereinabove noted, and names of such non-member manufacturers who thus refused to sell their said products, and induced said visor manufacturers to cease dealing with and to refuse to sell visors and trimmings to uniform cap manufacturers thus reported, and made use of coercive and concerted action and threats of boycott against such visor

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manufacturers to induce and require them to support the program herein set forth and to refrain from selling their visors and trimmings to non-member uniform cap manufacturers; and

(e) Held meetings in several large cities to devise means of exerting influence, pressure and coercion upon uniform cap manufacturers to abide by and adhere to the program hereinabove set forth, and imposed upon and collected from members selling below suggested prices, fines, and in one instance made threat of fine of \$2,000 and strike and labor troubles; and

Where aforesaid visor manufacturers, so-called "Policemen of the Industry,"

(f) Cooperated with the others hereinbefore set forth in carrying out the above noted program and refused to sell to those uniform cap manufacturers who failed to take membership in aforesaid first-named association or to observe uniform prices fixed in aforesaid lists, necessary visors and trimmings;

With result that prices of such caps were raised to levels higher than those prevailing before effecting of said agreement and preparation of said lists, prices for visors and trimmings used in manufacture of such uniform caps were advanced by aforesaid visor manufacturers, purchasing public was deprived of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal competition in uniform cap manufacturing industry, and small business enterprises engaged in manufacture and sale of such products were oppressed and discriminated against:

Held, That such acts and practices were to the prejudice of the public and competitors and tended unduly to hinder competition and create monopoly and constituted unfair methods of competition.

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

Mr. P. C. Kolinski for the Commission.

Mr. Elias Lieberman, of New York City, for Cap Association of the United States, Inc. and various other respondents.

Mr. Jerome L. Greenberg, of New York City, for Irving L. Lewis and Herman Buchbinder.

Sitron & Schwartz, of Chicago, Ill., for Chicago Uniform Cap Co.

Mr. John J. Mitchell, Jr., of Philadelphia, Pa., for Kuenzel Brothers.

Miller, Kamenear & Margolis, of Chicago, Ill., for Jacob Apfelbaum, Morris Greenberg and Jacob Wax.

COMPLAINT

Pursuant to the provisions of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that each and all the parties named in the caption hereof, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a pro-

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ceeding 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. That the respondent Cap Association of the United States, Inc., hereinafter referred to as the association, is a corporation incorporated and existing under the laws of the State of New York having its principal office in New York City; that prior to April 19, 1934, its corporate name was National Cap & Cloth Hat Institute, Inc.; that its membership consists of approximately 100 cap manufacturers distributed throughout the United States, whose combined output constitutes practically all caps manufactured in the United States;

That the respondent Uniform Cap Manufacturers Institute, Inc., hereinafter referred to as the institute, is a corporation incorporated and existing under the laws of the State of New York, having its principal office in New York City; that its membership consists of approximately 80 uniform cap manufacturers distributed throughout the United States, whose combined output constitutes practically all the uniform caps manufactured in the United States;

That the following named individuals, partnerships, and corporations are representative uniform cap manufacturers holding membership in both organizations, the association and the institute:

Respondent E. Mattes & Son, 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 at New York City.

Respondent William B. Mackey, is an individual trading as J. Mackey & Sons, with his office and principal place of business in New York City.

Respondent Pekarsky Cap Fronts, 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 at New York City.

Respondent American Cap Fronts Mfg. Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at New York City.

Respondent Samuel D. Basch is an individual trading as Basch Cap Co., with his office and principal place of business in Boston, Mass.

Respondent Wentworth Forman Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Massachusetts, with its principal office and place of business at Boston.

Respondent George Brunssen Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at New York City.

Respondent Nas Saw Equipment 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 New York City.

Respondent Philadelphia Uniform Co., 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 at Conshohocken, Pa.

Respondent Kuenzel Brothers 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.

Respondent Opper Cap Co., 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 at Cleveland.

Respondent, Figmore Uniform Cap Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business at Detroit.

Respondent Chicago Uniform Cap 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 at Chicago.

Respondent Jacob Apfelbaum is an individual trading as J. Apfelbaum, with his office and principal place of business in Chicago, Ill.

Respondent Morris Greenberg and Jacob Wax are partners trading as Eastern Uniform Cap Mfg. Co., with their office and principal place of business in Chicago, Ill.

Respondents Irving L. Lewis, Jacob Bressler, Herman Buchbinder, and Isaac Ross are respectively president, treasurer, secretary, and executive secretary of said association, in charge of and conducting its activities and affairs.

That respondents Murray H. Bader, Sidney Lesser, Herman Juelick, and Walter Seifert are respectively president, vice president, treasurer, and secretary of said institute.

That respondents E. Mattes & Son, Inc., William B. Mackey, trading as J. Mackey & Sons, Pekarsky Cap Fronts, Inc., and American

Cap Fronts Mfg. Co., are manufacturers of vizors and trimmings used in the manufacture of uniform caps.

That the other respondents specifically named herein as members of the respondent association and respondent institute do not embrace the entire list or number of such members; that such members constitute a class so numerous, far-flung, and changing as to make it impracticable to specifically name each and every one of them as parties respondent herein; that those specifically named herein are fairly representative of the whole; that all members of the afore-said respondent association and respondent institute are also made parties respondent herein as a class of which those specifically named are representative; that said members of said association and said institute are hereinafter called the members.

That such respondent members manufacture and sell uniform caps, being any and all types of headwear used or worn in conjunction with a uniform. The uniform caps manufactured and sold by respondent members are used by the armed forces of the United States, the Army, Navy, Marine Corps, and Coast Guard, all United States Postal Carriers, members of National Guard organizations, police and fire departments in every city of the United States, railway employes, including railroad, street railway, rapid transit and bus employes, chauffeurs, telegraph and delivery messengers, building and theatre attendants, gasoline, laundry and other industrial uniformed organizations, and large patriotic and fraternal organizations in every city and town in the United States.

PAR. 2. That in the course and conduct of the business and activities of said association and institute respondents, their officers and members respondent, they have been and are engaged in commerce among the several States and in trade, business, and commerce relating to, and affecting interstate commerce, as hereinafter alleged; that respondent members of said association and institute purchase the vizors, cloth and trimmings used in the manufacture of uniform caps from manufacturers in various States and cause such products to be shipped to their places of business; and in the course of the sale and distribution of uniform caps said respondents caused such merchandise when sold to be shipped and transported from their places of business to their customers at points in States other than the State in which such shipments originated; that except insofar as competition has been restrained, stifled, lessened, or destroyed by the respondents as hereinafter alleged, each of the respondents have been and are engaged in the course and conduct of their businesses and activities in substantial competition with each other in price, and are otherwise in such substantial competition with other indi-

viduals, partnerships, and corporations also engaged in the manufacture of uniform caps.

PAR. 3. In July 1933, or thereabouts, respondents united in a common course of action and cooperated and confederated together to fix and establish uniform prices at which said members of respondent association and respondent institute should sell uniform caps and to prevent others from selling at less prices and by and through the aforesaid means to suppress competition and especially competition in price in the selling and distribution of said products. To carry out the aforesaid purposes the respondents have done, among others, the following acts and things:

(a) Exacted and procured pledges and other promises of agreements from each member of respondent Association and respondent Institute and from manufacturers of vizers and trimmings to the effect that such members and manufacturers would support, adhere to and enforce the foregoing program of respondents set forth in paragraph 3 hereof.

(b) Printed and circulated among members price lists indicating the price to jobbers, the retail price, and the contract price to uniform tailors, of uniform caps manufactured and sold by respondent members.

(c) Printed and circulated among members, lists (so called black lists), containing the names of members who refused to manufacture and sell uniform caps at the suggested prices, and the names of uniform cap manufacturers not members of said association and institute, who refused to manufacture and sell uniform caps at the prices suggested by respondents herein, and supplied said lists to the manufacturers of uniform cap vizers, respondents herein, and induced said vizer manufacturers to cease dealing with and to refuse to open accounts with the uniform cap manufacturers so reported.

(d) Used in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats of boycott, and other united action against vizer manufacturers, to induce and require them, and to attempt so to induce and require them, to agree and conform to and to support and enforce the said program of respondents, and to refrain from selling said products to uniform cap manufacturers who were not members of said association.

(e) Held meetings of respondent association, and respondent institute, their members, officers and executive committees, to devise means of exerting influence, pressure and coercion upon uniform cap manufacturers, to abide by and adhere to said program.

PAR. 4. The combination and agreement so entered into and carried on by said respondents and the acts and things done thereunder and

pursuant thereto, as hereinabove alleged, resulted and results in the suppression and prevention of competition between and among them and in the enhancement of prices to the using public; in depriving 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; in oppression in discrimination against small business enterprises which were or are engaged in manufacturing and selling uniform caps; and are monopolistic practices and methods of competition which are unfair, and they constitute unfair methods of competition in commerce within the intent and meaning, and in violation of Section 5 of said Act approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 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 29, 1935, issued and served its complaint in this proceeding upon respondents, Cap Association of the United States, Inc., its officers and members, Irving L. Lewis, Jacob Bressler, Herman Buchbinder, Isaac Ross, individually and as president, treasurer, secretary, and executive secretary, respectively, of said association; Uniform Cap Manufacturers Institute, Inc., its officers and members, Murray H. Bader, Sidney Lesser, Herman Julick, Walter Seifert, individually and as president, vice president, treasurer, and secretary, respectively of said association; E. Mattes & Son, Inc., William B. Mackey, trading as J. Mackey & Sons, Pekarsky Cap Fronts, Inc., American Cap Fronts Mfg. Co., Inc., Samuel D. Basch, trading as Basch Cap Co., Wentworth Forman Co., Inc., George Brunssen Co., Inc., Nas Saw Equipment Corporation, Philadelphia Uniform Co., Inc., Kuenzel Brothers, Opper Cap Co., Figmore Uniform Cap Co., Inc., Chicago Uniform Cap Co., Jacob Apfelbaum, and Morris Greenberg and Jacob Wax, partners trading as Eastern Uniform Cap Mfg. Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by P. C. Kolinski, 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 Elias Lieberman, David Miller, and D. L. Apfelbaum, 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 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, Cap Association of the United States, Inc., is a non-profit corporation existing under the laws of the State of New York with its principal office in New York City. It is a trade association of approximately one hundred members who are manufacturers of all type of caps, and prior to April 19, 1934, its corporate name was National Cap & Cloth Hat Institute, Inc. Respondents, Irving L. Lewis, Jacob Bressler, Herman Buchbinder, and Isaac Ross are officers of this respondent association in charge of conducting its activities. Respondent Uniform Cap Manufacturers Institute, Inc., is a non-profit corporation organized in September 1934, under the laws of the State of New York with its principal office in New York City. It is a trade association of twenty-seven members who are manufacturers of uniform caps. Respondents Murray H. Bader, Sidney Lesser, Herman Julick, and Walter Seifert, are officers of this respondent association in charge of conducting its activities. These association respondents and their officers are not engaged in interstate commerce on their own accounts. Respondent E. Mattes & Son, Inc., Pekarsky Cap Fronts, Inc., and American Cap Fronts Mfg. Co., are corporations existing under the laws of the State of New York, with their principal offices and places of business in New York City, engaged in the manufacture and sale of visors and trimmings used in the manufacture of uniform caps. Respondent William B. Mackey is an individual trading as J. Mackey & Sons, with his office and place of business in New York City, engaged in the manufacture and sale of visors and trimmings used in the manufacture of uniform caps. These four respondent manufacturers of visors and trimmings are, and at all times hereinafter mentioned were engaged in interstate commerce, and in the sale of visors and trimmings make shipments of such commodities from the State of New York through and

into other States of the United States. The remaining respondents manufacture and sell uniform caps, being any and all types of head-wear used or worn in conjunction with a uniform. These commodities are used by the military, naval, postal and coast guard service of the United States, military service of the States, police and fire departments, railway employees, chauffeurs, telegraph messengers, building and theater attendants, gasoline, laundry, and industrial employees, and fraternal organizations. These respondents are Samuel D. Basch, an individual trading as Basch Cap Co., with his office and place of business in Boston, Mass.; Wentworth Forman Co., a corporation existing under the laws of the State of Massachusetts, with its principal office and place of business in Boston, Mass.; George Brunssen Co., Inc., and Nas Saw Equipment Corporation, corporations existing under the laws of the State of New York, with their principal offices and places of business in New York City; Philadelphia Uniform Co., Inc., and Kuenzel Brothers, corporations existing under the laws of the State of Pennsylvania, with their principal offices and places of business at Philadelphia, Pa.; Opper Cap Co., a corporation existing under the laws of the State of Ohio, with its principal office and place of business in the city of Cleveland, Ohio; Figmore Uniform Cap Co., a corporation existing under the laws of the State of Michigan, with its principal office and place of business in the city of Detroit, Mich.; Chicago Uniform Cap Co., a corporation existing under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, Ill.; Jacob Apfelbaum, an individual trading as J. Apfelbaum, with his office and principal place of business in the city of Chicago, Ill.; and Morris Greenberg and Jacob Wax, partners, trading as Eastern Uniform Cap Mfg. Co., with their office and principal place of business in the city of Chicago, Ill. With the exception of respondent Nas Saw Equipment Corporation, all of the respondents last named, engaged in the manufacture and sale of uniform caps, are, and at all times hereinafter mentioned were, engaged in interstate commerce, and make shipments of uniform caps from their respective places of business in the States of Massachusetts, New York, Pennsylvania, Ohio, Michigan, and Illinois, through and into other States of the United States.

PAR. 2. There are in the United States, and have been during the time referred to in paragraph one hereof, other persons, partnerships, and corporations engaged in the manufacture and sale of cloth caps, and other persons, partnerships and corporations engaged in the manufacture and sale of uniform caps. In the sale of these commodities, such other persons, partnerships, and corporations, pursuant

to such sales, ship and have shipped such commodities into and through the various States of the United States other than the States of origin of such shipments; and with such other persons, partnerships, and corporations respondent uniform cap manufacturers are and have been in active and substantial competition. These commodities are used by the military, naval, postal, and coast guard service of the United States, military service of the States, police and fire departments, railway employees, chauffeurs, telegraph messengers, building and theater attendants, gasoline, laundry and industrial employees, and fraternal organizations.

PAR. 3. There are in the United States, and have been during the time referred to in paragraph one hereof, other persons, partnerships, and corporations engaged in the manufacture and sale of visors and trimmings used in the manufacture of uniform caps. In the sale of these commodities, such other persons, partnerships, and corporations, pursuant to such sales, ship and have shipped such commodities into and through the various States of the United States other than the States of origin of such shipments; and with such persons, partnerships and corporations, respondent visor manufacturers E. Mattes & Son, Inc., Pekarsky Cap Fronts, Inc., American Cap Fronts Mfg. Co., and William B. Mackey, are and have been in active and substantial competition. These respondents are not engaged in the manufacture and sale of uniform caps. Their commodities, visors and trimmings, used in the manufacture of uniform caps, are indispensable items necessary to the manufacture of uniform caps. Until the year 1934, these respondent visor manufacturers were the only source of supply of such necessary visors and trimming for uniform caps. At all the times hereinafter mentioned they manufactured, sold, and shipped in interstate commerce approximately 60 percent of the total volume of visors and trimmings used in the uniform cap manufacturing industry in the United States. It is not practicable for the average uniform cap manufacturer to manufacture his own visors and trimmings.

PAR. 4. Prior to the year 1933 respondent uniform cap manufacturers had been offering for sale and selling competitive uniform caps at prices determined by competition among them, and these prices in many instances varied as among said respondents. In July 1933 and thereafter, all respondents herein held a series of meetings at which they discussed and compared prices at which they were offering for sale and selling competitive uniform caps, and at and by means of such meetings came to an agreement or understanding to fix the prices at which they would and did thereafter offer for sale and sell competitive uniform caps, which prices were uniform as

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among said respondents. These meetings were called by the officers of respondent Cap Association of the United States, Inc., and were presided over by such officers. Pursuant to such agreement to fix prices of uniform caps, respondents printed and circulated among members of the uniform cap manufacturing industry price lists indicating the price to jobbers, the retail price, and the contract price to uniform tailors, of uniform caps manufactured and sold by respondent members. Such price lists were circulated by means of and through the use of the correspondence facilities of the respondent Cap Association of the United States, Inc. From time to time thereafter, pursuant to such understanding, respondents uniformly changed said prices and adhered to the schedule of prices as revised.

PAR. 5. Pursuant to the agreement set forth in paragraph four hereof, respondents exacted and procured agreements of cooperation from the four respondent visor and trimming manufacturers to the effect that such visor manufacturers would support, adhere to and enforce the program of respondents set forth in paragraph four hereof. Said visor manufacturers became members of the Cap Association of the United States, Inc.

PAR. 6. In September 1934, respondents organized the respondent association Uniform Cap Manufacturers Institute, Inc., being a group of uniform cap manufacturers who were and are members of the respondent Cap Association of the United States, Inc. Respondents, Murray H. Bader, Sidney Lesser, Herman Julick, and Walter Seifert acted as officers of the Uniform Cap Manufacturers Institute, Inc. which continued in active existence until June 1935. Respondents procured from the four visor manufacturer respondents agreements to cooperate with the Uniform Cap Manufacturers Institute.

PAR. 7. Respondents cooperating and confederating together and using the offices, stationery, and secretarial facilities of respondent Cap Association of the United States, Inc., printed and circulated among members, lists containing the names of uniform cap manufacturers who refused to sell uniform caps at the suggested prices mentioned in paragraph four hereof, and containing the names of uniform cap manufacturers not members of respondent Cap Association of the United States, Inc., who refused to sell uniform caps at such suggested prices, and supplied said lists to the four respondent visor manufacturers herein, and induced said visor manufacturer respondents to cease dealing with and to refuse to sell visors and trimmings to the uniform cap manufacturers so reported. Respondents used in concert and agreement among themselves, coercive and concerted action, and threats of boycott against respondent

visor manufacturers to induce and require such visor manufacturers to support the program of respondents set forth in paragraph four herein, and to refrain from selling visors and trimmings to uniform cap manufacturers who were not members of said respondent association.

PAR. 8. Meetings were held in the cities of New York, Boston, Philadelphia, and Chicago, by respondent association, their members, and their officers, to devise means of exerting influence, pressure, and coercion upon uniform cap manufacturers to abide by and adhere to the program set forth in paragraph four hereof. At some of these meetings fines were imposed and collected from members who sold uniform caps below the suggested prices. In one instance a uniform cap manufacturer was threatened with a fine of \$2000.00 and with strike and labor troubles.

PAR. 9. The four respondent visor manufacturers did cooperate with the other respondents herein, to carry out the program set forth in paragraph four herein. Said visor manufacturers refused to sell visors and trimmings to uniform cap manufacturers who either failed to take membership in respondent Cap Association of the United States, Inc., or who failed to observe the uniform prices fixed in the lists described in paragraph four hereof. This method of refusing necessary supplies earned for respondent manufacturers the title of "Policemen of the Industry."

PAR. 10. As a result of the combination and agreement entered into and carried on by respondents, prices of uniform caps were raised to levels higher than those prevailing before the agreement was effected and uniform price lists prepared. The prices for visors and trimmings used in the manufacture of uniform caps were advanced by the visor manufacturer respondents. The acts of respondents have deprived the purchasing public of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and free competition in the uniform cap manufacturing industry, and such acts have resulted in oppression and discrimination against small business enterprises which were or are engaged in manufacturing and selling uniform caps.

CONCLUSION

The aforesaid acts and practices of the respondents Cap Association of the United States, Inc., its officers and members, Irving L. Lewis, Jacob Bressler, Herman Buchbinder, Isaac Ross, individually and as president, treasurer, secretary and executive secretary, respectively, of said association; Uniform Cap Manufacturers Institute, Inc., its officers

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and members, Murray H. Bader, Sidney Lesser, Herman Julick, Walter Seifert, individually and as president, vice president, treasurer, and secretary, respectively, of said association; E. Mattes & Son, Inc., William B. Mackey, trading as J. Mackey & Sons, Pekarsky Cap Fronts, Inc., American Cap Fronts Mfg. Co., Inc., Samuel D. Basch, trading as Basch Cap Co., Wentworth Forman Co., Inc., George Brunssen Co., Inc., Nas Saw Equipment Corporation, Philadelphia Uniform Co., Inc., Kuenzel Brothers, Oppor Cap Co., Figmore Uniform Cap Co., Inc., Chicago Uniform Cap Co., Jacob Apfelbaum, and Morris Greenberg and Jacob Wax, partners trading as Eastern Uniform Cap Mfg. Co., are to the prejudice of the public and of respondent's competitors, and tend unduly to hinder competition and create a monopoly, 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 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, briefs filed herein, and oral arguments by P. C. Kolinski, counsel for the Commission, and by Elias Lieberman, 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, Cap Association of the United States Inc., its officers and members, Irving L. Lewis, Jacob Bressler, Herman Buchbinder, Isaac Ross, individually, and as president, treasurer, secretary, and executive secretary, respectively, of said association; Uniform Cap Manufacturers Institute, Inc., its officers and members, Murray H. Bader, Sidney Lesser, Herman Julick, Walter Seifert, individually and as president, vice president, treasurer, and secretary, respectively, of said association; E. Mattes & Son, Inc., William B. Mackey, trading as J. Mackey & Sons, Pekarsky Cap Fronts, Inc., American Cap Fronts Mfg. Co., Inc., Samuel D. Basch, trading as Basch Cap Co., Wentworth Forman Co., Inc., George Brunssen Co., Inc., Nas Saw Equipment Corporation, Philadelphia Uniform Co., Inc.,

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Kuenzel Brothers, Opper Cap Co., Figmore Uniform Cap Co., Inc., Chicago Uniform Cap Co., Jacob Apfelbaum, and Morris Greenberg and Jacob Wax, partners trading as Eastern Uniform Cap Mfg. Co., their officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of uniform caps in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Entering into any agreement or understanding among themselves, or between 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 uniform caps.

2. Maintaining by concerted action, coercion and persuasion a boycott against and refusal to purchase visors and trimmings from any visor manufacturer who fails to abide by respondents' program to withhold supplies from non-members of their uniform price fixing agreement.

3. Publishing lists containing the names of members of respondent associations, so as to include in said lists only so-called regular or recognized members entitled to procure visors and trimmings used in the manufacture of uniform caps.

4. Refusing supplies of visors and trimmings to uniform cap manufacturers, and 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.

IN THE MATTER OF
MILLS SALES COMPANY OF NEW YORK, 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 3070. Complaint, Mar. 8, 1937—Decision, June 10, 1937

Where a corporation and five individuals, officers thereof, engaged in sale at wholesale and retail of a variety of peddlers' and retail dealers' supplies, including toothbrushes, dental creams, razor blades, perfumes, and other drug sundries and notions, in substantial competition with others engaged in manufacture and distribution of like and similar products and sale thereof in commerce among the various States and in the District of Columbia, and including manufacturers and distributors of such products who do not fictitiously price-mark their merchandise, and also those who do not advertise or falsely represent, through their catalogs, that they are manufacturers or importers or that they have been established in business for a greater period than is the case—

- (a) Listed and described many articles and items of merchandise, in their catalogs and price lists, as possessing retail values or prices many times in excess of their actual selling price to the retailer or to the purchaser, and of the actual retail price thereof, and included among items and articles thus described a number which had stamped or printed thereon, or on the labels thereof, or on the containers in which offered and sold to the public, fictitious retail prices many times in excess of the actual selling price of said items or articles of merchandise, as sold by peddler or retailer to consuming public, and in excess of their true and actual value, and which were not intended, by either themselves or their purchasers buying for resale, to be true retail price or retail value of merchandise thus marked, but to be far in excess of price intended to be and actually charged for sale thereof to ultimate consumer purchaser in usual course of trade, and far in excess of true value of various items thus marked;

With result of placing in the hands of its peddler and retailer customers buying for resale, an instrument and means enabling them to commit a fraud upon a substantial part of consuming public through representing, offering, and selling shaving and dental creams, cosmetics, and other drug sundries involved, as genuinely superior products produced by the manufacturer with intent of sale thereof in usual course of trade to public at and for retail price stamped thereon or on containers thereof;

- (b) Designated, in catalogs and other advertising matter, certain domestic perfumes made or compounded in the United States, as "L'Odeur d'Amour" and "Perfumes of France," and set forth on the containers of one of said perfumes certain printed matter in the French language to the effect that products in question had been made by the French firm there named in their factories near Paris, etc.; and
- (c) Represented, in solicitation and sale of their said commodities, that business in question was an old established one, and that corporation had been wholesaler for some twenty years, and that they were importers and manufacturers of toilettries, drug sundries, razor blades, etc., and made such

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statements as "now located in New York only * * * We have discontinued all other branches * * * Chicago branch discontinued," notwithstanding fact corporation in question was organized, etc., in 1936 and not 1916, and had been, accordingly, wholesaler for only extremely limited period thus indicated, they were not manufacturers and did not own, control, operate, or have any interest whatsoever in manufacturing establishments making such products, and had never operated place of business in Chicago, or in any other place than in New York City;

With results that a substantial portion of the consuming public of the several States was misled into the belief that various items of merchandise, described as hereinbefore set forth, were a superior value and were to be sold and distributed with the intent and purpose that they should be sold at retail prices closely approximating those stamped thereon, and that said products, by reason of the marks affixed or stamped thereon, were composed of superior ingredients and ordinarily retailed, in usual course of trade, for prices closely approximating those stamped on merchandise, and that they were manufacturers of said products, in business for a great many years, and were importers of perfumes, etc., and that aforesaid perfumes had been made in and imported from France or some other foreign country, and with tendency and capacity to mislead and deceive distributors and purchasing public into erroneous belief that said statements and representations were true, and with effect of inducing members of public to buy their products on account of such belief, and of unfairly diverting trade to them from competitors; to the injury of the general and to the damage and injury of manufacturers and distributors, and 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. S. Brogdyne Teu, II 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 Mills Sales Company of New York, Inc., a corporation, David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger and Walter Jacoby, individuals, officers of the aforesaid corporation, all hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Mills Sales Company of New York, Inc., is a corporation having its principal office and place of business located at 901 Broadway, in the city of New York, State of New

York, and operating a branch store located at 87 Orchard Street, city of New York, State of New York. It has been, for more than one year last past engaged in the sale and distribution of cosmetics, perfumes and notions to retail dealers and peddlers purchasing for resale, and also to the public direct. In the course and conduct of its business it offers said products for sale and sells the same in commerce between the State of New York and the several States of the United States and the District of Columbia.

Respondents David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger, and Walter Jacoby, are respectively, president, vice-president, treasurer, secretary, and assistant secretary of the aforementioned respondent corporation. They have their principal places of business at the above-mentioned addresses of the Mills Sales Company of New York, Inc. They all participate in the management and direction of the Mills Sales Company of New York, Inc., and its sales policies and general business operations.

PAR. 2. When said products are sold, respondents transport or cause the same to be transported from their places 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 still is, a constant current of trade and commerce in said products so sold by respondents, between and among the various States of the United States and in the District of Columbia. Respondents are now, and for more than one year last past have been engaged in substantial competition with other individuals, firms, partnerships, and corporations engaged in the manufacture, 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. 3. Respondents in soliciting the sale and in the selling of their commodities, and for the purpose of creating a demand on the part of the consuming public for said commodities, have advertised their commodities through the media of catalogues, price lists, and other printed matter published, issued and circulated through the United States mails to their customers and prospective customers in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means, respondents make and have made to the general public false and misleading statements with reference to the commodities offered by them for sale. Many articles and items of merchandise listed in said catalogues and price lists are described as possessing retail values greatly in excess of the actual selling price of respondents to the retailers or other

purchasers, and greatly in excess of the actual value thereof. A number of the said items and articles of merchandise described in the aforesaid catalogues have retail prices stamped or printed on the labels attached thereto, or on the containers in which they are offered for sale and sold to the public.

Representative of such statements and representations made by the respondents on the containers regarding the selling price and value of the commodities thus offered by them for sale are the following: Economy First Aid Kit. Price 25¢; Safeguard Brand DeLuxe Liquid Latex. Price \$4; Dupree Pills. Price \$2 per box; You love to season with pure spices. Allspice Price 35¢; Champion Cup Shaving Soap. Price 15¢; Spirits of Camphor, U. S. P. Value 35¢; Lather Shave Cream. Palm and Olive Oil. A product of Palm and Olive Oils. Price 35¢; Dr. Ross' Tooth Paste. Contains Milk of Magnesia. Price 60¢; Royal Blue Dental Cream. Contains Milk of Magnesia. Price 60¢; and Campbell's Lather Shave Cream. Price 35¢.

In truth and in fact the Economy First Aid Kit is sold to the retail trade for 5¢ per unit; Safeguard Brand DeLuxe Liquid Latex is sold to the retail trade for \$1 per unit; Dupree pills are sold to the retail trade for 25¢ per box; You love to season with pure spices. Allspice is sold to the retail trade for 6¢ per unit; Champion Cup Shaving Soap is sold to the retail trade for 2¢ per unit; Spirits of Camphor, U. S. P., is sold to the retail trade for 7¢; Lather Shave Cream. Palm and Olive Oil. A product of Palm and Olive Oils, is sold to the retail trade for 4¢; Dr. Ross' Tooth Paste. Contains Milk of Magnesia, is sold to the retail trade for 6¢; Royal Blue Dental Cream. Contains Milk of Magnesia, is sold to the retail trade for 10¢; and Campbell's Lather Shave Cream is sold to the retail trade for 6¢ per unit.

The respective items above referred to are usually and customarily sold to retail dealers or peddlers for the retail prices indicated in the unnumbered paragraph immediately preceding this one. The said retail prices at which the products are actually sold to retail consumers do not appear on the containers.

The said catalogues of respondents contain many other instances where fictitious retail prices are imprinted upon the label or carton.

Over a period of many years, manufacturers in many trades have adopted and followed the custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which the said manufacturers suggest that the retailer should sell the item or article to the ultimate consumer purchaser.

This suggested retail price so stamped or marked is intended to represent the cost to the manufacturer of the article plus a reasonable profit for the manufacturer and the retailer, and, consequently, to represent the approximate retail sale value of the item. The public generally understands this custom and has been led to and does place its confidence in the price-marking so stamped and the representations so made as to the quality of the product, to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

For many years a substantial portion of the consuming public has had and has expressed a marked preference for dental creams, shaving creams, toilet articles and similar household notions which are composed of superior ingredients and which are produced by the manufacturers thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products or for products made of inferior ingredients. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail price on said products as indicating the superior quality and character of the product and its higher value.

Whenever a genuinely superior product so stamped or marked with the retail price thereon is offered for sale at a substantially reduced price, the general purchasing public is led to believe and does believe that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail prices thereof over ordinary products sold for their regular price which is lower than the normal retail value of the superior products in the customary course of trade.

The retail prices so stamped or printed as aforesaid upon respondents' products are greatly in excess of the actual selling price of the said items or articles of merchandise by the retailer to the consuming public and are in excess of their true and actual value. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price-marked.

PAR. 4. The said catalogues published and distributed by the respondents also contain other instances of misleading descriptions and representations of their commodities; among them are the following:

1. Perfumes represented and designated as "L' Odeur d' Amour." On this container appears certain printed matter in the French language which, when translated, reads as follows:

This specialty and these accessories have been created by Oralee Brothers in their factories in the City of Perfumes at Suresnes, near Paris (France). They are the exclusive property of Oralee Brothers for the United States of America where they are manufactured.

Counterfeits will be rigorously prosecuted.

All our specialties are sold under the own name of "Oralee Brothers" without any forenames.

Oralee Brothers, Paris, France.

2. Package of perfumes bearing (in French) the legend, "Perfumes of France".

For many years a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for perfumes and toilettries which are manufactured or compounded in foreign countries, and especially in France, and then imported into the United States.

The aforementioned representations and description appearing on the aforesaid articles by labels printed in the French language serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that the commodities so described and referred to are manufactured in France.

In truth and in fact, the aforesaid articles are not manufactured in France or any other foreign country, but are domestic products made or compounded in the United States.

PAR. 5. The respondents, in soliciting the sale of and selling their said commodities, and for the purpose of creating the impression that the respondent Mills Sales Company of New York, Inc., is an old established business, represent that respondent has been a wholesaler since 1916.

PAR. 6. The respondents, in soliciting the sale of and selling their commodities, and for the purpose of creating a demand on the part of the consuming public for such commodities, now cause and for more than one year last past have caused themselves to be represented, through their letterheads and circulars, order blanks and general business stationery, as importers and manufacturers of toilettries, drug sundries, razor blades, novelties and notions.

PAR. 7. The respondents further represent, through such statements as, "Now located in New York only * * * we have discontinued all other branches * * * Chicago branch discontinued," and other statements of like import, represent that the corporate respondent at one time operated a place of business in the city of Chicago, in the State of Illinois.

In truth and in fact the above set out representations of the respondents are false in that the respondents' business is not an old

established business. The corporate respondents' business was incorporated in 1936. The respondents are not in any sense whatsoever importers of any of the aforementioned products, and they are not in any sense whatsoever manufacturers of the said articles. The said corporate respondents have never operated a branch in the city of Chicago, State of Illinois, or at any other place than in the city of New York, State of New York.

PAR. 8. The aforesaid false and misleading advertising and representations, together with the aforesaid false and fictitious price markings, on the part of the respondents, place in the hands of the aforesaid peddlers and retailers buying for resale, an instrument and means whereby said peddlers and retailers may commit a fraud upon a substantial portion of the consuming public, by enabling such dealers to represent and offer for sale and sell respondents' said shaving cream, dental cream, and other toilet notions as being genuinely superior, or imported, products produced and sold by the manufacturer thereof with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for approximately the retail price stamped on said products or on their containers.

PAR. 9. There are, among the competitors of the respondents in commerce, as described in paragraph 1 above, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and value of their respective products and the nature and size of their business. There are also among the competitors of respondents manufacturers and distributors of like and similar products who refrain from advertising or representing through their catalogues and other advertising media and through fictitious price markings, that the merchandise offered for sale by them has a merit, origin or value that it does not have.

PAR. 10. The effect of the foregoing false and misleading representations and acts of the respondents in selling and offering for sale such items of merchandise as hereinbefore referred to, is to mislead a substantial portion of the purchasing and consuming public in the several States of the United States, by inducing them to mistakenly believe:

1. That the various items of merchandise described in respondents' catalogues and other advertising media were and are of superior value and were and are sold and distributed by respondents with the intent and purpose that said products should be sold at retail prices closely approximating the prices stamped thereon.

2. That the said products, because of the price marks fixed or stamped thereon, are composed of superior ingredients and are

products which ordinarily retail, in the usual course of trade, for prices closely approximating the prices stamped on the merchandise.

3. That the respondents are manufacturers of said products, and large scale operators and distributors, and have been in business a great many years and conduct their business on such a scale as to assure purchasers of a superior quality and lower price by trading with such operators.

4. That the respondents are importers of perfumes, notions and other toiletries.

5. That the perfumes described in paragraph 4 are manufactured in and imported from France or some other foreign country.

The foregoing false and misleading statements and representations on the part of respondents have induced and still induce a substantial number of retail merchants as well as the consumer purchasers of said commodities, to buy the products offered for sale, sold and distributed by respondents, on account of the aforesaid erroneous and mistaken beliefs. As a result thereof trade has been diverted from those competitors of respondents engaged in similar businesses, referred to in paragraph 9 above. As a consequence thereof, substantial injury has been and is being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 11. 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 March 9, 1937, issued and served its complaint in this proceeding upon respondents Mills Sales Company of New York, Inc., a corporation, David Jacoby, individually, and as president of Mills Sales Company of New York, Inc., Evelyn Jacoby, individually, and as vice president of Mills Sales Company of New York, Inc., Joseph Jacoby, individually, and as treasurer of Mills Sales Company of New York, Inc., Estelle J. Krueger, individually, and as secretary of Mills Sales Company of New York, Inc., and Walter Jacoby, individually, and as assistant secretary of Mills Sales Company of New York, Inc., charging them with the use of unfair methods

of competition in commerce in violation of the provisions of said act. On May 14, 1937 the respondents filed their answer, in which answer they admit all the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in said complaint and consent that, without further evidence or intervening procedure, the Commission might issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, and 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 respondents are the Mills Sales Company of New York, Inc., a New York corporation organized and doing business by virtue of and under the laws of the State of New York, and David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Krueger, and Walter Jacoby, respectively president, vice president, treasurer, secretary, and assistant secretary of the Mills Sales Company of New York, Inc.

PAR. 2. Respondents have been for more than one year last past engaged in the wholesale and retail business of dealing in, and selling at retail, a variety of peddlers' and retail dealers' supplies, including tooth brushes, dental creams, razor blades, perfumes, and other drug sundries and notions.

PAR. 3. In the sale of said products respondents have transported or caused the same to be transported from their principal place of business in the State of New York to the purchasers thereof, located in States of the United States other than the State from which the shipment originated, and in the District of Columbia. There has been for more than one year last past, and still is, a constant current of trade and commerce in said products so distributed and sold by respondents between and among the various States of the United States and in the District of Columbia.

For more than one year last past the respondents have been engaged in substantial competition with other individuals, partnerships, firms, and corporations engaged in the manufacture and distribution of like and similar products, and in the sale thereof in commerce between and among the various States in the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business as aforesaid the respondents, in soliciting the sale of and in selling their products, and for the purpose of creating a demand upon the part of the consuming public for said products, have for more than one year last past caused their products to be advertised through the media of catalogs, price lists, and other printed matter published, issued, and circulated through the United States mails to their customers and prospective customers in the various States of the United States and in the District of Columbia. In the said ways and by said means respondents have made to the general public many unfair, false, and misleading statements with reference to the commodities offered by them for sale.

PAR. 5. Many articles and items of merchandise listed in said catalogs and price lists have been described as possessing retail values or prices many times in excess of the actual selling price by the respondents to the retailer or other purchaser and many times in excess of the actual retail price thereof.

A number of the said items and articles of merchandise described in said catalogs have retail prices stamped or printed thereon, on the labels attached thereto or on the containers in which they have been offered for sale and sold to the public. The retail prices so stamped or printed as aforesaid are many times in excess of the actual selling price of the said items or articles of merchandise sold by the peddler or retailer to the consuming public, and are many times in excess of their true and actual value. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

PAR. 6. Among the misleading and fictitious price markings appearing on cartons and containers and advertised by respondents in catalogs, price lists, and in other advertising matter are the following:

(a) "Economy First Aid Kit"—"Price 25¢", whereas this item is regularly sold by said respondents at retail for 5¢ per unit.

(b) "Safeguard Brand DeLuxe Liquid Latex"—"Price \$4", whereas this item is regularly sold by said respondents at retail for \$1 per unit.

(c) "Dupree Pills"—"Price \$2 per box", whereas this item is regularly sold by said respondents at retail for 25¢ per box.

(d) "You love to season with pure spices"—"Allspice"—"Price 35¢", whereas this item is regularly sold by said respondents at retail for 6¢ per unit.

(e) "Champion Cup Shaving Soap"—"Price 15¢", whereas this item is regularly sold by said respondents at retail for 2¢ per unit.

(f) "Spirits of Camphor, U. S. P."—"Value 35¢", whereas this item is regularly sold by said respondents at retail for 7¢ per unit.

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(g) "Lather Shave Cream"—"Palm and Olive Oil"—"A product of Palm and Olive Oils"—"Price 35¢", whereas this item is regularly sold by said respondents at retail for 4¢ per unit.

(h) "Dr. Ross' Tooth Paste"—"Contains Milk of Magnesia"—"Price 60¢", whereas this item is regularly sold by said respondents at retail for 6¢ per unit.

(i) "Royal Blue Dental Cream"—"Contains Milk of Magnesia"—"Price 60¢", whereas this item is regularly sold by said respondents at retail for 10¢ per unit.

(j) "Campbell's Lather Shave Cream"—"Price 35¢", whereas this item is regularly sold by said respondents at retail for 6¢ per unit.

PAR. 7. The retail prices which, as indicated above, appear on the items of merchandise or on the containers thereof are not and were not intended by either the respondents or the purchaser purchasing for resale to be the true retail price or the true retail value of the merchandise so price marked. The retail prices thus appearing on the items of merchandise or on the containers thereof were intended by the respondents and by the purchasers purchasing for resale to be far in excess of the price intended to be charged and actually charged for the sale of merchandise to the ultimate consumer purchasing in the usual course of trade, and far in excess of the true value of the various items of merchandise so price marked.

PAR. 8. Over a period of many years manufacturers have in many trades formed the custom of price marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which said manufacturers suggest the retailer should sell the item or article to the ultimate consumer purchaser. This suggested retail price so stamped or marked is intended to represent the cost of the manufacture of the article, plus a reasonable profit for the manufacturer and retailer and, consequently, to represent the approximate retail sale value of the item. The range of the suggested retail price is intended by the manufacturer to be indicative of the quality and character of the ingredients used and the process by which the item is manufactured. The public generally understands the custom herein detailed, and has been led to and does place its confidence in the price markings so stamped and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

PAR. 9. For many years a substantial part of the consuming public has expressed and has had a marked preference for dental creams, shaving creams, toilet articles, and like and similar drug sundries that are composed of superior ingredients and are produced by the manufacturer thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products manufactured with the usual and customary

ingredients or with inferior ingredients. Said manufacturers following the custom herein detailed, have marked or stamped the suggested retail prices on said products as an indication of the superior quality and character of the product and its resulting higher value. Whenever a genuinely superior product so stamped or marked with the retail price thereof is offered for sale at a substantially reduced price, the general purchasing public has been led to believe and does believe that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade.

The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail values thereof over ordinary products sold for the regular price, which is lower than the normal retail price of the superior product in the customary course of trade.

PAR. 10. The said catalogs, price lists, and other advertising literature of respondents contain many other instances where fictitious retail prices are imprinted upon the label or carton.

PAR. 11. The catalogs, price lists, and other advertising literature of respondents contain many other instances of false and misleading representations. Among them are the following:

(1) Perfumes represented and designated as "L'Odeur d' Amour." On this container appears certain printed matter in the French language which, when translated, reads as follows:

This specialty and these accessories have been created by Oralee Brothers in their factories in the City of Perfumes at Suresnes, near Paris (France). They are for the exclusive property of Oralee Brothers for the United States of America where they are manufactured.

Counterfeits will be rigorously prosecuted.

All our specialties are sold under the own name of "Oralee Brothers" without any forenames.

Oralee Brothers, Paris, France.

(2) Package of perfumes bearing (in French) the legend, "Perfumes of France".

PAR. 12. For many years a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for perfumes and toilettries which are manufactured or compounded in foreign countries, and especially in France, and then imported into the United States.

PAR. 13. The aforesaid articles of perfumes are not manufactured in France or in any other country, but are domestic products made or compounded in the United States.

PAR. 14. The respondents in soliciting the sale and selling their said commodities have represented that the respondent, Mills Sales

Company of New York, Inc., is an old established business, and further represents that respondent, Mills Sales Company of New York, Inc., has been a wholesaler since 1916.

Mills Sales Company of New York, Inc. was organized and incorporated in 1936 and has only been a wholesaler since 1936.

PAR. 15. The respondents in soliciting the sale and selling their commodities have represented themselves through letterheads and circulars, order blanks, and general business stationery to be importers and manufacturers of toiletries, drug sundries, razor blades, novelties, and general drug sundries and notions.

PAR. 16. The respondents are not manufacturers of toiletries, drug sundries, razor blades, novelties, and general drug sundries, and notions, nor do they own, control, operate, or have any interest whatsoever in manufacturing establishments making toiletries, drug sundries, razor blades, novelties, and notions.

PAR. 17. The respondent further represents through such statements as "now located in New York only * * * We have discontinued all other branches * * * Chicago branch discontinued" and other statements of like import, that the corporate respondent at one time operated a place of business in the city of Chicago, in the State of Illinois.

The respondent, Mills Sales Company of New York, Inc., has never operated a place of business in the city of Chicago, in the State of Illinois or at any other place than in the city of New York, State of New York.

PAR. 18. The false and misleading advertising and representations hereinabove set out together with the false and fictitious price markings herein set out on the part of respondents place in the hands of the aforesaid peddlers and retailers, buying for resale, an instrument and a means whereby said peddlers and retailers may, and do, commit a fraud upon a substantial part of the consuming public by enabling such dealers to represent and offer for sale and sell the said shaving cream, dental cream, cosmetics, and other general line of drug sundries as genuinely superior products produced by the manufacturer thereof, with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for the retail price stamped on the products or on their containers.

PAR. 19. There are among the competitors of the respondents in interstate commerce manufacturers and distributors of like and similar products who do not fictitiously price mark the merchandise offered for sale by them. There are also among the competitors of the respondents in interstate commerce manufacturers and distrib-

utors of like and similar products who do not advertise or represent through their catalogs that they are manufacturers, importers, or have been established in business for a great period of time unless such are the facts.

PAR. 20. The effect of the foregoing false and misleading representations and acts of the respondents in selling and offering for sale items of merchandise herein described is to mislead a substantial portion of the consuming public in the several States of the United States by inducing them to believe:

1. That the various items of merchandise described in respondents' catalogs and other advertising media were and are of superior value, and were and are sold and distributed by respondents with the intent and purpose that said products should be sold at retail prices closely approximating the prices stamped thereon.

2. That the said products, because of the price marks affixed or stamped thereon, are composed of superior ingredients and are products which ordinarily retail in the usual course of trade for prices closely approximating the prices stamped on the merchandise.

3. That the respondents are manufacturers of said products and have been in business a great many years.

4. That the respondents are importers of perfumes, notions, and other general line of drug sundries.

5. That the perfumes described in paragraph 11 are manufactured in and imported from France, or some other foreign country, into the United States.

PAR. 21. The use of each and all the foregoing false and misleading statements and representations by the respondents as herein set out has had and now has the tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and has induced and now induces members of the public to purchase the products of the said respondents on account of such erroneous beliefs, to the resultant damage and injury of manufacturers and distributors, and to the injury of the general public. Said representations have thereby unfairly diverted trade to said respondents from competitors, and substantial injury has been done by respondents to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondents, Mills Sales Company of New York, Inc., a corporation, David Jacoby, individually, and as president of Mills Sales Company of New York, Inc.,

Evelyn Jacoby, individually, and as vice president of Mills Sales Company of New York, Inc., Joseph Jacoby, individually, and as treasurer of Mills Sales Company of New York, Inc., Estelle J. Krueger, individually, and as secretary of Mills Sales Company of New York, Inc., and Walter Jacoby, individually, and as assistant secretary of Mills Sales Company of New York, Inc., are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of the complaint to be true and state that they waive hearing on the charges set forth in said complaint and consent that without further evidence or other intervening procedure the Commission may issue and serve upon them 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 made its findings as to the facts and conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is ordered, That the respondents, Mills Sales Company of New York, Inc., and David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Krueger, and Walter Jacoby, individually, and as officers of said Mills Sales Company of New York, Inc., and their respective agents, representatives, or employees, individual or corporate, in connection with the offering for sale, sale, and distribution of cosmetics, perfumes, tooth brushes, shaving creams, tooth paste, and other drug sundries and novelties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Causing cartons and containers in which said articles of merchandise are offered for sale to the public, to be printed, labeled, marked, or stamped with retail prices in excess of the actual and usual selling prices at which the said articles are sold by retailers to the consuming public; or

Representing, directly or indirectly, by newspaper, or magazine advertisement, articles, catalogs, labels, letterheads, or any other form of printed matter, or by radio broadcasting or in any other manner:

1. That the prices marked or affixed to or stamped on the products sold by them, or on the containers thereof, are the regular or customary retail prices for such products when said price marks are fictitious and greatly in excess of the regular and customary prices at which said products are sold or offered for sale at retail;

2. That their perfumes, cosmetics, and other notions are manufactured in France or any other foreign country;

3. That the respondents, or any one of them, are importers of said products sold by them;

4. That the respondents, or any one of them, are manufacturers of any of the said products sold by them;

5. That the respondent, Mills Sales Company of New York, Inc., is a large scale operator and distributor; that it has been in business since 1916 and is an old established business; and that it formerly operated branches in any city other than New York City;

It is further ordered, That respondents shall, within 60 days from the date of the service upon them of this order, file with the Commission a report in writing setting forth the manner and form in which they have complied with the order herein set forth.

IN THE MATTER OF
NATIONAL KREAM COMPANY, INC., AND NATIONAL
FOODS, INC.

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

Docket 2909. Complaint, Sept. 8, 1936¹—Decision, June 11, 1937

Where a corporation and its subsidiary distributing agency engaged, as case might be, in manufacture and sale of jams, preserves, and other food products, in substantial competition with those offering or selling similar products in like commerce, and including therein those engaged in manufacture of jams and preserves in accordance with conception thereof entertained by trade and consuming public, and who truthfully describe and represent their products, and including also preserve manufacturers making products similar to those made by said corporation, as hereinbelow set forth, and who label, describe, and sell the same as imitation preserves, in accordance with universal practice among other manufacturers—

Offered and sold, to retailers, chain stores, and others, certain imitation preserves and imitation jams which so simulated in appearance the genuine that the difference in fruit content could not be discerned by visual inspection, in jars or containers labeled as "Pure Preserves," together with name of particular fruit, notwithstanding fact products in question, thus labeled, were not made from the edible portion of the fruit or fruits indicated and in the proportion of forty-five pounds of actual fruit to each fifty-five pounds of sugar, but were adulterated by undisclosed substitution, in part, for fruits of mixture of water, sugar, and pectin, and were not jams, pure jams, preserves, or pure preserves, within meaning and popular acceptance of words "jams" or "preserves," as implying composition and proportion hereinbefore indicated;

With result that competitors selling standard unadulterated preserves were placed at a decided disadvantage in the marketing of their products in competition with the less costly imitation preserves made by said corporation and labeled, sold and described, as aforesaid, as "Pure Preserves," and at prices to dealers which producers of the genuine product could not meet by reason of fruit shortage in, and consequent lower production cost of, imitation product, and with capacity and tendency to mislead and deceive trade and consuming public into belief that products described as aforesaid by said corporation had been made from at least forty-five pounds of fruit or fruits involved to fifty-five pounds of sugar, and into purchase thereof in reliance on such erroneous belief, and with result of placing in hands of dealers at wholesale and retail, instrument of fraud enabling them to mislead and deceive public, and with capacity and tendency, further, unfairly to divert trade to them from their competitors, and otherwise injuriously affect the same; to the substantial injury of substantial competition in commerce:

¹ Amended.

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 L. Hornor*, trial examiners.
Mr. James M. Brinson and *Mr. James M. Hammond* for the Commission.

Mr. Henry Duke, of Long Island City, N. Y., for respondents.

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 National Kream Company, Inc., and National Foods, Inc., corporations hereinafter designated respondents, have been and are, and each 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, and having determined to modify its complaint herein heretofore on August 22, 1936, issued, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents National Kream Company, Inc., and National Foods, Inc., are now, and for several years last past have been, corporations organized, existing and doing business under the laws of the State of New York, with offices and principal place of business at 360 Furman Street, in Brooklyn, in said State.

Respondent National Kream Company, Inc., has been during such period, and now is, engaged in the manufacture of jams, jellies, preserves, and other food products and each of them has been and is engaged in their sale, and also in the sale of jams, jellies, and preserves purchased by them, and each of them, from other manufacturers, in commerce between and among the State of New York and the various States of the United States other than the State of New York.

National Foods, Inc., acts as a distributing agency for National Kream Company, Inc. and is a subsidiary of, and owned, controlled, managed, and directed by National Kream Company, Inc. Some of the jams, jellies, and preserves manufactured by National Kream Company, Inc., or purchased by it from other manufacturers, are sold in commerce as above described, bearing labels of National Foods, Inc.

It has been and is the practice of respondents, and each of them, to transport such products, or cause them to be transported, when sold,

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from their said place of business at Brooklyn, N. Y., to purchasers thereof located in States of the United States other than the State of New York.

Respondents have been and are, and each of them has been and is, engaged in substantial competition in interstate commerce with individuals, partnerships, and corporations offering for sale or selling jams, jellies, preserves, and other food products in like commerce.

PAR. 2. It has been and is the practice of respondents and of each of them to offer for sale and sell their products to retail dealers, chain stores and others in jars or containers bearing labels which represent that the contents of such jars or containers are "pure jams," "pure jellies," or "pure preserves." Such labels also name the fruits which respondents represent have been used in the manufacture of the contents of such jars or containers.

The following are typical labels which indicate the said representations, by means of which respondents induce purchase of their products:

NATIONAL PURE PRESERVES

STRAWBERRY

CONTENTS 4 lbs. (or "2 lbs." or "1 lb.") NET

Manufactured by

NATIONAL KREAM CO., INC.

NEW YORK, N. Y.

* * *

NATIONAL PURE PRESERVES

STRAWBERRY

Contents 1 lb. net

Manufactured by

NATIONAL KREAM CO., INC.

New York, N. Y.

In truth and in fact the products of respondents, so denominated, described and represented, have not been and are not jams, jellies or preserves or pure jam, pure jellies or pure preserves within the meaning and popular acceptance of the words "jams," "jellies," or "preserves."

The expressions "jams," "fruit jams," "jelly," "fruit jelly," "preserves," and "fruit preserves" signify and mean to and are known and understood by the trade and the purchasing public to be a product prepared from a mixture of the fruit or fruits specifically named on the label, or otherwise specified or represented, with sugar in the

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proportion of at least forty-five pounds of fruit to fifty-five pounds of sugar and cooked to an appropriate consistence, or expressed in terms of percentages, a product so cooked from at least 45 percent of fruit and 55 percent of sugar.

The jams, jellies, and preserves offered for sale and sold by respondents and each of them, in interstate commerce, by and with the representation that they have been or were jams, or pure jams, jellies or pure jellies, preserves or pure preserves have been or were adulterated by the substitution in part for fruits of a mixture of water, sugar, and pectin, so that the products have contained substantially less fruit than the pure or genuine jams, jellies, and preserves.

Respondents have failed to disclose such deficiency of the fruit so named on the label, or otherwise specified or represented, and the presence of substitutes therefor in their products. This practice of respondents lowers and reduces the quality of their products and enables them to sell adulterated jams, jellies, and preserves, as, and for the pure and genuine articles they purport to be and are not.

PAR. 3. Water, sugar, and pectin, the materials used for adulteration by respondent National Kream Company, Inc., in the manufacture of its so-called jams, jellies, and preserves are less expensive than the fruit for which they are substituted, and in addition thereto, the substitution of water, sugar and pectin for the proportion of fruit prescribed by the usages of the trade and the popular significance of the words "jams," "jellies," and "preserves" enables respondent National Kream Company, Inc., to procure a substantially higher yield than results from use of the proportion of at least forty-five pounds of fruit to fifty-five pounds of sugar.

Such practice of so substituting water, sugar and pectin in part for fruit, results in the reduction of costs of manufacture for National Kream Company, Inc., both because of greater yield and cheaper material.

PAR. 4. There are now and for several years last past have been individuals, partnerships and corporations engaged in the manufacture of jams, jellies and preserves in accordance with the conception of jams, jellies, and preserves entertained by the trade and consuming public, as more particularly described in paragraph 2 hereof, and in their sale in interstate commerce, truthfully described and represented, in competition with respondents.

PAR. 5. The practices of respondents and each of them in offering for sale and selling as jams, or pure jams, as jellies or pure jellies, as preserves or pure preserves, products which have not been manufactured from at least forty-five pounds or forty-five percent of the fruit or fruits named on the label, or otherwise specified or represented, to

fifty-five pounds, or fifty-five percent of sugar, but which have been adulterated with substitutes in part for said named fruit or fruits, have had and have the capacity and tendency to mislead and deceive the trade including wholesale and retail dealers and the consuming public into the belief that the products described as jams or pure jam, jelly or pure jelly, preserves or pure preserves, have been or are made from at least forty-five pounds of said fruit or fruits to fifty-five pounds of sugar and into the purchase of respondents' products in reliance on such erroneous belief.

By such practices, respondents have placed or put directly into the hands of dealers, wholesale and retail, an instrument of fraud by means of which they have been and are enabled to mislead and deceive the consuming public.

PAR. 6. The aforesaid practices of respondents described in paragraph 2 hereof have had and have the capacity and tendency to divert trade to respondents from their competitors mentioned in paragraph 4 hereof, and otherwise injuriously to affect them. Thereby substantial injury has been done, and still is being done, by respondents to substantial competition in interstate commerce.

PAR. 7. The aforesaid practices of respondents have been and are all to the prejudice of the public and respondents' competitors, and have been and are unfair methods of competition 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 September 8, 1936, issued and served its amended complaint in this proceeding upon the respondents, National Kream Company, Inc., and National Foods, Inc., both incorporated, 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 amended complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said amended complaint were introduced by James Brinson, Esq., and James M. Hammond, Esq., attorneys for the Commission, before Robert S. Hall and John L. Hornor, examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Henry Duke, Esq.,

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 amended complaint, the answer thereto, testimony and other evidence, briefs in support of the amended complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, and being now fully advised in the premises finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, National Kream Company, Inc., and National Foods, Inc., are now, and have been for several years last past, corporations organized and existing in accordance with the laws of the State of New York, with their offices and principal places of business located at 360 Furman Street in Brooklyn in said State.

Respondent, National Kream Company, Inc., has been and is now engaged in the manufacture of jams, preserves, and other food products and together with the respondent, National Foods, Inc., has been and is engaged in their sale, and in the sale of jams and preserves purchased by them, and each of them, from other manufacturers, in commerce between and among the State of New York and the various other States of the United States and in the District of Columbia.

The respondent, National Foods, Inc., acts as a distributing agency for the respondent, National Kream Company, Inc., and is a subsidiary of, and is owned, controlled, managed, and directed by the said National Kream Company, Inc. Some of the jams and preserves manufactured by National Kream Company, Inc., or purchased by it from other manufacturers, are sold in commerce as above described, bearing labels of National Foods, Inc.

It has been and is the practice of respondents, and each of them, to transport such products, or cause them to be transported, when sold, from their said place of business at Brooklyn, N. Y., to purchasers thereof located in States of the United States other than the State of New York.

The respondents have been and are, and each of them has been and is engaged in substantial competition in interstate commerce with corporations, individuals and partnerships offering for sale or selling jams, preserves, and other food products in like commerce.

PAR. 2. It has been and is the practice of respondents, and of each of them, to offer for sale and sell their products to retail dealers, chain stores and others in jars or containers bearing labels which

represent that the contents of such jars or containers are "pure preserves." Such labels also name the fruits which respondents represent have been used in the manufacture of the contents of such jars or containers.

The following are typical labels which indicate the said representations by means of which respondents induce the purchase of their products:

NATIONAL PURE PRESERVES

STRAWBERRY

CONTENTS 4 lbs. NET

Manufactured by

NATIONAL KREAM CO., INC.

NEW YORK, N. Y.

NATIONAL

PRESERVES

PURE BLACKBERRY

2 lbs. Net Wt.

NATIONAL FOODS, INC.,

Brooklyn, N. Y.

In truth and in fact, the products of respondents, so denominated, described and represented, have not been and are not jams, pure jams, preserves, or pure preserves, within the meaning and popular acceptance of the words "jams" or "preserves."

Preserves and jams originated as food products produced in the home by the housewife. In such home production, fruit and sugar, as ingredients of these products, were used in the proportion of a cup of sugar to a cup of fruit, and for many years such proportion of fruit and sugar was used and became generally recognized as the proper minimum proportion of fruit to sugar for such home production of preserves and jams. Since a cup of sugar is slightly heavier than a cup of fruit, this household formula is approximately equivalent to the ratio of at least forty-five pounds of fruit to fifty-five pounds of sugar as used in the standard or accepted formula by commercial manufacturers of jams and preserves as described below.

As defined commercially, insofar as fruit and sugar content is concerned, preserve, fruit preserve, jam and fruit jam are understood to mean the fruit product made by cooking or concentrating to a suitable consistency the properly prepared, entire edible portion of fresh fruit, cold-packed fruit, canned fruit, or a mixture of two or all of these, with sugar, in the preparation of which fruit product there is

used not less than forty-five pounds of actual fruit to each fifty-five pounds of sugar.

This formula of at least forty-five pounds of fruit to fifty-five pounds of sugar used in manufacturing jam or preserves has been universally recognized by preserve manufacturers as the minimum proportion of fruit to sugar required to produce a product that conforms to the public's understanding as to what constitutes "Jam" or "Preserve."

The jams and preserves offered for sale and sold by respondents, and each of them, in interstate commerce, by and with the representation that they are jams, pure jams or preserves or pure preserves, have been or were adulterated by the substitution in part for fruits of a mixture of water, sugar, and pectin, so that the products have contained substantially less fruit than pure or genuine jams and preserves.

Respondents have failed to disclose such deficiency of the fruit so named on the label, or otherwise specified or represented, and the presence of water, sugar, and pectin as a substitute therefor in their products by naming them as imitations. This practice of respondents lowers and reduces the quality and cost of manufacture of their products and enables them to sell adulterated jams and preserves, as, and for pure and genuine jams and preserves.

During the period 1932 to 1936, parts of both years inclusive, fifty-three samples of the respondents' preserves, representing seven different kinds of fruit were purchased at various retail stores in many different States, covering a territory from Massachusetts to Ohio and Maryland. In order to determine whether or not adulteration had been practiced by respondents, it was necessary to resort to chemical analysis. By comparing these analyses of respondents' products with the average analysis of corresponding fruits, properly qualified chemists are able to calculate the ratio of fruit to sugar in the preparation of a jam or preserve, both of which terms are synonymous as to the amount of fruit and sugar content. Twenty-eight of these samples were analyzed under the supervision of Commission's witness Sale, an expert food chemist of the United States Department of Agriculture. The result of each of these analyses is shown by Commission's Exhibit 38. He found that all samples analyzed were deficient in fruit content and averaged only approximately thirty-three pounds of fruit to fifty-five pounds of sugar. Seventeen samples of respondents' preserves were analyzed by Commission's witness Harrison, a commercial chemist of eighteen years' experience, who likewise found all samples deficient in fruit. Eight samples were analyzed by Commission's witness Walde, a chemist

who has specialized for ten years in the analysis of preserves. Mr. Walde, who interpreted his own and Mr. Harrison's analyses, found an average shortage in respondents' product of thirteen pounds of fruit; that is to say, only thirty-two pounds of fruit were used to fifty-five pounds of sugar, instead of at least forty-five pounds of fruit to fifty-five pounds of sugar as required by the accepted formula. The principal shortage of fruit in respondents' product was found to exist in strawberries, the most expensive of all the fruits used by the respondents for preserving purposes. The average content of fruit of all of the fifty-three samples analyzed was thirty-two and five-tenths pounds of fruit to fifty-five pounds of sugar.

Preserve manufacturers who are in competition with respondents also manufacture jams and preserves in the preparation of which less than forty-five pounds of fruit are used to each fifty-five pounds of sugar, and in which water, sugar, and pectin, a chemical which has the property of jellifying sugar and water, are used as a substitute material for part of the fruit that is required for a standard preserve. In composition, such products are substantially the same in appearance and consistency as the average composition of the products of the respondents. Preserve manufacturers in competition with respondents, who produce such products deficient in fruit, label, describe and sell the same as "Imitation Preserve," and this form of labeling and description is generally a universal practice among manufacturers other than respondents.

As known to the trade and to the purchasing and consuming public, "Imitation preserve" and "Imitation jam" are products prepared with less than forty-five pounds of fruit to each fifty-five pounds of sugar and in place of the full proportion of fruit there is added sugar and water with or without pectin, or combinations of one or more of these ingredients. The chemical analyses referred to above show that respondents' products were, in fact, imitation preserves and imitation jams manufactured in this manner.

The evidence further shows that in 1935 a criminal information was filed in the United States District Court for the Eastern District of New York, containing thirty counts, each charging the respondent, National Kream Company, Inc., with the adulteration of preserves in substantially the same manner as alleged in the amended complaint in this case. The National Kream Company, Inc., pled guilty to twelve of these counts and was fined \$25.00 on each of seven counts, for a total fine of \$175.00 and received a suspended sentence as to the other five counts to which the plea of guilty was entered. The other eighteen counts were dismissed.

PAR. 3. Various preserve manufacturers were called by the Commission for the purpose of ascertaining what savings would accrue as a result of an adulteration of preserves as described above. They testified that manufacturers of preserve so adulterated might save from five to thirty-eight per cent of their manufacturing costs by this subterfuge depending in each instance on the degree of adulteration and the cost of the fruit involved. Commission's Exhibits 40, 41, 43, and 51 set out complete tabulations on costs and savings accruing as a result of adulteration. Comparison of these exhibits with the degree of adulteration in respondents' product, as shown by the chemical analyses referred to above, indicates the amount the respondent saved in production costs. For example, referring to Commission's Exhibit No. 51, a tabulation covering strawberry preserves where the fruit was purchased at \$0.115 per pound, if the respondents adulterated to the extent of using only twenty-five pounds of fruit to fifty-five pounds of sugar, they would save 24% in cost of production, or \$0.98 per dozen on their two-pound jars of strawberry preserves. If the respondents used only thirty pounds of strawberries to fifty-five pounds of sugar, they would save 18% of their production costs, or \$0.72 on each dozen of their two-pound jars of strawberry preserves. The respondent's adulteration of strawberry preserves, as shown by the chemical analyses referred to above, averaged twenty-seven pounds of fruit to fifty-five pounds of sugar. Its average saving in production costs was therefore about \$0.80 per dozen on their two-pound jars of strawberry preserves, depending on the cost of the fruit, with a similar proportionate saving on one-pound or four-pound jars, as the case might be.

Respondent's competitors in the sale of standard unadulterated preserves were placed at a decided disadvantage in the marketing of their products in competition with the imitation preserve manufactured by the respondents but labeled, sold and described by respondents as pure preserve, and sold to dealers at prices which the producers of pure preserves could not meet as a result of respondents' trade advantage because of fruit shortage in their product which necessarily gave them a lower production cost.

Respondents' imitation preserves and imitation jams were so made that they simulated unadulterated preserves or jams in appearance to the extent that the difference in fruit content between the imitation and the genuine products could not be discerned by visual inspection.

PAR. 4. There are now, and have been for many years past, other corporations, partnerships, and individuals engaged in the manu-

facture of jams and preserves in accordance with the conception of jams and preserves entertained by the trade and consuming public, as more particularly described in paragraph 2 hereof, who truthfully describe and represent their products in their sale in interstate commerce in competition with respondents.

PAR. 5. The practices of respondents and each of them in offering for sale and selling as jams, or pure jams and as preserves or pure preserves, products which have not been manufactured from at least forty-five pounds of the fruit or fruits named on the label, or otherwise specified or represented, to fifty-five pounds of sugar, but which have been adulterated with substitutes in part for said named fruit or fruits, have had and now have the capacity and tendency to mislead and deceive the trade, including wholesale and retail dealers, and the consuming public into the belief that the products described by respondents as jams or pure jams, preserves or pure preserves, have been or are made from at least forty-five pounds of said fruit or fruits to fifty-five pounds of sugar and into the purchase of respondents' products in reliance on such erroneous belief.

By such practices, respondents have placed in the hands of dealers, wholesale and retail, an instrument of fraud by means of which said dealers have been and are enabled to mislead and deceive the consuming public.

PAR. 6. The aforesaid practices of respondents, as described herein, have had and now have the capacity and tendency to unfairly divert trade to respondents from their competitors and otherwise to injuriously affect them, thereby, substantial injury has been done, and still is being done by respondents to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondents, National Kream Company, Inc., and National Foods, Inc., respondents herein, are to the prejudice of the public and of the respondents' competitors and constitute unfair methods in 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 respondents, testimony and other evidence taken before Robert S. Hall and John L. Hornor, trial examiners of the Commission

theretofore duly designated by it, in support of the allegations of said amended complaint and in opposition thereto, briefs filed herein and oral arguments by James M. Hammond, Esq., counsel for the Commission, and by Henry Duke, Esq., counsel for respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved 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, National Kream Company, Inc., and National Foods, Inc., their officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution of preserves or imitation preserves, jams or imitation jams in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing in any manner whatsoever that a mixture of fruit and sugar is pure preserve or preserve or pure jam or jam unless the same is properly prepared from the entire edible portion of fresh, cold-packed, or canned fruit, or a mixture of two or all of these, and cooked or concentrated to a suitable consistency with sugar, and in the preparation of which jam or preserve there is used not less than forty-five pounds of actual fruit to each fifty-five pounds of sugar;

2. Selling or offering for sale a product made in simulation of a jam or preserve but containing less than forty-five pounds of fruit to each fifty-five pounds of sugar used in the manufacture thereof until there is affixed to the container in which said product is sold, in a conspicuous place so as to be easily and readily seen, a word or words clearly indicating that said fruit product is imitation jam or imitation preserve.

It is hereby further ordered, That the respondents, National Kream Company, Inc., and National Foods, Inc., shall, within 30 days from the date of service 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.

IN THE MATTER OF

J. G. McDONALD CHOCOLATE COMPANY

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

Docket 2706. Complaint, Jan. 31, 1936—Decision, June 12, 1937

Where a corporation engaged in manufacture and sale of "straight" goods candy, and of so-called "break and take," "draw," or "deal" assortments, sale and distribution of which latter type to public, with means or opportunity of obtaining a prize or becoming a winner by lot or chance connected therewith, teaches and encourages gambling among children, who comprise a substantial number of the purchasers and consumers of such type, and particularly of assortments sold and distributed through different colored centers or pushcards, and sale and distribution of which, by lot or chance, provides easy means of disposing of such type candy, for which there is constant demand, and sale of which in the markets of the other, or "straight," merchandise has been followed by a marked decrease therein, due to gambling or lottery feature connected with former—

Sold to jobbers and retailers assortments so packed and assembled as to involve, or as to be designed to involve, use of a lottery scheme in sale and distribution to consumers thereof, and consisting of (1) number of penny pieces of uniform size and shape, concealed colored centers of some of which differed from those of the majority, together with number of larger pieces to be given free of charge and as prizes to chance purchasers of those pieces, colored centers of which differed, as aforesaid, from majority; (2) bars of candy, together with pushcards, for sale under a plan, and in accordance with cards' explanatory legend, under which purchaser's five cents secured one or more bars, depending on number or legend pushed by chance, and last push likewise receives specified number of additional pieces; and (3) assortments of packages of candy of varying size, together with punchboard, for sale under a plan, and in accordance with said board's explanatory legend, pursuant to which purchaser received, for five cents paid, one of aforesaid packages or nothing other than privilege of a punch, dependent upon number thus secured by chance; in competition with many who sell their exclusively "straight" merchandise in competition with such "break and take," "draw," or "deal" assortments, and with many who regard such 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, by reason thereof, refuse to sell candy so packed and assembled that same can be resold to public by lot or chance, and in violation of public policy;

With result that such competitors were thereby put to a disadvantage in competing, retailers bought, from it and other employing same methods of sale, such candy as more salable, sales of such unwilling competitors, who could compete on even terms only by giving same or similar devices

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showed marked decrease in their unwillingness to do so, some competitors began sale and distribution of candy to public by lot or chance to meet competition of manufacturers who thus sold and distributed their products, trade was diverted to it and others from said unwilling competitors, and public and competitors were prejudiced and injured, 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 of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles P. Vicini* and *Mr. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.
Senior & Senior, of Salt Lake City, Utah, 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 J. G. McDonald Chocolate 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 Utah with its principal office and 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 in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said products, when so sold, to be transported from its place of business in the city of 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 engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

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PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers, various packages or assortments of candy, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages, nor does it include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

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

The majority of the said pieces of candy of uniform size, shape, and quality, have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size, shape, and quality, retail at the price of one cent each, but the purchaser who procures one of the said candies having a center of a different color than the majority, is entitled to receive, and is to be given free of charge, one of the said larger pieces of candy heretofore referred to. The color of the center of said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candy having a center colored differently from the majority thus procure one of the said larger pieces of candy wholly by lot or chance.

The respondent furnishes to said wholesale and retail dealers, with said assortment, a display card to be used by the retail dealer in offering said candy to the public. The display card bears a legend or statement informing the prospective purchaser that the said candy is being sold in accordance with the above described sales plan.

(b) Another assortment manufactured and distributed by respondent is composed of a number of pieces of candy, and a number of larger pieces of candy, 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 or number is disclosed. Sales are 1¢ each and the card bears statements informing customers and prospective customers that certain specified legends or numbers entitle the purchaser to one of the small pieces of candy, and that certain other specified legends or numbers entitle the purchaser to one of the larger pieces of candy. The purchaser of the last push from said card is also entitled to one of the larger pieces of candy. The legends or numbers on the discs or pushes are effectively concealed from the purchaser and prospective purchaser until a selec-

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tion has been made and the disc separated from the card. The fact as to whether a purchaser receives one of the small bars of candy or one of the larger bars of candy for the price of 1¢ is thus determined wholly by lot or chance.

The respondent also manufactures and distributes a similar assortment where the pieces or bars of candy are correspondingly larger, and where the sales are 5¢ each instead of 1¢ each.

(c) Another assortment manufactured and distributed by respondent is composed of a number of boxes of assorted chocolates, together with a device commonly called a punch board. The said boxes of candy are distributed to the consuming public by means of said punch board in the following manner:

The sales by means of said punch board are 5¢ each, and when a punch is made from said board, a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement informing the customer and prospective customer as to which numbers receive a box of candy. The numbers on said board are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the particular punch separated from the board. The boxes of candy are worth more than 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5¢. The purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy in said assortment are thus distributed from punches on said board wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure (a) larger pieces of candy; (b) larger bars of candy; or (c) boxes of candy.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dan-

gerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said method and manner of packing said candy, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent, in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, acts and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on January 31, 1936, issued and served a complaint upon the respondent, J. G. McDonald Chocolate Company, a corporation, charging that respondent had been and was using unfair methods of competition in commerce as "commerce" is defined in said act of Congress.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by P. C. Kolinski, attorney for the Commission and in opposition to the allegations of the complaint by H. L. Mulliner, attorney for the respondent, before Charles P. Vicini and Henry M. White, examiners 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 hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of Henry C. Lank, counsel for the Commission, and Charles F. Solomon, secretary of the respondent corporation; 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, J. G. McDonald Chocolate Company, is a corporation organized under the laws of the State of Utah, with its principal office and place of business located in Salt Lake City, 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 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 jobbers and retail dealers, certain assortments of candy so packed and assembled as to involve or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the consumers thereof.

Several of such assortments manufactured, sold, and distributed by respondent are 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 given free of charge and as a prize 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 have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size and shape retail at the price of 1¢ each, but the 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 contained in said assortment. The color of the centers of said pieces of candy of uniform size and shape in said assortment is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy of uniform size and shape thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent also distributes several assortments of candy which are composed of a number of bars of candy, together with a device commonly called a "push card." The said bars of candy are distributed to the consuming public by means of said push card 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 or legend is disclosed. Sales are 5¢ each, and the card bears a statement or statements informing customers and prospective customers that all the numbers or legends pushed from said card receive one bar of candy, but that certain specified numbers or legends receive one or more additional bars of candy. The push card also bears a legend stating that the last push on the card receives a specified number of additional bars of candy. All purchasers receive one bar of candy, but purchasers obtaining the specified numbers or legends receive additional bars of candy of the same size and quality. The numbers or legends on said card are effectively

concealed from the purchaser or prospective purchaser until a push or sale has been made and the particular push separated from the card. The additional bars of candy in said assortment are thus distributed to purchasers of pushes from said card wholly by lot or chance.

Respondent also distributes several assortments composed of a number of packages of candy of varying size, together with a device commonly called a "punchboard." The said packages of candy are distributed to the consuming public by means of said punchboard in the following manner: The punchboard has a number of holes in which slips of paper bearing numbers are secreted. The slips of paper and the numbers thereon are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular slip of paper separated from the board. The punchboard has printed at the top thereof various statements or legends informing purchasers and prospective purchasers that certain numbers receive specified packages of candy. Sales are 5¢ each, and the packages of candy contained in said assortment are distributed to the consuming public in accordance with the legends at the top of said punchboard. The fact as to whether a purchaser receives one of the packages of candy or nothing other than the privilege of punching a number from said board for the price of 5¢ is 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 "break and take," "draw," or "deal" assortments. Assortments of candy without the lot or chance features in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" goods. These terms will be used hereafter in these findings to 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 respondent, and such retail dealers display said assortments for sale to the public as packed by respondent, and the candy contained in said assortments is generally sold and distributed to the consuming public in accordance with respondent's sales plans, as above described.

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 are designed to 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 "break and take," "draw," or "deal" assortments of candy and who sell their "straight" goods in interstate commerce, in competition with the "break and take," "draw," or "deal" candy, and manufacturers of "straight" goods have noted a marked decrease in the sales of their products whenever or wherever the "break and take," "draw," or "deal" assortments have appeared in their markets. This decrease in the sale of "straight" candy is due to the gambling or lottery feature connected with the "break and take," "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 "break and take," "draw," or "deal" candy because of the gambling feature connected with its sale. The sale and distribution of "break and take," "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 which are sold and distributed to the consumers by means of differently colored centers or "pushcards."

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. 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 re-

fuse 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," "draw," or "deal" method, buy from respondent and others employing the same methods of sale, and thereby trade is diverted to respondent and others using similar methods from said competitors. Such competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do, and their sales of "straight" candy show a marked decrease. The sale and distribution of candy by lot or chance provides an easy means of disposing of such products. There is a constant demand for candy which is sold by lot or chance, and in order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors have begun the sale and distribution of candy to the public by lot or chance. The use of such methods by respondent, in the sale and distribution of its candy, is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

PAR. 8. Respondent sells its merchandise in the States of Utah, Idaho, Montana, Colorado, Washington, Oregon, California, Arizona, and New Mexico. The majority of its candy is sold as "straight" merchandise but its sales of "break and take," "draw," or "deal" assortments are substantial.

PAR. 9. 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 alterations, 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, J. G. McDonald Chocolate 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."

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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 the respondent, testimony and other evidence taken before Charles P. Vicini and Henry M. White, 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 the oral arguments of Henry C. Lank, counsel for the Commission, and of Charles F. Solomon, secretary of respondent corporation; 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, J. G. McDonald Chocolate Company, a corporation, its officers, directors, 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 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 contained in said assortments to the public.

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy, 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. Supplying to or placing in the hands of retail and wholesale dealers and jobbers, assortments of candy, together with a device commonly called a "push card," or a device commonly called a "punchboard," for use, or which may be used, in distributing or selling said candy to the public at retail.

5. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "push card," or a device commonly called a

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"punchboard," either with packages or assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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, J. G. McDonald Chocolate Company, a corporation, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
GERMANIA TEA COMPANY, AND CONSOLIDATED DRUG
TRADE PRODUCTS, INC.

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

Docket 3114. Complaint, Apr. 26, 1937—Decision, June 12, 1937

Where two corporations respectively engaged in importation and sale, and sale and distribution, of two herb products sold under trade names "Germania Herb Tea" and "Germania Orange Pekoe Tea," and composed, principally and respectively, of "senna" and "juniper," and of caffeine, in substantial competition with those engaged in sale of similar herb products and other preparations designed and used for purposes for which said corporations held out their aforesaid products as useful—

Represented, in extensive advertising campaigns conducted by them, consisting of radio broadcasts, circulars, pamphlets, and other printed matter, and in labels placed on aforesaid products, that they had substantial therapeutic value in the treatment of obesity when used in connection with a designated reducing diet, facts being first-named product performed no function in treatment of obesity other than that of a laxative or purgative, and neither product was of value as a remedy, treatment or cure for aforesaid condition;

With effect of misleading and deceiving purchasers and prospective purchasers into the belief that said representations were true, and to cause purchase of said products by reason of such erroneous beliefs, and with the result that trade was thereby diverted from aforesaid competitors to it; 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. John Darsey for the Commission.

Mr. Benjamin Segal, of Minneapolis, 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 Germania Tea Company, a corporation, and Consolidated Drug Trade Products, Inc., 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 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. Respondent, Germania Tea Company, is a corporation existing and doing business under and by virtue of the laws of the State of Minnesota with its principal office and place of business located at 608 First Avenue North in the city of Minneapolis, State of Minnesota. For more than two years last past, it has been engaged in the importation and sale of herb products, among which products are those which it sells under the trade names, "Germania Herb Tea" and "Germania Orange Pekoe Tea." The respondent causes the aforesaid designated products when sold to be transported from its principal place of business in the State of Minnesota to purchasers thereof residing in the various other States of the United States.

The respondent, Consolidated Drug Trade Products, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois with its principal place of business located at 544 South Wells Street in the city of Chicago, State of Illinois. It has for several years last past been engaged in the sale of various drug products. For a period of more than three (3) years last past, it has been engaged in the sale and distribution of the products, "Germania Herb Tea" and "Germania Orange Pekoe Tea," which it obtains from the respondent, Germania Tea Company under a distributor contract which makes provision for an advertising campaign to be conducted by the respondent, Consolidated Drug Trade Products, Inc., in connection with the offering for sale and sale of the aforesaid products. It causes the products, "Germania Herb Tea" and "Germania Orange Pekoe Tea," when sold to be transported from its place of business in the State of Illinois to purchasers thereof located in the various other States of the United States.

In the course and conduct of their businesses, the respondents have been and are in substantial competition in commerce among and between the various States of the United States with other corporations, partnerships, firms, and individuals engaged in the sale of similar herb products, or products and preparations designed and used for the purposes for which respondents represent their aforesaid products to be useful.

PAR. 2. In the course and conduct of their business, and for the purpose of inducing the purchase of their products, respondents have cooperatively printed and circulated through the several States to customers and prospective customers, pamphlets and other advertising matter and have made use of radio broadcasts over stations of sufficient power to convey the programs emanating therefrom

into the various States of the United States other than the State wherein said program originated. In all of said advertisements and radio broadcasts and on the labels placed on said products, the respondents make many statements wherein they represent that said products have a substantial therapeutic value in the treatment of obesity when used in connection with a designated reducing diet.

In truth and in fact, said herb products now designated as "Germania Herb Tea" and "Germania Orange Pekoe Tea" are of no value as a remedy for obesity. Neither preparation plays any important part in reducing excess weight when used in connection with any designated diet. The principal ingredients of the product are "senna" which is a strong purgative and "juniper" which is a diuretic. Neither of these ingredients are of any material value in the treatment of obesity or in reducing excess weight. A continuous use of these products might result in harmful effects to a substantial portion of the persons using the same without the direction and supervision of a doctor.

PAR. 3. Under the foregoing facts and circumstances, the representations and statements used by the respondents in the sale of their herb products are false and misleading. The use of such statements and representations has the capacity and tendency to mislead and deceive ultimate purchasers and consumers into the erroneous and mistaken beliefs that said products have a substantial therapeutic value in the treatment of obesity and into the purchase of respondent's herb products on account of said beliefs induced by the representations of the respondents. As a result thereof, trade is unfairly diverted to respondents from competitors engaged in selling in commerce, as herein described, products of the same kind and nature as those of respondents or selling products which actually do have substantial therapeutic value in the treatment of obesity. In consequence thereof, injury has been done by respondents to competition in commerce among and between the various States of the United States.

PAR. 4. 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 April 26, 1937, issued and served its complaint in this proceeding upon respondents, Germania Tea Company, and Consolidated Drug Trade Products, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On May 20, 1937, the respondents filed their answers in which answers 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 law charged in the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Germania Tea Company, is a Minnesota corporation having its principal office and place of business at 608 First Avenue, North, Minneapolis, Minn. For several years it has been engaged in the importation and sale of herb products, among which products are those sold under the trade name "Germania Herb Tea" and "Germania Orange Pekoe Tea." The respondent causes the aforesaid designated products when sold to be transported from its place of business in Minnesota to purchasers residing in the various other States of the United States.

The respondent, Consolidated Drug Trade Products, Inc., is an Illinois corporation with its principal place of business at 544 South Wells Street, Chicago, Ill. For several years it has been engaged in the sale of various drug products. For a period of more than three years it has been engaged in the sale and distribution of the products "Germania Herb Tea" and "Germania Orange Pekoe Tea" which it obtains from the respondent, Germania Tea Company, under a distributor contract which provides for an advertising campaign to be conducted by the respondent, Consolidated Drug Trade Products, Inc. It causes the products designated above, when sold,

to be transported from its place of business in the State of Illinois to purchasers who are located in the various other States of the United States.

In the course and conduct of their businesses, the parties respondent herein have been and are in substantial competition in commerce among and between the various States of the United States with other corporations, partnerships, firms, and individuals engaged in the sale of similar herb products and other preparations designed and used for the purposes for which respondents represent their aforesaid products to be useful.

PAR. 2. For the purpose of inducing the purchase of the aforesaid products, respondents have conducted extensive advertising campaigns in the various States of the United States consisting of radio broadcasts, circulars, pamphlets, and other printed matter. In all of said radio broadcasts, printed matter, and labels placed on said products, the respondents have made many statements wherein they represent that the aforesaid products have a substantial therapeutic value in the treatment of obesity when used in connection with a designated reducing diet.

In truth and in fact the herb products "Germania Herb Tea" and "Germania Orange Pekoe Tea" are of no value as a remedy, treatment, or cure for obesity. The principal ingredients of the product "Germania Herb Tea," are "senna," which has laxative and purgative qualities, and "juniper" which is a diuretic. The ingredients of the product "Germania Herb Tea" have no therapeutic value in the treatment of obesity and perform no functions in this respect other than those of a laxative or purgative. The principal ingredient of the product "Germania Orange Pekoe Tea," is caffeine. This product has no therapeutic value as a remedy, treatment or cure for obesity.

PAR. 3. Respondents' false and misleading representations of and concerning the said products, as hereinabove set forth, have the capacity and tendency to mislead and deceive, have misled and deceived, and do mislead and deceive purchasers and prospective purchasers into the belief that such representations are true and to cause the purchase of said products as the result of such erroneous beliefs. Trade is thereby diverted from its aforesaid competitors to respondents, to the substantial injury of substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondents, Germania Tea Company, and Consolidated Drug Trade Products, Inc., 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 answers of respondents, in which answers respondents admit all the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in said complaint and consent that, without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondents, Germania Tea Company and Consolidated Drug Trade Products, Inc., their officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of herb products now designated as "Germania Herb Tea" and "Germania Orange Pekoe Tea," or of the same or similar products designated by any other name or names in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That the product now designated as "Germania Herb Tea" performs any functions in a reducing program other than those of a laxative or purgative;

2. That the product now designated as "Germania Orange Pekoe Tea" performs any function or has any value in the treatment of obesity, or, in a reducing program, other than the caffeine supplied through its consumption.

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
AMERICAN GRAIN DISTILLERS, INC.

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

Docket 2420. Complaint, May 27, 1935—Decision, June 17, 1937

Where a corporation engaged, as rectifier of all kinds of whiskies at its rectifying plant, in purchasing, rectifying, and blending whiskies, gins, and other spirituous beverages, and in producing gin with a still used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products between and 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 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 "distiller" as 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, on its stationery, mailing cards, and invoices, and on the labels attached to the bottles in which it sold and shipped its said products, that it was a producer of distilled spirits from raw materials, and thus represented 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 and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash as aforesaid, notwithstanding fact it did not thus distill said various beverages thus bottled, labeled, sold, and transported by it, as definitely understood from word "distillers," used in connection with liquor industry and products thereof in the trade and by the purchasing public, as meaning, when used in connection with liquor industry and products thereof, manufacture of such liquors by process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, 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, for the purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public;

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

Complaint

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 beverages sold by it were by it made and distilled from mash, wort, or wash, and with capacity and tendency to induce dealers and purchasing public, acting in such beliefs, to buy its said whiskies and other spirituous beverages, bottled and sold by it, and with result 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 manufacturers by distillation from mash, wort or wash of whiskies or other spirituous beverages; 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.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that American Grain 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 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 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 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 distributors, 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 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 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 "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 produce 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 the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the words "Grain" and "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

Complaint

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 re-distillation 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 "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 spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," "distilling," or "grain" 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," "distillers," or "grain" 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 whiskies, gins, and other spirituous beverages sold by the respondent are manufactured or distilled by it 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 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, 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 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 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 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 distributors, 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 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 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 words "Distillers" and "Grain" in its corporate name, printed on 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 whiskies, gins, and other spirituous beverages from mash, wort, or wash, and that the whiskies, gins and other spirituous beverages by it 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 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 on May 29, 1935, served its complaint in this proceeding upon respondent Amer-

ican Grain 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 the 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 said testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony or other evidence in opposition to the allegations of the complaint were introduced by Maurice Nathanson, president of the American Grain Distillers, Inc., appearing for respondent. 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 (no brief in opposition thereto having been filed and no oral argument 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 Michigan corporation organized August 24, 1933, and was engaged in the distilled spirits rectifying business from the time of repeal of the Eighteenth Amendment to the Constitution of the United States up to some time in April of 1936, when it ceased to engage in the aforesaid business. During said period respondent operated, under a basic rectifier's permit from the Government known as "R-248," a rectifying establishment with a capacity of 5,000 cases a day, rectifying all kinds of whiskies, purchasing its distilled spirits from Publicker Commercial Alcohol Company and other distilleries. Upon its premises, aforesaid, there was a still for use in the production of gins by a process of rectification whereby alcohol purchased but not produced by respondent was re-distilled over juniper berries and other aromatics.

During the period between repeal of the Eighteenth Amendment and April 1936, respondent was engaged in the business of purchasing, rectifying, and blending whiskies, gins, and other spirituous beverages in its aforesaid plant under its said 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 it caused its said products when sold to be transported from its place of business in

Michigan 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 States of origin of said shipments, and in the District of Columbia.

In the course and conduct of its business as aforesaid, respondent, during said period, was 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 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 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. "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).

Many distillers operate a separate establishment 500 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 distillers have a tax paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery or at any rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the ----- Company." If the distilled spirits therein contained are bottled by a distiller 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 on the bottle "Blended 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, viz, "D" for a distiller and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus, "R-248" 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. This number is placed on the bottle to identify the bottler.

Knowledge of these details is not widespread among the retail trade and is very limited among the general public. All whiskies, whether coming from a distillery or rectifier, are generally conceded to be "distilled" products. Therefore, it is not possible to determine from the presence of the phrase "Blended and Bottled by" alone, or the phrase "Bottled by" alone on the label whether the package was bottled by a rectifier who is a distiller, or by a rectifier who is not a distiller.

This respondent does not now and never has 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 authorizes 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.

PAR. 3. The evidence adduced in this case from approximately eight competitive trade witnesses (both rectifiers and distillers) and sixteen members of the purchasing public shows, and the Commission finds, that for a long period of time the word "distilling," when used in connection with the liquor industry and the products thereof, has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

The rectification of alcoholic spirits by this respondent as aforesaid in the production of its gin, does not make or constitute it a distiller or a distilling company as defined by Sec. 3247 of the Revised Statutes of the United States regulating Internal Revenue.

The testimony of those having long experience in both the distilled spirits rectifying industry and the distilling industry, established,

and the Commission finds 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 or by the general public.

PAR. 4. This respondent, by the use of the word "distillers" in its corporate name, on its stationery, mailing cards, invoices, and on the labels attached to the bottles in which it sold and shipped its products in interstate commerce, represented itself as a producer of distilled spirits from raw materials, and was so regarded, by virtue of said representations, by the trade and purchasing public. It thus represented to its customers and furnished them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it was a distiller and that the whiskies and other spirituous beverages in said bottles contained were by it manufactured by the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not now and never was a distiller, does not now and never did distill the said whiskies, or other spirituous beverages, by it so bottled, labeled, sold, and transported, and does not now and never did own, operate, or control any place or places where such beverages are or 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 "distiller" 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," "distiller," or "distillers" as a part of their corporate or trade names, on their stationery or advertising, or on the labels attached to the bottles in which they sold and shipped their said products.

PAR. 6. Representations by the respondent as hereinabove set forth had the capacity and tendency to and did mislead and deceive dealers and the purchasing public into the belief that respondent was a distiller, and that the whiskies and other spirituous beverages by it sold

were manufactured and distilled by it from mash, wort, or wash, and had the capacity and tendency also to induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies 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 whiskies or other spirituous beverages. Thereby respondent did substantial injury to competition in interstate commerce.

PAR. 7. At the time the hearings in this case were held, to wit, October 1936, respondent had no stock and no plant. On August 3, 1936, its basic permit had been amended by changing its address from 2431 Scotten Avenue, to 634 Lafayette Building, Detroit, Mich., which is a small temporary office where respondent gets its mail and is conducting certain correspondence in an endeavor to sell its rectifying equipment now located in Cincinnati, Ohio, with the Ansonia Copper Company. Respondent is attempting to sell its machinery and all its other assets in order to pay its creditors and close its books. It is now insolvent but there will be no bankruptcy proceedings as the chief creditors are financially interested in the respondent company, and the company expects to turn any proceeds over to its creditors and dissolve the company. Its labels, bearing the name "American Grain Distillers" were disposed of as junk. However, from the record before the Commission the company still maintains its corporate existence, and the Commission does not feel assured that upon a reorganization the name might not be resumed in interstate commerce in the absence of a prohibitive order.

PAR. 8. 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.

PAR. 9. The Commission's complaint in this case was issued on the same day as 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 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 Com-

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mission 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 American Grain Distillers, Inc., 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."

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 L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the said complaint, brief filed herein by PGad B. Morehouse, counsel for the Commission (no testimony or other evidence having been offered on behalf of respondent, and no brief having been filed on behalf of respondent, and no 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, American Grain Distillers, Inc., 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 "distillers" in its corporate name, on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any other way by word, or words of like import, (a) that it is a distiller of whiskies, gins, or other spirituous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through the process of distillation; or (c) that it owns, operates, or

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controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place, or places.

It is further ordered, That the said complaint be, and the same hereby is dismissed as to count 2 thereof.

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

IN THE MATTER OF
SHUPE-WILLIAMS 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 2708. Complaint, Jan. 31, 1936—Decision, June 17, 1937

Where a corporation engaged in manufacture and sale of "straight" goods candy, and also of so-called "break and take," "draw," or "deal" assortments, sale and distribution of which type candy, in constant demand and affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, and providing an easy means of disposing of such products, teaches and encourages gambling among children, constituting substantial number of purchasers and consumers of such type, and sale and distribution of which in the markets of many manufacturers who sell their "straight" goods in interstate commerce in competition with the other, has been followed by a marked decrease in sales of such "straight" goods, due to gambling or lottery feature connected with said "break and take," "draw," or "deal" candy, preferred by consumers because of gambling feature connected therewith and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—
Sold, to wholesalers, jobbers, and retailers, certain assortments of candy which were so packed and assembled as to involve, or were designed to or might involve, use of a lottery scheme when sold and distributed to consumers thereof, and several of which consisted of (a) a number of penny pieces of uniform size and shape, along with explanatory display cards for retailer's use, and number of larger pieces to be given to those purchasers procuring by chance one of aforesaid uniform pieces, concealed colored centers of which different from that of the majority, and small package of candy to be given as prize to purchaser of last piece in assortment, and (b) number of candy bars, together with push card for sale and distribution to purchasing public under a plan, and in accordance with said card's explanatory legend, by which person received, for five cents paid, one, two, three, four, or five bars of candy, dependent upon particular legend disclosed by chance by push, and purchaser of last push was entitled to six; so assembled and packed that they were designed to be, and were exposed and used by retailer dealer purchasers thereof for distribution and resale to purchasing public by lot or chance, without alteration or rearrangement and with knowledge and intent that such candy should thus be resold to public by lot or chance by said retail dealers, in competition with many who regard such sale and distribution as morally bad and as encouraging gambling, and especially among children, and as injurious to the candy industry through resulting 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, 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;

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With result that such competitors were put to a disadvantage in competing, retailers, finding candy more salable by "break and take," "draw," or "deal" method, bought from it and others employing same methods of sale, trade was diverted to it and others using similar method from said competitors, who could compete on even terms only by giving similar devices to retailers, and sales of their "straight" candy, in their unwillingness so to do, showed a marked decrease, some competitors began sale and distribution of candy by lot or chance in order to meet competition of manufacturers who thus sold and distributed such products, and trade was diverted to it from its said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry involved; to the prejudice and injury of the public and competitors:

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

Before *Mr. Charles P. Vicini* and *Mr. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* 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 Shupe-Williams 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 Utah with its principal office and place of business in the city of Ogden, State of Utah. Respondent is now, and for several years last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said products, when so sold, to be transported from its place of business in the city of Ogden, 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 engaged

in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers, various packages or assortments of candy, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages, nor does it include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

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

The majority of the said pieces of candy of uniform size, shape, and quality, have centers of the same color, but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size, shape and quality, retail at the price of one cent each, but the purchaser who procures one of the said candies having a center of a different color than the majority, is entitled to receive, and is to be given free of charge, one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy in said assortment is entitled to receive, and is to be given free of charge, the small box of candy. The color of the center of said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candy having a center colored differently from the majority thus procure one of the said larger pieces of candy wholly by lot or chance, and the purchaser of the last piece of candy in the said assortment thus procures the small box of candy wholly by lot or chance.

The respondent furnishes to said wholesale and retail dealers, with said assortment, a display card to be used by the retail dealer in offering said candy to the public. The display card bears a legend or statement informing the prospective purchaser that the said candy is being sold in accordance with the above described sales plan.

(b) Another assortment manufactured and distributed by respondent is composed of a number of candy bars, 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 legend is disclosed. Sales are 5¢ each and the card bears statements informing customers and prospective

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customers that certain specified legends entitle customer to one bar of candy, that certain other specified legends entitle the customer to two bars of candy, that certain other specified legends entitle the customer to three bars, that certain other specified legends entitle the customer to four bars of candy, and that other specified legends entitle the customer to five bars of candy. The legends on the discs or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disc separated from the card. The number of 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 to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure (a) larger pieces of candy or a small box of candy; (b) additional bars of candy.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said method and manner of packing said candy, and by the element of chance involved in the sale thereof in

the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent, in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, acts and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on January 31, 1936, issued and served a complaint upon the respondent, Shupe-Williams Candy Company, a corporation, charging that respondent had been and was using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by P. C. Kolinski, attorney

for the Commission, and in opposition to the allegations of the complaint by D. B. Van Dyke and H. L. Mulliner, attorneys for the respondent, before Charles P. Vicini and Henry M. White, examiners 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 hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral argument of Henry C. Lank, counsel for the Commission, the respondent not being represented although duly notified of the time and place of such hearing; 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, Shupe-Williams Candy Company, is a corporation organized under the laws of the State of Utah, with its principal office and place of business located at 2605 Wall Avenue, in the city of Ogden, State of Utah. Respondent is now, and for several years last past has been, engaged in the manufacture of candy in the city of Ogden and in the sale and distribution thereof to retail dealers and jobbers located in the State of Utah and in the States of Idaho, Nevada, Wyoming, Montana, Colorado, and Oregon. It causes 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 other States of the United States as mentioned above. In so carrying on said business, respondent is and has been engaged in interstate commerce, and is and has been engaged 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. 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 certain assortments of candy so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the consumers thereof.

Several of such assortments manufactured, sold and distributed by respondent are composed of a number of pieces of candy of uni-

form 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 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 retail at the price of 1¢ each, but the purchaser who procures one of the said candies having a center of a different color from the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy in said assortment. The purchaser of the last piece of candy in said assortment is entitled to receive and is to be given free of charge the small package of candy contained in said assortment. The color of the center of said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy selected broken open. The purchasers of said candies having a center colored differently from the majority thus procure one of the said larger pieces of candy or the small package of candy wholly by lot or chance. The respondent furnishes to said wholesale and retail dealers with said assortments a display card to be used by retail dealers in offering said candy to the public. The display card bears a legend or statement informing purchasers and prospective purchasers that the said candy is being sold in accordance with the above described sales plan.

Respondent has also distributed and does distribute assortments of candy which are composed of a number of bars of candy, together with a device commonly called a "push card". The said bars of candy are distributed to the consuming public by means of said pushcard 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 legend is disclosed. Sales are 5¢ each, and the card bears statements informing customers and prospective customers that certain specified legends entitle the customer to one bar of candy; that certain other specified legends entitle the customer to two bars of candy; others to three bars of candy; others to four bars of candy; others to five bars of candy; and that the purchaser of the last push is entitled to six bars of candy. The legends on the discs or pushes are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular disc selected separated from the card. The fact as to whether a purchaser receives one, two, three, four, five, or six

bars of candy for the price of 5¢ is 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 "break and take," "draw," or "deal" assortments. Assortments of candy without the lot or chance features in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" goods. These terms will be used hereafter in these findings to 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 respondent, and such retail dealers display said assortments for sale to the public as packed by respondent, and the candy contained in said assortments is generally sold and distributed to the consuming public in accordance with respondents' sales plans, as above described.

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 are designed to 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 "break and take," "draw," or "deal" assortments of candy and who sell their "straight" goods in interstate commerce in competition with the "break and take," "draw," or "deal" candy, and manufacturers of "straight" goods have noted a marked decrease in the sales of their products whenever or wherever the "break and take,"

"draw," or "deal" assortments have appeared in their markets. This decrease in the sale of "straight" candy is due to the gambling or lottery feature connected with the "break and take," "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 "break and take," "draw," or "deal" candy because of the gambling feature connected with its sale. The sale and distribution of "break and take," "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.

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. 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 "break and take," "draw," or "deal" method, buy from respondent and others employing the same methods of sale, and thereby trade is diverted to respondent and others using similar methods from said competitors. Such competitors can compete on even terms only by giving the same or similar devices to retailers. This they are unwilling to do, and their sales of "straight" candy show a marked decrease. The sale and distribution of candy by lot or chance provides an easy means of disposing of such products. There is a constant demand for candy which is sold by lot or chance, and in order to meet the competition of manufacturers who sell and distribute candy which is sold by such methods, some competitors have begun the sale and distribution of candy to the public by lot or chance. The use of such methods by respondent, in the sale and distribution of its candy, is prejudicial and injurious to the public and its competitors, and has resulted in the diversion of trade to respondent from its said competitors, and is a restraint upon and a detriment to the freedom of fair and legitimate competition in the candy industry.

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PAR. 8. Respondent sells its merchandise in the States of Utah, Idaho, Nevada, Wyoming, Montana, Colorado, and Oregon. The majority of its candy is sold as "straight" merchandise, but its sales of "break and take," "draw," or "deal" assortments are substantial.

PAR. 9. 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 respondent, Shupe-Williams 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 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 respondent, testimony and other evidence taken before Charles P. Vicini and Henry M. White, 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 the oral argument of Henry C. Lank, counsel for the Commission, the respondent not being represented at said argument although duly notified of the time and place thereof; 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, Shupe-Williams Candy Company, 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 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 assortments of candy which are used, or may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy and a small package of candy, which said larger pieces of candy and small package of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

4. Supplying to or placing in the hands of retail and wholesale dealers and jobbers assortments of candy, together with a device commonly called a "push card," for use, or which may be used, in distributing or selling said candy to the public at retail.

5. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "push card," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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, Shupe-Williams Candy Company, a corporation, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
OSTLER CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2837. Complaint, June 8, 1936—Decision, June 17, 1937*

Where a corporation engaged in manufacture and sale of "straight" or "staple" goods candy, and also of so-called "break and take," "draw," or "deal" assortments, sale and distribution of which type candy, in constant demand and affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, and providing an easy means of disposing of such products, teaches, and encourages gambling among children, constituting substantial number of purchasers and consumers of such type, and sale and distribution of which in the markets of many manufacturers who sell their "straight" goods in interstate commerce in competition with the other, has been followed by a marked decrease in sales of such "straight" goods, due to gambling or lottery feature connected with said "break and take," "draw," or "deal" candy, preferred by consumers because of gambling feature connected therewith, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—

Sold, to jobbers and retailers, certain assortments of candy which were so packed and assembled as to involve, or which were designed to involve, use of a lottery scheme when sold and distributed to consumers thereof, and several of which consisted of (a) a number of candy bars, together with a push card, for sale and distribution to purchasing public under a plan, and in accordance with said card's explanatory legend, by which person received, for five cents paid, one or more additional bars of candy, depending on numbers or legends pushed by chance, and last push on card likewise received specified number of additional bars, and of other assortments involving same principal or sales plan where unit of sale was one cent rather than five cents, and varying in detail from that immediately above described in such matters as inclusion of additional pieces of candy to be given as prizes or in the furnishing of articles of merchandise other than candy to be thus given and distributed to ultimate consumers wholly by lot or chance, and (b) assortments of a number of penny pieces of candy of uniform size and shape, together with number of larger pieces to be given as prizes to purchasers of a relatively few of said uniform pieces, concealed color or colored centers of which differed from that of the majority, and also with small box of candy to be given free of charge to purchaser of last piece of uniform size in assortment; so assembled and packed that they were designed to be, and were, exposed and used by retail dealer purchasers for distribution and resale to purchasing public by lot or chance, without alteration or rearrangement, and with knowledge and intent that such candy should thus be resold to public by lot or chance by said retail dealers, in competition with many who regard such sale and distribution as morally bad and as encouraging gambling, and espe-

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cially among children, and as injurious to the candy industry through resulting 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, 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 such competitors were put to a disadvantage in competing, retailers, finding candy more salable by "break and take," "draw," or "deal" method, bought from it and others employing same methods of sale, trade was diverted to it and others using similar method from said competitors, who could compete on even terms only by giving similar devices to retailers, and sales of their "straight" candy, in their unwillingness so to do, showed a marked decrease, some competitors began sale and distribution of candy by lot or chance in order to meet competition of manufacturers who thus sold and distributed such products, and trade was diverted to it from its said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry involved; to the prejudice and injury of the public and competitors:

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

Before *Mr. Charles P. Vicini* and *Mr. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* 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 Ostler 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, Ostler Candy Company, is a corporation organized and operating under the laws of the State of Utah, with its principal place of business located at 143 South State Street, Salt Lake City, Utah. Respondent is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution of such products and in the sale and distribution of the products of other candy manufacturers to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States, and causes and has caused all of said products,

when so sold, to be transported from its principal place of business in Salt Lake City, 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 more than 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 its 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.

(a) Several of said assortments manufactured, sold and distributed by the respondent are composed of a number of bars of candy, together with a device commonly called a push card. The said bars of candy are distributed to the consuming public by means of said push card 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 or legend is disclosed. Sales are five cents each and the card bears a statement or statements informing customers and prospective customers that all the numbers or legends pushed from said card receive one bar of candy, but that certain specified numbers or legends receive one or more additional bars of candy. The push card also bears a legend stating that the last push on the card receives a specified number of additional bars of candy. All purchasers receive one bar of candy, but purchasers obtaining the specified numbers or legends receive additional bars of candy of the same size and quality. The numbers or legends on said card are effectively concealed from the purchaser or prospective purchaser until a push or sale has been made and the particular push separated from the card. The additional bars of candy in said assortment are thus distributed to purchasers of pushes from said card wholly by lot or chance.

(b) The respondent distributes several other assortments involving the same principle or sales plan, where the unit of sale is one cent, rather than five cents. These several assortments vary only in detail from the assortments described above in paragraph (a). In some of said assortments larger pieces of candy instead of additional pieces of candy are to be given as prizes and in other of the assortments,

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articles of merchandise other than candy are furnished and are to be given as prizes to purchasers from said assortments. The larger or additional pieces of candy and the other articles of merchandise are distributed to the ultimate consumer wholly by lot or chance.

(c) Certain other assortments manufactured, sold and distributed by respondent are 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 box of candy, which larger pieces of candy and the small box of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner. The majority of said pieces of candy of uniform size and shape are of the same color or have centers of the same color, but a small number of said pieces of candy are of different color or have centers of different color. The said pieces of uniform size and shape retail at a price of one cent each, but the purchaser who procures one of said candies colored differently or 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 assortments is entitled to receive and is to be given, free of charge, the small box of candy. The color of the said pieces of candy or the color of the centers of the said pieces of candy in said assortments is effectively concealed from the purchaser and prospective purchaser until a selection has been made and the wrapper removed or the piece of candy broken open. The aforesaid purchasers of said candies who procure a candy colored differently or 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 the small box of candy wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortment, 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 plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sales of its products, in accordance with the sales plans hereinabove set forth, and said sales plans have the capacity and tendency 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

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to procure additional or larger bars of candy or small boxes of candy or other articles of merchandise.

The use by respondent of said methods in the sale of candy and the sale of candy by and through the use thereof, and by the aid of said methods, 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 methods 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 methods or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery schemes.

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 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 candies 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 games of chance 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 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 equivalent method 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 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.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said methods or any method involving a game of

chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on June 8, 1936, issued and served a complaint upon the respondent, Ostler Candy Company, a corporation, charging that respondent had been and was using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by H. L. Mulliner, attorney for the respondent, before Charles P. Vicini and Henry M. White, examiners 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 hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral argument of Henry C. Lank, counsel for the Commission, the respondent not being represented although duly notified of the time and place of such hearing; 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, Ostler Candy Company, is a corporation organized under the laws of the State of Utah, with its principal office and place of business located at 143 South State Street, in Salt Lake City, Utah. Respondent is now, and for several years⁵

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 to retail dealers in the States of Nevada, Wyoming, Idaho, and Montana. 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 other States of the United States as mentioned above. In so carrying on said business, respondent is and has been engaged in interstate commerce, and is and has been engaged 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. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to jobbers and retail dealers, as above described, certain assortments of candy so packed and assembled as to involve, or which are designed to involve, the use of a lottery scheme when sold and distributed to the consumers thereof. Several of such assortments manufactured, sold, and distributed by respondent are composed of a number of bars of candy, together with a device commonly called a "push card." The said bars of candy are distributed to the consuming public by means of said push card 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 or legend is disclosed. Sales are 5¢ each, and the card bears a statement or statements informing customers and prospective customers that all the numbers or legends pushed from said card receive one bar of candy, but that certain specified numbers or legends receive one or more additional bars of candy. The push card also bears a legend stating that the last push on the card receives a specified number of additional bars of candy. All purchasers receive one bar of candy, but purchasers obtaining the specified numbers or legends receive additional bars of candy of the same size and quality. The numbers or legends on said card are effectively concealed from the purchaser or prospective purchaser until a push or sale has been made and the particular push separated from the card. The additional bars of candy in said assortment are thus distributed to purchasers of pushes from said card wholly by lot or chance.

Respondent has distributed and does distribute several other assortments involving the same principle or sales plan as that described above where the unit of sale is 1¢ rather than 5¢. These several assortments vary only in detail from the assortment described imme-

diately above. In some of said assortments larger pieces of candy, instead of additional pieces of candy, are to be given as prizes, and in other assortments articles of merchandise other than candy are furnished by respondent and are to be given as prizes to purchasers from said assortments. The larger or additional pieces of candy, or the other articles of merchandise, are distributed to the ultimate consumers wholly by lot or chance.

Respondent has also distributed and does distribute assortments which are 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 box of candy, which larger pieces of candy and small box of candy are to be given as prizes to purchasers of said pieces of candy of uniform size and shape in the following manner: The majority of said pieces of candy of uniform size and shape are of the same color or have centers of the same color, but a small number of said pieces of candy are of different color or have centers of different color. The said pieces of candy of uniform size and shape retail at a price of 1¢ each, but the purchaser who procured one of said candies colored differently or having a center colored differently from the majority is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to. The purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive and is to be given free of charge the small box of candy. The color of the said pieces of candy, or the color of the centers of the said pieces of candy in said assortment, is effectively concealed from the purchaser and prospective purchaser until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candies who procure a candy colored differently, or 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 the small box of candy 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," "deal," or "break and take" 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, and said retail dealers and the retail dealers to whom respondent sells direct expose

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said assortments for sale and sell said candy to the purchasing public in accordance with the sales plans as described above.

PAR. 5. All sales made by respondent, whether to wholesale dealers 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 are designed to 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 many manufacturers of candy, competing with respondent in the territory served by respondent, who do not manufacture and sell "draw," "deal," or "break and take" assortments of candy and who sell their "straight" or "staple" goods in interstate commerce in competition with the "draw," "deal," or "break and take" candy, and manufacturers of "straight" or "staple" goods have noted a marked decrease in the sales of their products whenever or wherever the "draw," "deal," or "break and take" assortments have appeared in their markets. This decrease in the sale of "straight" or "staple" candy is due to the gambling or lottery feature connected with the "draw," "deal," or "break and take" candy. Witnesses from several branches of the candy industry testified in this proceeding to the effect that consumers preferred to purchase the "draw," "deal," or break and take" candy because of the gambling feature connected with its sale. The sale and distribution of "draw," "deal," or "break and take" packages or assortments of candy, or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children who comprise a substantial number of the purchasers and consumers of this type of candy.

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. The Commission finds that many competitors regard such sale and distribution as morally bad and as encouraging gambling, especially among chil-

dren; 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," "deal," or "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. 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, Nevada, Idaho, Montana, and Wyoming. The majority of its candy is sold as "straight" merchandise, only a small part of its sales being assortments with which a pushcard is furnished or which is so packed and assembled as to involve a lot or chance feature when resold to the consuming public, but all of its salesmen at all times offer said "draw," "deal," or "break and take" assortments of candy to its customers and prospective customers, together with its "straight" merchandise. While the annual volume of business of respondent was not shown exactly, an officer for the respondent testified, and the Commission finds, that respondent's annual volume of business is substantial.

PAR. 9. 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.

Order

CONCLUSION

The aforesaid acts and practices of respondent, Ostler 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 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 P. Vicini, and Henry M. White, 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 the oral argument of Henry C. Lank, counsel for the Commission, the respondent not being represented at said argument although duly notified of the time and place thereof; 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, Ostler Candy Company, 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, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers, packages or assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said packages or assortments to the public.

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail, bars of candy, together with a

device commonly called a "push card," which push card is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail.

4. Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size and shape of different colors or having centers of a different color, together with larger pieces of candy or other articles of merchandise, which said larger pieces of candy or other articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy of a particular color or having a center of a particular color.

5. Furnishing to retail and wholesale dealers and jobbers, a device commonly called a "push card," either with packages or assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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 respondent, Ostler Candy Company, a corporation, within 30 days after 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
 GLADE 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 284S. Complaint, June 19, 1936—Decision, June 17, 1937

Where a corporation engaged in manufacture and sale of "straight" goods candy, and also of so-called "break and take," "draw," or "deal" assortments, sale and distribution of which type candy, in constant demand and affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, and providing an easy means of disposing of such products, teaches and encourages gambling among children, constituting substantial number of the purchasers and consumers of such type, and particularly of candy-bar assortments with push card, and sale and distribution of which type in the markets of many manufacturers who sell their "straight" goods in interstate commerce in competition with the other, has been followed by a marked decrease in sales of such "straight" goods, due to gambling or lottery feature connected with said "break and take," "draw," or "deal" candy, preferred by consumers because of gambling feature connected therewith, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition, or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy,—

Sold, to jobbers and retailers, certain assortments of candy which were so packed and assembled as to involve, or were designed to involve, use of a lottery scheme when sold and distributed to consumers thereof, and several of which consisted of (a) a number of candy bars, together with push card, for sale and distribution to consuming public under a plan, and in accordance with said card's explanatory legend, by which purchaser received, for five cents paid, one or more additional bars of candy, depending upon particular number or legend pushed by chance, and last push on card also received specified number of additional bars, and (b) number of packages of candy of varying size, together with punch board, for sale and distribution to consuming public under a plan, and in accordance with said board's explanatory legend, by which purchaser received, for five cents paid, one of said packages, in accordance with number punched by chance, or nothing other than privilege of a punch; so assembled and packed that they were designed to be, and were, exposed and used by retail dealer purchasers thereof for distribution and resale to purchasing public by lot or chance, without alteration or rearrangement, and with knowledge and intent that such candy should thus be resold to public by lot or chance by said retail dealers, in competition with many who regard such sale and distribution as morally bad and as encouraging gambling, and especially among children, and as injurious to the candy industry through resulting 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, 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;

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With result that such competitors were put to a disadvantage in competing, retailers, finding candy more salable by "break and take," "draw," or "deal" method, bought from it and others employing same methods of sale, trade was diverted to it and others using similar method from said competitors, who could compete on even terms only by giving similar devices to retailers, and sales of their "straight" candy, in their unwillingness so to do, showed a marked decrease, some competitors began sale and distribution of candy by lot or chance in order to meet competition of manufacturers who thus sold and distributed such products, and trade was diverted to it from its said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry involved; to the prejudice and injury of the public and competitors:

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

Before *Mr. Charles P. Vicini* and *Mr. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* 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 Glade 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, Glade Candy Company, is a corporation organized and operating under the laws of the State of Utah, with its principal office and place of business located at 232 South Fifth East Street, Salt Lake City, Utah. 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 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 Salt Lake City, 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 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 packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of said assortments, manufactured and distributed by the respondent, is composed of a number of boxes of assorted chocolate candies, together with a device commonly called a "punch-board." The said boxes of candy are distributed to the consuming public by means of said punchboard in the following manner: The sales by means of said punchboard are 5 cents each, and when a punch is made from said board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the prospective customer as to which numbers receive a box of candy. The purchasers of the last punch on each of three sections of the board each receive a box of chocolate candy. On a so-called two hundred hole board fourteen numbers call for a prize box of candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by punching the last number on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5 cents. The numbers on said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance.

(b) Another 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 cents each, and the card bears statements informing customers and prospective customers as follows:

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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, four candy bars, five candy bars or six candy bars for the price of 5 cents is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments, resells said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its product in accordance with the sales plans hereinabove set forth, and said sales plans have the capacity and tendency 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 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

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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 June 19, 1936, issued and served a complaint upon the respondent, Glade Candy Company, a corporation, charging that respondent had been and was using unfair methods of

competition in commerce, as "commerce" is defined in said act of Congress.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by H. L. Mulliner, attorney for the respondent, before Charles P. Vicini and Henry M. White, examiners 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 hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral argument of Henry C. Lank, counsel for the Commission, the respondent not being represented although duly notified of the time and place of such hearing; 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, Glade Candy Company, is a corporation organized under the laws of the State of Utah, with its principal office and place of business located at 232 South 5th East Street in Salt Lake City, 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 in the States of Nevada, Wyoming, Idaho, and Colorado. It causes 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 other States of the United States as mentioned above. In so carrying on said business, respondent is and has been engaged in interstate commerce, and is and has been engaged 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. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to jobbers and retail dealers certain assortments of candy so packed and assembled as to involve, or which are designed to involve, the use of a lottery scheme when sold and distributed to the consumers thereof.

Several of such assortments manufactured, sold, and distributed by respondent are composed of a number of bars of candy, together with a device commonly called a "push card." The said bars of candy are distributed to the consuming public by means of said push card 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 or legend is disclosed. Sales are 5¢ each, and the card bears a statement or statements informing customers and prospective customers that all the numbers or legends pushed from said card receive one bar of candy, but that certain specified numbers or legends receive one or more additional bars of candy. The push card also bears a legend stating that the last push on the card receives a specified number of additional bars of candy. All purchasers receive one bar of candy, but purchasers obtaining the specified numbers or legends receive additional bars of candy of the same size and quality. The numbers or legends on said card are effectively concealed from the purchaser or prospective purchaser until a push or sale has been made and the particular push separated from the card. The additional bars of candy in said assortment are thus distributed to purchasers of pushes from said card wholly by lot or chance.

Respondent also distributes several assortments composed of a number of packages of candy of varying size, together with a device commonly called a "punchboard." The said packages of candy are distributed to the consuming public by means of said punchboard in the following manner: The punchboard has a number of holes in which slips of paper bearing numbers are secreted. The slips of paper and the numbers thereon are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular slip of paper separated from the board. The punchboard has printed at the top thereof various statements or legends informing purchasers and prospective purchasers that certain numbers receive specified packages of candy. Sales are 5¢ each, and the packages of candy contained in said assortment are distributed to the consuming public in accordance with the legends at the top of said punchboard. The fact as to whether a purchaser receives one of the packages of candy or nothing other than the privilege of punching a number from said board for the price of 5¢ is 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" 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, 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 sales plans as described above.

PAR. 5. All sales made by respondent, whether to wholesale dealers 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 are designed to 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 many manufacturers of candy, competing with respondent in the territory served by respondent, who do not manufacture and sell "draw" or "deal" assortments of candy and who sell their "straight" goods in interstate commerce in competition with the "draw" or "deal" candy, and manufacturers of "straight" 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" candy is due to the gambling or lottery feature connected 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 with a pushcard.

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. The Com-

mission 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" 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, Montana, and Colorado. The majority of its candy is sold as "straight" merchandise, but its sales of "draw" or "deal" assortments are substantial.

PAR. 9. 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 respondent, Glade 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 within the intent and meaning

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of Section 5 of an Act of Congress, approved September 26, 1914, 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 Charles P. Vicini and Henry M. White, 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 the oral argument of Henry C. Lank, counsel for the Commission, the respondent not being represented although duly notified of the time and place of such hearing; 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, Glade Candy Company, a corporation, its officers, directors, 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 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 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 commonly called a "push card," or a device commonly called a "punchboard," 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 "punchboard," either with packages or assortments of candy or separately, bearing a legend or legends or statements informing the

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purchasing public 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, Glade Candy Company, a corporation, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
WOODY CANDY COMPANY

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

Docket 2697. Complaint, Jan. 31, 1936—Decision, June 19, 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 included assortments such as (1) number of small candy bars, number of medium-sized bars, and number of larger bars, together with push cards, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for five cents paid, one of the majority of small bars, one of the medium-sized, or one of the large bars, in accordance with particular number pushed by chance, and purchaser of last push was entitled, without charge, to one of said large pieces; and (2) number of pieces of candy, number of bars of candy, and one still larger bar, together with push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for penny paid, one of the small pieces composing majority of said assortment, or one of the large bars, in accordance with particular number pushed by chance, and purchaser of last push was entitled to receive, without charge, the still larger bar—

Sold, to wholesalers and retailers for display and resale to purchasing public by the retailer-vendee, 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 said products, in accordance with such plans, contrary to the established public policy of the several States and of the United States Government, and contrary, in many States, to local criminal statutes, and in competition with many who, unwilling to offer and sell candy so packed and assembled, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance or sale therewith of a chance to procure larger pieces, refrain therefrom, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance, as contrary to public policy or criminal statutes as aforesaid, or as detrimental to public morals and to morals of the purchasers of such products;

With result that many dealers in and ultimate purchasers of candy were attracted by said methods and manner of packing such product, and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase same, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use such or equivalent methods, many dealers were induced to purchase the candy thus offered and sold by it in preference to all others, by reason of preference given thereto by ultimate purchaser on account of such game of chance involved therein, and with tendency and capacity, because of said game of chance alone, unfairly to divert to it trade and custom from its said competitors

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who do not use same or equivalent methods, exclude from such trade all competitors who are unwilling to and do not use such or equivalent practices or methods, lessen competition therein and tend to create a monopoly thereof in it and such other distributors as use same or equivalent methods, deprive purchasing public of benefits 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 equivalent methods, as contrary to public policy and criminal statutes:

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. P. C. Kolinski and *Mr. Henry C. Lank* 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 Woody 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 Oklahoma, with its principal place of business in the city of Oklahoma City, State of Oklahoma. 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 Oklahoma City, State of Oklahoma, to purchasers thereof in other States of the United States, at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers, various packages or assortments of candy, so packed

and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages, nor does it include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments is composed of a number of small candy bars, a number of medium sized candy bars, and a number of larger 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 number is disclosed. Sales are five cents each and the majority of the numbers entitle the purchaser to one of the small bars of candy. A few of the numbers entitle the purchaser to one of the medium sized bars of candy and three of the numbers entitle the purchaser to one of the large bars of candy, and the purchaser of the last push on the card is entitled to one of the large bars of candy. The card bears statements informing customers and prospective customers as to which numbers receive the small bars, which numbers receive the medium bars, and which numbers receive the large bars, and that the purchaser of the last push on said card is entitled to one of the large bars. 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 fact as to whether a purchaser receives one of the small candy bars, one of the medium candy bars, or one of the large sized candy bars for the price of five cents is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondent is composed of a number of pieces of candy, a number of bars of candy, and one still larger bar of candy, 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 number is disclosed. Sales are one cent each, and the majority of the numbers entitle the purchaser to one of the small pieces of candy, but a few of the numbers entitle the purchaser to one of the large bars of candy, and the purchaser of the last push is entitled to receive the still larger bar of candy. The push card bears statements informing customers and prospective customers as to which numbers receive the small pieces of candy, which numbers receive the larger bars of candy, and stating that the purchaser of the last push is entitled to receive the still larger bar of candy. 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 fact as to whether a purchaser receives one of the small pieces of candy, one of the larger bars of candy, or the still

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larger bar of candy for the price of one cent is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure larger pieces or bars of candy in the manner alleged.

Such sales of candy, along with the sale of such chances 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. 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.

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

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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 benefits 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, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 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 on February 3, 1936 served, its complaint in this proceeding upon respondent Woody Candy Company, a corporation, charging it with the

use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, respondent filed its answer dated August 31, 1936, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, 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 under the laws of the State of Oklahoma, with its principal place of business located in the city of Oklahoma City, State of Oklahoma. Respondent is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States. It causes said products when sold, to be transported from its place of business in Oklahoma City, State of Oklahoma, to purchasers thereof in other States of the United States at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers various packages or assortments of candy so packed 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 and it does not include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance.

(a) One of said assortments is composed of a number of small candy bars, a number of medium sized candy bars, and a number of

larger 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 number is disclosed. Sales are 5¢ each, and the majority of the numbers entitle the purchaser to one of the small bars of candy. A few of the numbers entitle the purchaser to one of the medium sized bars of candy, and three of the numbers entitle the purchaser to one of the large bars of candy. The purchaser of the last push on the card is entitled to one of the large bars of candy. The card bears statements informing customers and prospective customers as to which numbers receive the small bars, which numbers receive the medium bars, and which numbers receive the large bars, and that the purchaser of the last push on said card is entitled to one of the large bars. 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 fact as to whether a purchaser receives one of the small candy bars, one of the medium sized candy bars, or one of the large candy bars, for the price of 5¢, is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by respondent is composed of a number of pieces of candy, a number of bars of candy, and one still larger bar of candy, 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 number is disclosed. Sales are 1¢ each, and the majority of the numbers entitle the purchaser to one of the small pieces of candy, but a few of the numbers entitle the purchaser to one of the large bars of candy, and the purchaser of the last push is entitled to receive the still larger bar of candy. The push card bears statements informing customers and prospective customers as to which numbers receive the small pieces of candy, which numbers receive the larger bars of candy, and stating that the purchaser of the last push is entitled to receive the still larger bar of candy. The numbers on 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 of the small pieces of candy, one of the larger bars of candy, or the still larger bar of candy, for the price of 1¢, is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers

and the retail dealers to whom respondent sells direct expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public, as above found, involves a game of chance or the sale of a chance to procure larger pieces or bars of candy in the manner described. Such sales of candy, together with the sale of chances to procure larger pieces or bars of candy in the manner described, 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. The use by respondent of said methods 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 methods or equivalent or similar methods involving the same or an equivalent or similar element of chance or lottery scheme. By reason of said facts, many persons, firms, and corporations who make and sell candy in competition with respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or the sale with such candy of a chance to procure larger pieces or bars of candy, 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, because of said game of chance alone, unfairly 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 benefits of free competition in said candy trade. The use of said methods by respondent has the tendency and capacity unfairly to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods that are contrary to public policy and to criminal statutes.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance, because such methods are contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such methods are detrimental to public morals and to the morals of the purchasers of said candy, or because of any or all of said reasons.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent dated August 31, 1936, 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, Woody Candy Company, a corporation, its officers, representatives, agents, and employees, in con-

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nection with the offering for sale, sale and distribution of candy in interstate commerce, do 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 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 commonly called a "push card," 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," either with packages or assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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, Woody Candy Company, a corporation, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
FINE-REDING CANDY MANUFACTURING 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 2699. Complaint, Jan. 31, 1936—Decision, June 19, 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 included assortments such as (1) number of small pieces of candy, number of larger pieces or bars thereof, and one still larger piece, together with push cards, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for penny paid, one of the small pieces, or one of the larger pieces or bars, in accordance with particular number pushed by chance, and purchaser of last push was entitled, without charge, to the aforesaid still larger bar; and (2) number of small bars of candy, number of medium-sized bars, and number of still larger bars, together with push card, for sale under a similar plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for five cents paid, one of the aforesaid pieces of varying size—

Sold, to wholesalers and retailers for display and resale to purchasing public by the retailer-vendee, 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 said products, in accordance with such plan, contrary to the established public policy of the several States and of the United States Government, and contrary, in many States, to local criminal statutes, and in competition with many who, unwilling to offer and sell candy so packed and assembled, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance or sale thereof with of a chance to procure larger pieces, refrain therefrom, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance, as contrary to public policy or criminal statutes as aforesaid, or as detrimental to public morals and to morals of the purchasers of such products;

With result that many dealers in and ultimate purchasers of candy were attracted by said methods and manner of packing such product, and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase same, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use such or equivalent methods, many dealers were induced to purchase the candy thus offered and sold by it, in preference to all others, because of the game of chance involved therein, and with tendency and capacity, because of said game of chance alone, unfairly to divert to it trade and custom from its said competitors who do not use same or equivalent methods, exclude from such trade all competitors who are unwilling to and do not use such or equivalent practices or methods, lessen competition therein and tend to create a monopoly thereof in it and such other distributors as use same

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or equivalent methods, deprive purchasing public of benefits of free competition in trade involved, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt or 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.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.

Mr. D. G. Johnson, of Oklahoma City, Okla., 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 Fine-Reding Candy Mfg. 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 Oklahoma, with its principal place of business in the city of Oklahoma City, State of Oklahoma. 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 Oklahoma City, State of Oklahoma, to purchasers thereof in other States of the United States, at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers, various packages or assortments of candy, so packed 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

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respondent, but this list is not all inclusive of the various packages, nor does it include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

(a) One of said assortments is composed of a number of small pieces of candy, a number of larger pieces or bars of candy, and one still larger piece of candy, 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 number is disclosed. Sales are one cent each and the card bears statements informing customers and prospective customers that certain specified numbers receive one of the small pieces of candy, that certain other specified numbers receive one of the larger pieces or bars of candy, and that the purchaser of the last push from said card receives the still larger bar of candy. 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 fact as to whether a purchaser receives a small piece of candy, a larger piece of candy, or the still larger bar of candy for the price of one cent is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of small bars of candy, a number of medium sized bars of candy, and a number of still larger bars of candy, together with a device commonly called a push card. The candy contained in said assortment is distributed to purchasers in the following manner:

The candy contained in said assortment is distributed to purchasers in a similar manner to that shown by the sales plan described in subparagraph (a) except that sales are five cents each instead of one cent each and the pieces or bars of candy are larger than the corresponding pieces or bars of candy in the assortment referred to in subparagraph (a).

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure larger pieces or bars of candy in the manner alleged.

Such sales of candy, along with the sale of such chances to procure additional bars of candy or packages of candy or other articles of merchandise in the manner alleged, are contrary to the established

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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. 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.

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, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 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 on February 3, 1936, served, its complaint in this proceeding upon respondent, Fine-Reding Candy Manufacturing Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, briefs and oral arguments of counsel having been waived; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Oklahoma, with its principal place of business

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in the city of Oklahoma City, State of Oklahoma. Respondent is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States. It causes said products when sold to be transported from its place of business in Oklahoma City, State of Oklahoma, to purchasers thereof in other States of the United States at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers various packages or assortments of candy so packed 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, and it does not include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance.

(a) One of said assortments is composed of a number of small pieces of candy, a number of larger pieces or bars of candy, and one still larger piece of candy, together with a device commonly called a push card. The candy contained in said assortments 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 one cent each and the card bears statements informing customers and prospective customers that certain specified numbers receive one of the small pieces of candy, that certain other specified numbers receive one of the larger pieces or bars of candy, and that the purchaser of the last push from said card receives the still larger bar of candy. 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 fact as to whether a purchaser receives a small piece of candy, a larger piece of candy, or the still larger bar of candy for the price of one cent is thus determined wholly by lot or chance.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of small bars of candy, a num-

ber of medium sized bars of candy, and a number of still larger bars of candy, together with a device commonly called a push card. The candy contained in said assortment is distributed to purchasers in the following manner:

The candy contained in said assortment is distributed to purchasers in a similar manner to that shown by the sales plan described in subparagraph (a) except that sales are five cents each instead of one cent each and the pieces or bars of candy are larger than the corresponding pieces or bars of candy in the assortment referred to in subparagraph (a).

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public, as above found, involves a game of chance or the sale of a chance to procure larger pieces or bars of candy in the manner described. Such sales of candy, together with the sale of such chances to procure larger pieces or bars of candy in the manner described, 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. The use by respondent of said methods 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 methods or equivalent or similar methods involving the same or an equivalent or similar element of chance or lottery scheme. By reason of said facts, many persons, firms, and corporations who make and sell candy in competition with respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or the sale with such candy of a chance to procure larger pieces or bars of candy by chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said methods and manner of packing said candy and by the element of chance involved in the sale thereof in

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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 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 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.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance because such methods are contrary to 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.

CONCLUSION

The aforesaid acts and practices of the respondent, Fine-Reding Candy Manufacturing 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 complaint of the Commission and the answer of respondent dated August 31, 1936, 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

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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, Fine-Reding Candy Manufacturing Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy 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 commonly called a "push card", for use, or which may be used, in distributing or selling candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "push card," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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, Fine-Reding Candy Manufacturing Company, Inc., a corporation, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
WILLIAMS-CRAHAN COMPANY

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

Docket 2704. Complaint, Jan. 31, 1936—Decision, June 19, 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 included assortments such as (1) number of penny pieces of candy of uniform size and shape, the enclosed concealed centers of majority of which were cream, together with a number of larger pieces to be given as prizes to chance purchasers of aforesaid penny pieces of uniform size, etc., enclosed concealed centers of which were, instead, red cinnamon, and also to those purchasers of last one of said uniform penny pieces in each of the two trays into which assortment was divided, without further charge, and together with, also, explanatory display card for retailer's use; (2) number of small pieces of candy, together with number of larger pieces and two still larger pieces, and punchboard or push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for five cents paid, one of the small or one of the larger pieces, in accordance with particular number pushed by chance, and maker of last push in each of the two sections into which cards were divided received one of the still larger pieces; and (3) number of bars of candy of uniform size, together with push card or punchboard, for sale under a plan, and in accordance with explanatory legend on said card or board, pursuant to which purchaser paid amount ranging from one cent to five cents for uniform size pieces thus sold, in accordance with particular number pushed by chance—

Sold, to wholesalers and retailers for display and resale to purchasing public by the retailer-vendee, 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 said products, in accordance with such plans, contrary to public policy as long recognized in the common law and criminal statutes, and contrary 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 purchasing public, as to involve a game of chance or sale therewith of a chance to procure larger pieces, refrain therefrom, and in competition with many who are unwilling to adopt and use said or any method involving game of chance, or sale of a chance to win by chance, or other method contrary to public policy;

With result that many dealers in and ultimate purchasers of candy were attracted by said methods and manner of packing such product, and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase same, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use such or equivalent

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methods, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its said competitors, to exclude from such trade all competitors who are unwilling to and do not use such or equivalent practices or methods as unlawful, lessen competition therein and tend to create a monopoly thereof in it and such other distributors as use same or equivalent methods, deprive purchasing public of benefits 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 equivalent 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. P. C. Kolinski and *Mr. Henry C. Lank* 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 Williams-Crahan 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 Oklahoma with its principal office and place of business in the city of Oklahoma City, State of Oklahoma. Respondent is now, and for several years last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States, and causes said products, when so sold, to be transported from its place of business in the city of Oklahoma City, State of Oklahoma, to purchasers thereof in other States of the United States at their respective places of business, and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy, between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and

retail dealers, various packages or assortments of candy, so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages, nor does it include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

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

The majority of the said pieces of candy of uniform size, shape, and quality, have cream centers, but a small number of said pieces of candy have centers containing red cinnamon. 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 pieces of candy having a center of red cinnamon, is entitled to receive, and is to be given free of charge, one of the said larger pieces of candy heretofore referred to. The assortment is packed in two trays, and the purchaser of the last piece of candy of uniform size, shape, and quality in each tray, is entitled to receive, and is to be given free of charge, one of the larger pieces of candy heretofore referred to. The fact as to whether the pieces of candy of uniform size, shape, and quality are of whipped cream throughout, or contain red cinnamon, 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 procuring a candy having red cinnamon in the center thus procure one of the said larger pieces of candy wholly by lot or chance, and the purchaser of the last piece of candy of uniform size, shape, and quality, in each of said trays, also procures one of the larger pieces of candy wholly by lot or chance.

The respondent furnishes to said wholesale and retail dealers, with said assortment, a display card to be used by the retail dealer in offering said candy to the public. The display card bears a legend or statement informing the prospective purchaser that the said candy is being sold in accordance with the above described sales plan.

(b) Another assortment manufactured and distributed by respondent is composed of a number of small pieces of candy, together with a number of larger pieces of candy, and two still larger pieces of candy, and a device commonly known as a punchboard or 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 number is disclosed. The discs on said card are divided into two sections and sales are 5¢ each. The

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card bears statements or legends informing customers and prospective customers that certain numbers indicated receive one of the small pieces of candy, that other numbers receive one of the larger pieces of candy, and that the last push in each section receives one of the still larger bars of candy. 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 of the small pieces of candy, one of the bars of candy, or one of the still larger bars of candy in said assortment, is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by respondent is composed of a number of bars of candy of uniform size, together with a device commonly known as a push card or punch-board. 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 number is disclosed. The numbers of said discs are 1¢, 2¢, 3¢, 4¢, or 5¢, and the customer pays the price marked on said disc. The numbers on said discs are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disc separated from the card. The fact as to whether a purchaser pays 1¢, 2¢, 3¢, 4¢, or 5¢ for a bar of candy is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct, expose said assortments for sale, and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public 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; or (c) bars of candy at a price less than 5¢.

The use by respondent of the said methods of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said methods 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 methods 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 equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said method and manner of packing said candy, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent, in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on January 31, 1936, issued, and on February 3, 1936, served its complaint in this proceeding upon respondent, Williams-Crahan Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, respondent filed its answer dated August 31, 1936, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, 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 under the laws of the State of Oklahoma, with its principal office and place of business located in the city of Oklahoma City, State of Oklahoma. Respondent, is now, and for several years last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States. It causes said products when sold to be transported from its place of business in the city of Oklahoma City, State of Oklahoma, to purchasers thereof in other States of the United States at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of the said business, respondent is in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy and candy products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers various packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages

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are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all inclusive of the various packages and it does not include all the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance.

(a) One of said assortments is composed of a number of pieces of candy of uniform size, shape, and quality, together with a number of larger pieces of candy, which larger pieces of candy are to be given as prizes to purchasers of said pieces of candy of uniform size, shape, and quality, in the following manner: The majority of the said pieces of candy of uniform size, shape, and quality have cream centers, but a small number of said pieces of candy have centers containing red cinnamon. The said pieces of candy of uniform size, shape and quality retail at the price of 1¢ each, but the purchaser who procures one of the said pieces of candy having a center of red cinnamon is entitled to receive and is to be given free of charge one of the said larger pieces of candy heretofore referred to. The assortment is packed in two trays, and the purchaser of the last piece of candy of uniform size, shape, and quality in each tray is entitled to receive and is to be given free of charge one of the larger pieces of candy heretofore referred to. The fact as to whether the pieces of candy of uniform size, shape, and quality are of whipped cream throughout, or contain red cinnamon, is effectively concealed from the purchasers and prospective purchasers until a selection has been made and the piece of candy selected broken open. The aforesaid purchasers procuring a candy having red cinnamon in the center thus procure one of the said larger pieces of candy wholly by lot or chance, and the purchaser of the last piece of candy of uniform size, shape, and quality in each of said trays also procures one of the larger pieces of candy wholly by lot or chance. Respondent furnishes to said wholesale and retail dealers with said assortment a display card to be used by the retail dealer in offering said candy to the public. The display card bears a statement or legend informing the prospective purchaser that the said candy is being sold in accordance with the above described plan.

(b) Another assortment manufactured and distributed by respondent is composed of a number of small pieces of candy, together with a number of larger pieces of candy and two still larger pieces of candy, and a device commonly known as a "punchboard" or "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 number is disclosed. The discs on said

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card are divided into two sections, and sales are 5¢ each. The card bears statements or legends informing customers and prospective customers that certain numbers indicated receive one of the small pieces of candy, that other numbers receive one of the larger pieces of candy, and that the last push in each section receives one of the still larger pieces of candy. 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 of the small pieces of candy, one of the larger pieces of candy, or one of the still larger pieces of candy in said assortment, is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by respondent is composed of a number of bars of candy of uniform size, together with a device commonly known as a "push card" or "punch-board." 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 number is disclosed. The numbers on said discs are 1¢, 2¢, 3¢, 4¢, or 5¢, and the customer pays the price marked on said disc. The numbers on said discs are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disc separated from the card. The fact as to whether a purchaser pays 1¢, 2¢, 3¢, 4¢, or 5¢, for a bar of candy is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure (a) and (b) larger pieces of candy, or (c) bars of candy at a price less than 5¢. The use by respondent of the said methods in the sale of candies, and the sale of candies by and through the use thereof and by the aid of said methods, 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 methods 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 methods or equivalent or similar methods 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 found, are unwilling to offer for sale or sell candy so packed and assembled as above described, 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 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. 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 equivalent methods; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are 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 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 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.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy.

CONCLUSION

The aforesaid acts and practices of the respondent, Williams-Crahan Company, a corporation, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competi-

tion 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 dated August 31, 1936, 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, Williams-Crahan Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce, do 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 contained in said assortments to the public.

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy, which 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. Supplying to or placing in the hands of retail and wholesale dealers and jobbers assortments of candy, together with a device commonly called a "push card" or a "punchboard," for use or which may be used in distributing or selling said candy to the public at retail.

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5. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "push card" or a "punchboard," either with packages or assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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 Williams-Crahan Company, a corporation, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
STARTUP 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 2705. Complaint, Jan. 31, 1936—Decision, June 19, 1937

Where a corporation engaged in manufacture and sale of "straight" goods candy, and also of so-called "break and take," "draw," or "deal" assortments, sale and distribution of which type candy, in constant demand and affording, in connection with sale thereof to public, means or opportunity of obtaining a prize or becoming a winner by lot or chance, and providing an easy means of disposing of such products, teaches and encourages gambling among children, comprising, by far, majority of purchasers and consumers of such type, and sale and distribution of which in the markets of many manufacturers who sell their "straight" goods in interstate commerce in competition with the other, has been followed by a marked decrease in sales of such "straight" goods due to gambling or lottery feature connected with said "break and take," "draw," or "deal" candy, preferred by consumers because of gambling feature connected therewith, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—

Sold, to wholesalers, jobbers, and retailers, certain packages or assortments of candy which were so packed and assembled as to involve, or which were designed to or might involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof, and several of which were composed of (a) number of penny pieces of uniform size and shape, together with explanatory display card for retailer's use, and number of larger pieces or bars of candy, to be given as prizes to purchasers by chance of a relatively few of said uniform penny pieces, concealed colored centers of which differed from those of the majority, and also together with small package of candy, to be given free of charge to purchaser of last uniform piece in assortment, (b) number of small pieces of candy, number of larger pieces and bars of candy, and number of small packages of candy, together with push card, for sale and distribution to consuming public under a plan, and in accordance with said board's explanatory legend, by which purchaser received, for penny paid, one of small pieces, one of larger pieces, one of bars, or one of small packages, in accordance with number pushed by chance, and purchaser of last push or punch was entitled also to one of such packages, and (c) of number of candy bars, together with push card, for distribution to consuming public under a plan, and in accordance with said card's explanatory legend, by which purchaser received, for five cents paid, one, two, three, four, or five bars, dependent upon legend disclosed by chance by push, and purchaser of last push received six; so assembled and packed that they were designed to be, and were, displayed and used by retail dealer purchasers thereof for distribution and resale to purchasing public in accordance with such sales plans, by lot or chance, without alteration or rearrangement, and with knowledge and intent that such candy should

thus be resold to public by lot or chance by said retail dealers, in competition with many who regard such sale and distribution as morally bad and as encouraging gambling, and especially among children, and as injurious to the candy industry through resulting 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, 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 such competitors were put to a disadvantage in competing, retailers, finding candy more salable by "break and take," "draw," or "deal" method, bought from it and others employing same methods of sale, trade was diverted to it and others using similar method from said competitors, who could compete on even terms only by giving similar devices to retailers, and sales of whose "straight" candy, in their unwillingness so to do, showed a marked decrease, some competitors began sale and distribution of candy by lot or chance in order to meet competition of manufacturers who thus sold and distributed such products, and trade was diverted to it from its said competitors, and there was a restraint upon and a detriment to the freedom of fair and legitimate competition in the industry involved; to the prejudice and injury of the public and competitors:

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

Before *Mr. Charles P. Vicini* and *Mr. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* 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 Startup 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 office and place of business located in the city of Provo, State of Utah. It is now and for several years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States and causes the said products, when so sold, to be transported from its principal place of business in the city of

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Provo, 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 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 packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. Certain of said packages are hereinafter described for the purpose of showing the methods used by respondent, but this list is not all-inclusive of the various packages nor does it include all of the details of the several sales plans which respondent has been or is using in the distribution of candy by lot or chance:

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

The majority of said pieces of candy in said assortment have centers of the same color but a small number of said pieces of candy have centers of a different color. The said pieces of candy of uniform size, shape, and quality in said assortment retail at the price of one cent each but the purchasers who procure one of said candies having a center of a different color than the majority of said candies are entitled to receive and are to be given free of charge one of the said larger pieces of candy. The purchaser of the last piece of candy of uniform size, shape, and quality in said assortment is entitled to receive and is to be given free of charge one of the said larger pieces of candy. The color of the center of said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the piece of candy broken open. The aforesaid purchasers of said candies who procure a candy having a center colored differently from the majority of said pieces of candy, and the purchaser of the last piece of candy in said assortment, thus procure one of the said larger pieces of candy wholly by lot or chance.

Respondent furnishes to said wholesale and retail dealers with said assortment of candy, a display card, to be used by the retailer in offering said merchandise for sale to the public, which display card bears a legend or statement informing the prospective purchaser which color of the said colored center candies contained in said assortment entitles the purchaser to a prize, and that by purchasing the last piece of candy in said assortment the purchaser will receive one of the said larger pieces of candy free of charge.

(b) Another assortment manufactured and distributed by the respondent is composed of a number of small pieces of candy, a number of larger pieces of candy, and a small box of candy, together with a device commonly called a push card. The candy in said assortment is distributed to the consuming public in the following manner:

The push card has a number of partially perforated discs and when a disc is separated from the card, a number is disclosed. Sales are 1¢ each and the card bears statements informing customers and prospective customers as to which numbers receive one of the small pieces of candy, which numbers receive one of the larger pieces of candy, and that the purchaser of the last push from said card receives the small box of candy. The numbers on the discs or pushes are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disc separated from the card. The fact as to whether a purchaser receives one of the small pieces of candy, one of the larger pieces of candy, or the small box of candy is thus determined wholly by lot or chance.

(c) Another assortment manufactured and distributed by respondent is composed of a number of bars of candy, together with a device commonly called a push card. The candy contained in said assortment is distributed to purchasers in the following manner:

The push card has a number of partially perforated discs and when a push is made and the disc separated from the card, a legend is disclosed. Sales are 5¢ each, and the card bears statements informing customers and prospective customers as to the number of bars which are to be given with particular legends. Certain specified legends receive one bar, certain specified legends receive two bars, others three bars, others four bars, and others five bars. The purchaser of the last push on said card receives six bars. The legends on the discs or pushes are effectively concealed from the purchaser and prospective purchaser until a selection has been made and the disc separated from the card. The number of candy bars which a customer receives for the price of 5¢ is thus determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public as above alleged involves a game of chance or the sale of a chance to procure (a) larger pieces of candy, (b) larger pieces of candy or a box of candy, (c) additional bars of candy.

The use by respondent of said method of the sale of candies, and the sale of candies by and through the use thereof and by the aid of said method is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Wherefore, many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said method and manner of packing said candy, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent, in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do

not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

PAR. 7. The aforementioned methods, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors as hereinabove alleged. Said methods, acts and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on January 31, 1936, issued and served a complaint upon the respondent, Startup Candy Company, a corporation, charging that respondent had been and was using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress.

After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by H. L. Mulliner, attorney for the respondent, before Charles P. Vicini and Henry M. White, examiners 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 hearing before the Commission on said complaint, the answer thereto, testimony and other evidence briefs in support of the complaint and in opposition thereto and the oral argument of Henry C. Lank, counsel

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for the Commission, the respondent not being represented although duly notified of the time and place of such hearing; 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 under the laws of the State of Utah, with its principal office and place of business located in the city of Provo, State of Utah. It is now, and for several years last past, has been engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers, jobbers, and to retail dealers located in the State of Utah and in the States of Wyoming, Idaho, Nevada, and Arizona. 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 other States of the United States as mentioned above. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been engaged 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. In the course and conduct of its business as described in paragraph 1 hereof, the respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain packages or assortments of candy so packed and assembled as to involve or which are designed to or may involve the use of a lottery scheme when sold and distributed to the ultimate consumer thereof.

Several of said assortments are composed of a number of pieces of candy of uniform size and shape together with a number of larger pieces or bars of candy and a small package of candy, which larger pieces or bars of candy and small package of candy are to be given as prizes to purchasers of said small candies in the following manner: The majority of the said pieces of candy in the said assortments 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 assortments retail at the price of one cent each, but the purchaser who procures one of the said candies having a center of a color different from the majority is entitled to receive and is to be given free of charge one of the said larger pieces or bars of candy. The purchaser of the last piece of

candy of uniform size and shape in said assortments is entitled to receive and is to be given free of charge the small package of candy. 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 candy having a center colored differently from the majority of the said pieces of candy and the purchaser of the last piece of candy in the said assortments thus procure one of the said larger pieces or bars of candy or the small package of candy wholly by lot or chance.

Respondent furnishes to said wholesale and retail dealers with the above described assortments a display card to be used by the retail dealers in offering said merchandise for sale to the public, which display card bears a legend or statement informing the purchaser and prospective purchaser which of the said colored center candy contained in said assortments entitles the purchasers to a prize and that by purchasing the last piece of candy in said assortments the purchaser will receive a prize.

Other assortments manufactured, sold and distributed by the respondent are composed of a number of small pieces of candy, a number of larger pieces and bars of candy, and a number of small packages of candy, together with a device commonly called a "push card." The candy in said assortments is distributed to the consuming public in the following manner: The "push card" has a number of partially perforated discs and when a disc is separated from the card, a number is disclosed. Sales are one cent each and the card bears statements or legends informing purchasers and prospective purchasers as to which numbers receive one of the small pieces of candy, which numbers receive one of the larger pieces of candy, which numbers receive one of the bars of candy, which numbers receive one of the small packages of candy, and that the purchaser of the last push or punch from said card receives one of the small packages of candy. The numbers on the discs or pushes are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disc selected separated from the card. The fact as to whether a purchaser receives one of the small pieces of candy, one of the larger pieces of candy, one of the bars of candy, or one of the small packages of candy, is thus determined wholly by lot or chance.

The respondent also manufactures, sells and distributes assortments which are composed of a number of bars of candy, together with a device commonly called a "push card." The candy contained

in said assortments is distributed to the consuming public in the following manner: The "push card" has a number of partially perforated discs and when a push is made and the disc selected separated from the card, a legend is disclosed. Sales are 5¢ each and the card bears statements informing purchasers and prospective purchasers as to the number of bars of candy which are to be given with particular legends. Certain specified legends receive one bar; other specified legends receive two bars; others, 3 bars; others, 4 bars; and others, 5 bars. The purchaser of the last push on said card receives 6 bars. The legends on the discs or pushes are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disc selected separated from the card. The fact as to whether a purchaser receives one, two, three, four, five or six bars of candy for the price of 5¢ is 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 "break and take," "draw," or "deal" assortments. Assortments of candy without the lot or chance feature in connection with their resale to the public are generally referred to in the candy trade or industry as "straight" goods. These terms will be used hereafter in these findings to 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. 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 and assembled by the respondent and the candy contained in the majority of said assortment is sold and distributed to the consuming public in accordance with the sales plans as described in paragraph 2 hereof.

PAR. 5. All sales made by respondent whether to wholesale dealers or 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 are designed to 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 above, respondent has knowledge that said candy will be sold to the purchasing public by retail dealers

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by lot or chance and it packs such candy in the way and manner described so that without alteration or rearrangement thereof it may be sold to the purchasing public by lot or chance by said retail dealers.

PAR. 6. There are in the United States many manufacturers offering for sale and selling candy in the territory served by this respondent who do not manufacture and sell "break and take," "draw," or "deal" assortments of candy and who sell their "straight" goods in interstate commerce in competition with the "break and take," "draw," or "deal" candy and manufacturers of "straight" goods have noted a marked decrease in the sales of their product whenever or wherever the "break and take," "draw," or "deal" assortments have appeared in their markets. This decrease in the sale of "straight" candies is due to the gambling or lottery feature connected with the "break and take," "draw," or "deal" assortments.

Witnesses from several branches of the candy industry testified in this proceeding to the effect that consumers preferred to purchase the "break and take," "draw," or "deal" candy because of the gambling feature connected with its sale. The sale and distribution of "break and take," "draw," or "deal" assortments of candy or of candy which has connected with its sale to the public the means or opportunity of obtaining a prize or becoming a winner by lot or chance, teaches and encourages gambling among children who comprise by far the majority of the purchasers and consumers of this type of candy.

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.

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 "break and take," "draw," or "deal" method, buy from respondent and others employing the same methods of sale, and thereby trade is diverted to respondent and others using similar methods, from said competitors. Such competitors can compete on even terms only by giving the same or similar devices to retailers. This, they are unwilling to do

and their sales of "straight" candy shows 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 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. Although the volume of business of the respondent was not shown exactly, an official of the respondent corporation testified and the Commission finds that the respondent's annual volume of business is approximately \$100,000.00, but that the majority of this business is "straight" merchandise and the lesser part thereof the lot or chance assortments.

PAR. 9. 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 respondent, Startup 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 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 Charles P. Vicini and Henry M. White, 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 the oral argument of Henry C. Lank, counsel for the Commission, the re-

spondent not being represented at said argument although duly notified of the time and place thereof; 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, Startup Candy Company, its officers, directors, 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 or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers, assortments of candy which are used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale and 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 a different color, together with larger pieces of candy or small packages of candy, which larger pieces of candy or small packages of candy are to be given as prizes to the purchasers procuring pieces of candy with a center of a particular color.

4. Supplying to, or placing in the hands of wholesale dealers and jobbers, or retail dealers assortments of candy, together with a device commonly called a "push card" for use or which may be used in distributing or selling said candy to the public at retail.

5. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "push card," either with assortments of candy or separately bearing a legend or legends, or statements informing the purchasing public 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, Startup Candy Company, a corporation, 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.

IN THE MATTER OF
UNIQUE NOVELTIES, INC.

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

Docket 3108. Complaint, Apr. 20, 1937—Decision, June 25, 1937

Where a corporation engaged in sale and distribution of candy, candy products, and chewing gum, including certain assortments so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and which included (1) large number of individually wrapped penny caramels of uniform size and shape, of which a relatively few were red or red-centered, and of which a still smaller number were green or green-centered, together with a number of small pennants to be given free, and in accordance with explanatory display card for retailer's use included with assortment, to chance purchasers of aforesaid red or red-centered caramels, and with a number of larger pennants to be thus given to such purchasers of the green or green-centered caramels, and to be given, along with said display card, to which one of said larger pennants was attached, to purchaser of last caramel in assortment; and (2) a large number of individually wrapped penny sticks of chewing gum, together with number of small felt pennants to be given, without charge, to chance purchasers of said sticks, upon the inside of the wrapper of which were printed words "Home Run," and to be given also to purchaser of last stick in assortment, in accordance with explanatory display card supplied for retailer's use—

Sold, to wholesalers and jobbers and to retailers for display and resale, 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 said products, in accordance with such plans, contrary to public policy as long recognized in the common law and criminal statutes, and contrary to an established public policy of the United States Government, and in competition with many who, unwilling to offer and sell candy and chewing gum so packed and assembled, or otherwise arranged and packed for sale to the purchasing public as to involve a game of chance, refrain therefrom, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance, as contrary to public policy or criminal statutes as aforesaid, or as detrimental to public morals and to morals of the purchasers of such products;

With results that consuming public was induced to purchase said caramels or gum because of chance of obtaining free, one of pennants contained in said assortments, and with capacity and tendency to induce purchasers to buy its said products in preference to those offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said methods and manner of packing such products and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase same, thus packed and sold by it, in preference to those offered and sold by said competitors who do not use such or

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equivalent methods, and with tendency and capacity, by reason thereof, to divert to it trade and custom from its said competitors who do not use same or equivalent methods, exclude from such trade all competitors unwilling to, and who do not, use such or equivalent practices or methods as unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other competitors as use same or equivalent methods, 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 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.

Mr. Charles W. Jablon, 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 Unique Novelties, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 35-37 Claver Place, in the city of Brooklyn, State of New York. Respondent is now, and for several months last past has been, engaged in the sale and distribution of candy, candy products, and chewing gum to wholesale dealers and jobbers and to retail dealers 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 Brooklyn, N. Y., to purchasers thereof in the State of New York and in other States of the United States at their respective places of business. There is now, and has been for several months last past, a course of trade and commerce by said respondent in such candy, candy products and chewing gum 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 individuals and partnerships engaged in the sale and distribution of candy, candy products, and chewing gum in commerce between and among the various States of the United States.

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PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers and to retail dealers assortments of candy, candy products, and chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of said assortments is composed of 150 pieces of caramel candy of uniform size and shape, together with 20 small pennants and 11 larger pennants and a display card, hereinafter referred to, which has a still larger pennant fastened thereon. 120 of these caramels are yellow. 20 of said caramels are red or have red centers, and 10 of said caramels are green or have green centers. The said caramels are contained within non-transparent wrappers, and the color of said caramels, or the color of the center of said caramels, is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The said caramels retail for 1¢ each, and the purchaser procuring one of the red caramels, or one of the caramels having a red center, is entitled to receive and is to be given free of charge one of the small pennants contained in said assortment. The purchaser procuring one of the green caramels, or one of the caramels having a green center, is entitled to receive and is to be given free of charge one of the larger pennants contained in said assortment. The purchaser of the last caramel in said assortment is entitled to receive and is to be given free of charge the display card hereinbefore referred to, to which one of the large pennants is attached. The display card included with said assortment contains statements or legends informing the purchasers and prospective purchasers that the said assortment is being sold in accordance with the above described sales plan.

The said pennants are thus distributed to the purchasers of said caramel candies wholly by lot or chance, and the consuming public is induced to purchase said caramel candies because of the chance of obtaining one of the said pennants contained in said assortment.

(b) An assortment of chewing gum being sold and distributed by respondent is composed of 100 sticks of chewing gum contained within individual wrappers, together with a number of small felt pennants and a display card to which has been attached one of said pennants. The majority of the wrappers within which said sticks of chewing gum are contained have no printing on the inside, but a small number of said wrappers have the words "Home Run" printed on the inside thereof. The fact as to whether the inside of the wrapper is blank or has the words "Home Run" thereon is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The said sticks of chewing gum retail at 1¢ each, and the purchaser procuring a stick of chewing gum contained within a wrapper bearing the words "Home Run" is entitled to receive and is to be given free of charge one of the said felt pennants contained in said assortment. The purchaser of the last stick of chewing gum in said assortment is entitled to receive and is to be given free of charge the display card to which a pennant is attached. The display card included with said assortment contains statements or legends informing the purchasers and prospective purchasers that the said assortment is being sold in accordance with the above described sales plan. The said small felt pennants

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are thus distributed to purchasers of sticks of chewing gum from said assortment wholly by lot or chance, and the consuming public is induced to purchase said chewing gum because of the chance of obtaining one of the said small felt pennants.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments of candy and chewing gum 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 the same 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. Such sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondent's said products in preference to candy or chewing gum offered for sale and sold by its competitors.

PAR. 4. The sale of candy and chewing gum to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a pennant.

The use by respondent of said methods in the sale of candy and chewing gum, and the sale of candy and chewing gum by and through the use thereof and by the aid of said methods, 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 methods 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 competitors of respondent who do not adopt and use the same methods or equivalent or similar methods involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy or chewing gum in competition with respondent, as above alleged, are unwilling to offer for sale or sell candy or chewing gum so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy or chewing gum are attracted by respondent's said methods and manner of packing said candy and chewing gum and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy and chewing gum so packed and sold by respondent in preference to candy or chewing gum 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 equivalent methods; to exclude from said candy and chewing gum trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said candy and chewing gum trade and to tend to create a monopoly of said candy and chewing gum trade in respondent and in such other competitors of respondent as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said candy and chewing gum trade. The use of said methods by respondent has the tendency and capacity to eliminate from said candy and chewing gum trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

PAR. 6. The aforementioned methods, acts and practices of 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, 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 20, 1937, issued and on April, 22, 1937, served its complaint in this proceeding upon the respondent, Unique Novelties, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent filed answer thereto admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, briefs and oral argument of counsel having been waived; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 35-37 Claver Place, in the city of Brooklyn, State of New York. Respondent is now, and for several months last past, has been engaged in the sale and distribution of candy, candy products, and chewing gum to wholesale dealers and jobbers and to retail dealers 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 Brooklyn, N. Y., to purchasers thereof in the State of New York and in other States of the United States at their respective places of business. There is now, and has been for several months last past, a course of trade and commerce by said respondent in such candy, candy products and chewing gum 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 individuals and partnerships engaged in the sale and distribution of candy, candy products, and chewing gum 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 and to retail dealers assortments of candy, candy products and chewing gum so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

(a) One of said assortments is composed of 150 pieces of caramel candy of uniform size and shape, together with 20 small pennants and 11 larger pennants and a display card, hereinafter referred to, which has a still larger pennant fastened thereon. 120 of these caramels are yellow, 20 of said caramels are red or have red centers, and 10 of said caramels are green or have green centers. The said caramels are contained within nontransparent wrappers, and the color of said caramels, or the color of the center of said caramels, is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The said caramels retail for 1¢ each, and the purchaser procuring one of the red caramels, or one of the caramels having a red center, is entitled to receive and is to be given free of charge one of the small pennants contained in said assortment. The purchaser procuring one of the green caramels, or one of the caramels having a green center, is

entitled to receive and is to be given free of charge one of the larger pennants contained in said assortment. The purchaser of the last caramel in said assortment is entitled to receive and is to be given free of charge the display card hereinbefore referred to, to which one of the large pennants is attached. The display card included with said assortment contains statements or legends informing the purchasers and prospective purchasers that the said assortment is being sold in accordance with the above described sales plan.

The said pennants are thus distributed to the purchasers of said caramel candies wholly by lot or chance, and the consuming public is induced to purchase said caramel candies because of the chance of obtaining one of the said pennants contained in said assortment.

(b) An assortment of chewing gum being sold and distributed by respondent is composed of 100 sticks of chewing gum contained within individual wrappers, together with a number of small felt pennants and a display card to which has been attached one of said pennants. The majority of the wrappers within which said sticks of chewing gum are contained have no printing on the inside, but a small number of said wrappers have the words "Home Run" printed on the inside thereof. The fact as to whether the inside of the wrapper is blank or has the words "Home Run" thereon is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The said sticks of chewing gum retail at 1¢ each, and the purchaser procuring a stick of chewing gum contained within a wrapper bearing the words "Home Run" is entitled to receive and is to be given free of charge one of the said felt pennants contained in said assortment. The purchaser of the last stick of chewing gum in said assortment is entitled to receive and is to be given free of charge the display card to which a pennant is attached. The display card included with said assortment contains statements or legends informing the purchasers and prospective purchasers that the said assortment is being sold in accordance with the above described sales plan. The said small felt pennants are thus distributed to purchasers of sticks of chewing gum from said assortment wholly by lot or chance, and the consuming public is induced to purchase said chewing gum because of the chance of obtaining one of the said small felt pennants.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments of candy and chewing gum 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 the same 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. Such sales plans have the capacity and tendency of inducing purchasers thereof to purchase respondent's said products in preference to candy or chewing gum offered for sale and sold by its competitors.

PAR. 4. The sale of candy and chewing gum to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a pennant. The use by respondent of said methods in the sale of candy and chewing gum, and the sale of candy and chewing gum by and through the use thereof and by the aid of said methods, 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 methods 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 competitors of respondent who do not adopt and use the same methods or equivalent or similar methods involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy or chewing gum in competition with respondent, as above described, are unwilling to offer for sale or sell candy or chewing gum so packed and assembled, 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 or chewing gum are attracted by respondent's said methods and manner of packing said candy and chewing gum and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy and chewing gum so packed and sold by respondent in preference to candy or chewing gum 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 equivalent methods; to exclude from said candy and chewing gum trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said candy and chewing gum trade, and to tend to create a monopoly of said candy and chewing gum trade in respondent and in such other competitors of respondent as use the same or equivalent methods; and to deprive

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the purchasing public of the benefit of free competition in said candy and chewing gum trade. The use of said methods by respondent has the tendency and capacity to eliminate from said candy and chewing gum trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

CONCLUSION

The aforesaid acts and practices of the respondent, Unique Novelties, 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 May 22, 1937, by the respondent admitting all the material allegations of the complaint to be true, and the respondent by its counsel having waived filing of briefs and 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, Unique Novelties, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of candy, candy products and chewing gum in interstate commerce, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy, candy products or chewing gum so packed and assembled that sales of such candy, candy products, or chewing gum to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy, candy products, or chewing gum which are used, or which may be used, without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device, or gift enterprise in the sale or distribution

of the candy, candy products, or chewing gum contained in said assortments to the public.

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces of candy of uniform size, shape, and quality having centers of a different color, together with felt pennants or other articles of merchandise, which said felt pennants or other articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

4. Packing or assembling in the same package or assortment of chewing gum for sale to the public at retail pieces of chewing gum enclosed in wrappers, some of which have no legends printed on the inside thereof and others of which have a legend printed on the inside thereof, together with felt pennants or other articles of merchandise, which said felt pennants or other articles of merchandise, are to be given as prizes to the purchaser procuring a piece of chewing gum having a legend on the inside of the wrapper thereof.

5. Furnishing to wholesale dealers, jobbers and retail dealers display cards, either separately or with packages or assortments of candy, candy products, or chewing gum, bearing a legend or legends or statements informing the purchasers that the candy, candy products, or chewing gum 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, Unique Novelties, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
WINTHROP NOVELTY 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 3109. Complaint, Apr. 20, 1937—Decision, June 25, 1937

Where a corporation engaged in sale and distribution 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 included such assortments as large number of wrapped penny caramels of uniform size and shape, majority of which were uniform throughout, together with a number of Radio Star Jig Saw puzzles, to be given, without charge, to those purchasing, by chance, one of a few red-centered caramels included in assortment in question—

(a) Sold, to wholesalers and jobbers, and to retailers, for display and resale to purchasing public by the retailer-vender, 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 products, in accordance with such plan, contrary to public policy as long recognized in the common law and criminal statutes, and contrary 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, refrain therefrom;

With result that consuming public was induced to buy its said candies because of chance of obtaining one of said puzzles or prizes, and with capacity and tendency to induce purchasers to buy said products in preference to those offered and sold by competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by its said method or manner of packing such product and by element of chance involved in sale thereof, as above set forth, and thereby induced to purchase same, thus packed and sold by it, in preference to that offered and sold by its competitors who do not use such or equivalent methods, and with tendency and capacity, because of said game of chance, to divert to its trade and custom from its said competitors who do not use same or equivalent methods, exclude from said trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful, lessen competition in said trade and tend to create a monopoly thereof in it and in such other competitors as use same or equivalent methods, deprive purchasing public of benefit of free competition therein, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent methods; and

(b) Represented to customers and prospective customers, through use of words "manufacturers of novelty candy products," that it was the manufacturer of the candy or merchandise sold and distributed by it, notwithstanding fact it neither owned, controlled, nor operated any factory whatsoever, and did not make any of its candy or merchandise;

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With effect of misleading and deceiving many of its customers into the erroneous belief that it was a business concern which controlled and operated a factory in which the candy and other merchandise sold by it was made, and that persons dealing with it were buying said products directly from the manufacturer thereof, and thereby eliminating profits of a selling agency or middleman and obtaining various advantages not had by those buying goods therefrom, and of unfairly diverting trade to it from its competitors, including many who do not falsely represent that they manufacture merchandise or candy sold by them:

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.

Mr. Charles W. Jablon, 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 Winthrop Novelty 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, 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:

PARAGRAPHS 1. Respondent is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 35-37 Claver Place, in the city of Brooklyn, State of New York. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of candy to wholesale dealers and jobbers and to retail dealers 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 Brooklyn, N. Y., to purchasers thereof in the State of New York and 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 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 individuals and partnerships 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 business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers and to 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.

One of said assortments is composed of 150 pieces of caramel candy of uniform size and shape, together with 12 Radio Star Jig Saw puzzles. The majority of the caramels in said assortment have the same color throughout, but a small number of said caramels have a red center. The said caramels are wrapped in non-transparent wrappers, and the color of the center of said caramels is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The said caramels retail at the price of 1¢ each, and the purchaser procuring one of the caramels having a red center is entitled to receive, and is to be given free of charge, one of the Radio Star Jig Saw puzzles heretofore referred to. The said Jig Saw puzzles are thus distributed to purchasers of said caramels wholly by lot or chance, and the consuming public is induced to purchase said candies because of the chance of obtaining one of the said Jig Saw puzzles. *

The respondent sells and distributes several assortments of candy involving a game of chance or lottery scheme when sold and distributed to the consuming public, but respondent's method of packing and assembling the said assortments and the sales plan involved are similar in all major respects to that described above.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments of candy resell the same to retail dealers, and the said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell the same 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. Such 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 its competitors.

PAR. 4. The sale of candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a Jig Saw puzzle.

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 competitors of respondent 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 an equivalent method. 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 in such other competitors of respondent as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity 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. 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 the use of the words "manufacturers of novelty candy products," that it is the manufacturer of the candy or merchandise which it sells and distributes. A substantial portion of the wholesale and retail dealers have expressed, and have, a preference for dealing direct with the manufacturer of candy or candy products

being purchased, such purchasers believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from a selling agency or middleman.

The use by respondent of said representation that it is a manufacturer has the capacity and tendency to, and does, mislead and deceive many of respondent's said customers into the erroneous belief that respondent is a business concern which controls and operates a factory in which the candy and other merchandise sold by respondent is manufactured, and that persons dealing with respondent are buying said candy or merchandise directly from the manufacturer thereof, thereby eliminating the profits of a selling agency or middleman and obtaining various advantages that are not obtained by persons purchasing goods from a selling agency or middleman. The truth and fact is that respondent neither owns, controls, nor operates any factory whatsoever and does not manufacture any candy or merchandise sold by it. There are many competitors of respondent who do not falsely represent that they manufacture the merchandise or candy sold by them. The use of said representation by respondent has the tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors.

PAR. 7. The aforementioned method, acts and practices of 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, 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 20, 1937, issued and on April 22, 1937, served its complaint in this proceeding upon the respondent, Winthrop Novelty Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent filed answer thereto admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, briefs

Findings

and oral argument of counsel having been waived; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 35-37 Claver Place, in the city of Brooklyn, State of New York. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of candy to wholesale dealers and jobbers and to retail dealers 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 Brooklyn, N. Y., to purchasers thereof in the State of New York and 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 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 individuals and partnerships 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 business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers and to 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.

One of said assortments is composed of 150 pieces of caramel candy of uniform size and shape, together with 12 Radio Star Jig Saw puzzles. The majority of the caramels in said assortment have the same color throughout but a small number of said caramels have a red center. The said caramels are wrapped in non-transparent wrappers, and the color of the center of said caramels is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The said caramels retail at the price of 1¢ each, and the purchaser procuring one of the caramels having a red center is entitled to receive, and is to be given free of charge, one of the Radio Star Jig Saw puzzles heretofore referred to. The said Jig Saw puzzles are thus distributed to pur-

chasers of said caramels wholly by lot or chance, and the consuming public is induced to purchase said candies because of the chance of obtaining one of the said Jig Saw puzzles.

The respondent sells and distributes several assortments of candy involving a game of chance or lottery scheme when sold and distributed to the consuming public, but respondent's method of packing and assembling the said assortments and the sales plan involved are similar in all major respects to that described above.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments of candy resell the same to retail dealers, and the said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell the same 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. Such 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 its competitors.

PAR. 4. The sale of candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a Jig Saw puzzle. 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 competitors of respondent 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 described, are unwilling to offer for sale or sell candy so packed and assembled, 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 an equivalent method. 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 in such other competitors of respondent as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity 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. 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 the use of the words "manufacturers of novelty candy products," that it is the manufacturer of the candy or merchandise which it sells and distributes. A substantial portion of the wholesale and retail dealers have expressed, and have a preference for dealing direct with the manufacturer of candy or candy products being purchased, such purchasers believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from a selling agency or middleman. The use by respondent of said representation that it is a manufacturer has the capacity and tendency to, and does mislead and deceive many of respondent's said customers into the erroneous belief that respondent is a business concern which controls and operates a factory in which the candy and other merchandise sold by respondent is manufactured, and that persons dealing with respondent are buying said candy or merchandise directly from the manufacturer thereof, thereby eliminating the profits of a selling agency or middleman and obtaining various advantages that are not obtained by persons purchasing goods from a selling agency or middleman. The truth and fact is that respondent neither owns, controls, nor operates any factory whatsoever and does not manufacture any candy or merchandise sold by it. There are many competitors of respondent who do not falsely represent that they manufacture the merchandise or candy sold by them. The use of said representation by respondent has the tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors.

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25 F. T. C.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on May 22, 1937, by the respondent admitting all the material allegations of the complaint to be true, and the respondent by its counsel having waived filing of briefs and 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, Winthrop Novelty Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with Jig Saw puzzles or other articles of merchandise, which said Jig Saw puzzles or other articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

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Order

4. Representing, directly or indirectly, that respondent is the manufacturer of the merchandise which it sells.

It is further ordered, That the respondent, Winthrop Novelty Company, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
JAMES CLARK DISTILLING CORPORATION AND D. & B.
PRODUCTS CORPORATION

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

Docket 2411. Complaint, May 24, 1935—Decision, June 26, 1937

Where a corporation and its selling agency engaged, under common control and, as the case might be, in purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages, and in the making of gin with a still used therefor by said first-named corporation, by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in transporting their aforesaid products into and through various States to the wholesale and retail purchasers thereof in States other than State of origin, and in the District of Columbia, in substantial competition with those engaged in the manufacture, by original and continuous distillation from mash, wort, or wash, 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 from mash, wort, or wash of whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distilling," or "distillers" 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 corporate name of said first corporation, printed on stationery and catalogs and on the labels attached to the bottles in which they sold and shipped their said various products and in various other ways to their customers, and furnished same with a means of representing to their vendees, both retailers and ultimate consuming public, that said first-named corporation was a distiller and that the 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 distill said various beverages, thus bottled, labeled, sold, and transported, by 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" 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

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

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by process of original and continuous distillation from mash, wort, or wash, and, notwithstanding (1) distillation, theretofore, for a limited time and by a separate company, but under supervision of an individual specialist in construction of distilleries and himself a distiller, of quantity of whiskey for it and its thereafter use at its rectifying plant, nor (2) distillation, under contract of sale with a separate company but in its name, for a limited time and theretofore, of quantity of whiskey, thereafter left in storage to age and bearing its name, and distiller's permit secured, and subsequently permitted to lapse, under such contract of purchase, 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 said first-named corporation was a distiller or distilling company in the ordinarily accepted sense of those terms, and that the whiskies, gins, and other spirituous beverages sold by them were made or distilled by said first-named corporation from mash, wort, or wash by one continuous process, and of inducing dealers and purchasing public, acting in such beliefs, to buy their said whiskies and other beverages rectified and bottled by said first-named corporation, and with distinct tendency of giving them an unfair competitive advantage over those of their competitors who do not, through use of such terms in their trade or corporate names, represent that the package of alcoholic liquors offered to retailer, and in turn to consumers is a distillery-bottled one, and thereby to divert trade to them 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, *Mr. Max J. Miller* and *Mr. Herman Keller*, 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 James Clark Distilling Corporation and D. & B. Products 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 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:

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25 F. T. C.

Count 1

PARAGRAPH 1. Respondent, James Clark Distilling Corporation, is a corporation organized, existing, and doing business under the laws of the State of New Jersey, having its principal office and place of business at 26 Exchange Place in Jersey City, in the said State. Respondent D. & B. Products Corporation is a corporation organized, existing and doing business in and under the laws of the State of New Jersey with its principal office and place of business at 26 Exchange Place, Jersey City in said State. Both respondents are subsidiaries or affiliates of Distillers and Brewers Corporation of America, a holding corporation incorporated under the laws of the State of Delaware in June 1933 and all three corporations aforesaid have interlocking officers and directors. Respondent, James Clark Distilling Corporation, is now and since its organization in August 1933, has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in the sale thereof to the respondent, D. & B. Products Corporation aforesaid. The D. & B. Products Corporation and the James Clark Distilling Corporation, by the D. & B. Products Corporation, its distributing and selling agent, are now and since their organizations have been engaged in the sale of said products in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their said businesses they cause their said products when sold to be transported from their places of business in Jersey City 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 their businesses aforesaid, respondents are now and for more than one year last past have been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by original and continuous distillation from mash, wort, or wash of 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 the District of Columbia; and in the course and conduct of their businesses as aforesaid, respondents are and have been for more than one year last past in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of purchasing, rectifying, blending and bottling whiskies, gins, and other spirituous beverages and in

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the sale thereof in constant course of trade and 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, James Clark Distilling Corporation, has upon its said premises, stills used in the production of gin by a process of rectification whereby tax paid alcohol purchased but not produced by the said respondent is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits does not make or constitute the respondent James Clark Distilling Corporation, 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 production of such 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 prepared and bottled by the actual distillers thereof.

PAR. 3. In the course and conduct of its business as aforesaid respondent, James Clark Distilling Corporation, 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 its said products to the D. & B. Products Corporation and in various other ways, and the respondent, D. & B. Products Corporation in the course and conduct of its business as aforesaid by the sale in interstate commerce as aforesaid of the products of the James Clark Distilling Corporation containing the word "distilling" on the labels attached to the bottles in which it sells and ships the said products, printed on its stationery, in its advertising, and in various other ways represent to customers and furnish them with a means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies, gins, and the other spirituous beverages therein contained, were by the James Clark Distilling Corporation aforesaid, produced through an original and continuous process of distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof was complete, when as a matter of fact the respondent, James Clark Distilling Corporation, is not a distiller and does not distill the said whiskies, gins, or other

spirituous beverages by it so bottled and labeled and by it and the respondent, D. & B. Products Corporation so sold and transported, and merely by the use of stills as aforesaid in the rectification of alcoholic spirits by redistillation over juniper berries and other aromatics, respondent, James Clark Distilling Corporation, does not distill the gins by it so bottled and labeled and by both respondents so 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. The respondent James Clark Distilling Corporation is a rectifier of alcoholic liquors and does not own, operate or control any place or places where such beverages are produced by the process of distillation from mash, wort, or wash as aforesaid and respondent, D. & B. Products Corporation is solely engaged in the business of selling the alcoholic beverages aforesaid.

PAR. 4. There are among the competitors of respondents engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate 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 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 and advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. The representation by respondents as set forth in paragraph 3 hereof, is calculated to and has a capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that the whiskies, gins, and other spirituous beverages sold by the respondents are manufactured and distilled by James Clark Distilling Corporation 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 rectified, blended, bottled, and sold as aforesaid thereby diverting trade to the respondents from their competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by

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distillation from mash, wort, or wash as aforesaid of whiskies, gins, and other spirituous beverages, and thereby respondents do substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondents are to the prejudice of the public and the competitors of respondents and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Count 2

PARAGRAPH 1. Respondent, James Clark Distilling Corporation, is a corporation organized, existing, and doing business under the laws of the State of New Jersey, having its principal office and place of business at 26 Exchange Place in Jersey City, in the said State. Respondent D. & B. Products Corporation is a corporation organized, existing, and doing business in and under the laws of the State of New Jersey with its principal office and place of business at 26 Exchange Place, Jersey City in said State. Both respondents are subsidiaries or affiliates of Distillers and Brewers Corporation of America, a holding corporation incorporated under the laws of the State of Delaware in June 1932 and all three corporations aforesaid have interlocking officers and directors. Respondent, James Clark Distilling Corporation, is now and since its organization in August 1933 has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in the sale thereof to the respondent, D. & B. Products Corporation aforesaid. The D. & B. Products Corporation and the James Clark Distilling Corporation, by the D. & B. Products Corporation, its distributing and selling agent, are now and since their organizations have been engaged in the sale of said products in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their said businesses they cause their said products when sold to be transported from their places of business in Jersey City 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 their businesses aforesaid, respondents are now and for more than one year last past have been in substantial com-

petition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by original and continuous distillation from mash, wort, or wash of 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 the District of Columbia; and in the course and conduct of their businesses as aforesaid, respondents are and have been for more than one year last past in substantial competition with other corporations and with individuals, partnerships, and firms 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.

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 respondents as aforesaid of the word "distilling" in the corporate name of James Clark Distilling Corporation, on stationery, advertising, and labels attached to the bottles in which the products of such corporation are sold and shipped and in various other ways, constitutes false advertising within the meaning of the aforesaid provision of Article V and tends to and does create the misleading impression that the whiskies, gins, and other spirituous beverages so sold by respondents are manufactured and distilled by the respondent, James Clark Distilling Corporation from mash, wort or wash as aforesaid and that the respondent, James Clark Distilling

Corporation is engaged in the business of distilling spirits from mash, wort or wash as aforesaid and that the spirituous beverages by respondents so sold and transported have been prepared and bottled by the 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 respondents 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 on May 25, 1936 served its complaint in this proceeding upon the respondents, James Clark Distilling Corporation and D. & B. Products 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' answer thereto, testimony and other evidence in support of the allegations of the 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 Mortimer S. Gordon, Max J. Miller, and Herman E. Keller, 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 and brief in support of the complaint, brief in opposition thereto and oral arguments of counsel aforesaid having been waived; and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, James Clark Distilling Corporation, is a corporation organized, existing and doing business under the laws of the State of Delaware, licensed to do business in the State of New Jersey and having its principal office and place of business at 26 Exchange Place, Jersey City, in the State of New Jersey.

The respondent, D. & B. Products Corporation, is a corporation organized, existing, and doing business in and under the laws of the State of New Jersey, with its principal office and place of business at the same address aforesaid.

Both respondents are subsidiaries or affiliates of the Distillers and Brewers Corporation of America, a holding corporation, incorporated under the laws of the State of Delaware in June, 1933, and all three corporations aforesaid are under common control through stock ownership.

The respondent, James Clark Distilling Corporation, is now, and since its organization in August 1933, has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in the sale thereof through the agency of the other respondent, D. & B. Products Corporation.

The D. & B. Products Corporation and the James Clark Distilling Corporation, by the D. & B. Products Corporation, its distributing and selling agent, are now and since their organization have been engaged in the sale of said products in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of their said businesses they cause their said products when sold to be transported from their places of business in Jersey City 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 their businesses aforesaid, respondents are now and for more than one year last past have been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by original and continuous distillation from mash, wort, or wash of 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 the District of Columbia; and in the course and conduct of their businesses as aforesaid, respondents are and have been for more than one year last past in substantial competition

with other corporations and with individuals, partnerships, and firms 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 the District of Columbia.

Respondent James Clark Distilling Corporation received Permit No. R-24 from the Federal Alcohol Control Administration January 10, 1934, to engage in the distilled spirits rectifying industry, which said permit became and was invalidated August 29, 1935, by reason of the passage of the Federal Alcohol Administration Act (49 Stat. 977), and since November 23, 1935, it has done the same kind of business under a permit of the same number issued by the Federal Alcohol Administration.

In April of 1934, James H. Cocks, a consulting engineer specializing in the construction of distilleries, and himself a distiller of about 40 years' experience, was employed by respondent James Clark Distilling Corporation to supervise the distillation of 3,210 barrels of whiskey at the Seagram Distillery No. 1, at Lawrenceburg, Ind., under a formula prepared by him, and he did so, inspecting the quality of the grains used and the entire fermenting up until the whiskey was drawn off in barrels, the barrels being marked and branded with said respondent's name. The first day's mash was made April 9, 1934, and this order was completed on the 28th or 30th of April 1934. Of this whiskey, 3,116 barrels were used by the respondent in its distilled spirits rectifying plant between April of 1934 and February of 1936.

On January 28, 1936, pursuant to a previous application filed October 25, 1935, a distiller's basic permit No. D-697 was issued under the Federal Alcohol Administration Act and Regulations to the respondent, James Clark Distilling Corporation, authorizing it to engage in the business of distilling whiskey at "Old 31" East Turnpike, Bardstown, Ky., under lease of the distillery of the Tom Moore Distilling Company. Under contract, the terms of which are hereinafter set forth, with the aforesaid distillery, and between the months of February and May 1936, there was produced by the Tom Moore Distilleries, in the name of James Clark Distilling Corporation, a total of 358,370.54 proof gallons of whiskey, none of which at the time of the hearings had been withdrawn or used by respondent in its business, it being desired to leave it in storage for the purpose of aging. This whiskey is in barrels or kegs bearing respondent's corporate name.

Respondent's sales volume is approximately three and one-half million dollars per year, and averages approximately 700,000 gallons of spirituous beverages annually, all of which is sold through the

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medium of the other respondent, D. and B. Products Corporation, as aforesaid.

The whiskey which was produced at the Tom Moore Distilleries, as aforesaid, was produced under an agreement in writing, dated August 20, 1935, between respondent and the said distilling company, which agreement, in substance, provided as follows:

Whereas on the 2d day of August, 1935, the parties hereto entered into a certain agreement whereby Tom Moore agreed to manufacture and sell to James Clark, and James Clark agreed to purchase specific quantities of manufactured distillations of certain whiskey to be manufactured by the Tom Moore Bardstown Distillery, and

Whereas James Clark is desirous of having the said whiskey manufactured by Tom Moore under the name of James Clark, now, therefore, in consideration of the sum of \$10 and other good and valuable consideration in hand paid to the other by the parties hereto, the receipt of which is hereby acknowledged, the parties hereto mutually agree as follows:

(1) Whiskey to be manufactured and sold by Tom Moore to James Clark pursuant to the contract between said parties dated the 2d day of August, 1935, shall be manufactured and sold to James Clark as whiskey manufactured in the name of James Clark and all barrels of his whiskey shall be marked and branded by Tom Moore in accordance with the Internal Revenue Laws, in such a manner as to indicate the name of James Clark as the actual distiller thereof.

(2) James Clark agrees to apply to the State of Kentucky for the issuance to it of a distiller's permit in order to effectuate the distillation of whiskey by Tom Moore, in the name of James Clark, and James Clark further agrees to obtain from the United States Treasury Department and/or the latter's appropriate bureau the necessary distiller's permit and authority to have such whiskeys manufactured by Tom Moore in the name of James Clark and agrees to file with the said United States Treasury Department all necessary documents and bonds required in order to effectuate the same.

(3) Tom Moore hereby agrees to pay to James Clark no later than 60 days from the date hereof the sum of \$500, the same representing a reimbursement to James Clark of one-half of the Kentucky State distiller's permit fee of \$1,000 paid to the State of Kentucky by James Clark.

(4) Tom Moore hereby agrees to use his best efforts in assisting James Clark, its agents or representatives, in procuring the aforesaid distiller's permits from the State of Kentucky and the United States Treasury Department.

(5) Tom Moore hereby covenants and agrees that it will save harmless James Clark as the preceding distiller against any and all manner of liability and/or claims, suits, actions, damages, charges, and/or expenses (including attorney and counsel fees) that may be asserted, alleged, or created by any person, firm, or corporation against James Clark individually or jointly with others, by reason of the manufacture by Tom Moore and/or James Clark as superseding distiller, of any whiskey in the name of James Clark, at the Tom Moore Bardstown, Kentucky, distillery, and Tom Moore further covenants and agrees that it will cause to be effected at its own expense and with responsible insurance companies sufficient insurance to cover all distilling and manufacturing operations at its Bardstown distillery as will adequately inure to

the benefit of James Clark as superseding distiller, and by reason of the manufacture of such whiskey in the name of James Clark, and by way of specification but not in limitation thereof, said insurance shall include coverage against workmen's compensation, general accident and public liability, fire, explosions of boilers, and theft, burglary, robbery, and elevator.

(6) It is definitely understood and agreed by and between the parties hereto that this memorandum of agreement shall not in any manner be considered to be in limitation or modification of the agreement between the parties hereto dated the 2d day of August, 1935, and it is definitely understood that this memorandum of agreement is intended to supplement the aforesaid agreement, and it is not intended for any other purpose.

In witness whereof the parties hereto have hereunto set their hands and seals this 26th day of August, 1935.

The agreement of August 2, 1935, referred to in the above agreement, was an agreement between Tom Moore Distillery, therein referred to as the "manufacturer," and James Clark Distilling Corporation, therein referred to as the "purchaser," whereby Tom Moore Distillery agreed to manufacture in bond for the account of James Clark during the months of August, September, October, November and December of 1935, 2,500 barrels of full-bodied straight Kentucky bourbon whiskey, setting approximately 125,000 gallons to conform to the standards of identity theretofore promulgated by the Federal Alcohol Administration. The agreement provided for the Tom Moore Distillery to pay the State of Kentucky a production tax, and if the said tax should be increased during the term of the contract, the increase was to be paid by the James Clark Distilling Company. The price included the State of Kentucky production tax.

The agreement also provided for the Tom Moore Distillery to furnish to the James Clark Distilling Corporation promptly at the manufacture of the aforementioned whiskey negotiable warehouse receipts representing 500 barrels of whiskey distilled during the then current month, said warehouse receipts to be issued in the name of James Clark Distilling Corporation, in such respective denominations as it might select.

The agreement further provided for the whiskey to be stored by the Tom Moore Distillery, the warehouse storage charges accrued to be paid by the James Clark Distilling Corporation upon withdrawal from the bonded warehouse, and the said whiskey was at James Clark's expense insured while the same was stored in the Tom Moore Distillery's bonded warehouse, except that the distillery agreed to insure the whiskey from the time it entered into bond up to the first day of the next succeeding month, which insurance furnished by the distillery was to inure to the benefit of the James Clark Distilling Corporation.

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The agreement provided that the Tom Moore Distillery warranted that the whiskey made by it would be all Kentucky straight bourbon whiskey made from good sound grain, containing at least 21 percent small grain, properly mashed, and distilled in accordance with the formula to be furnished by the James Clark Distilling Corporation.

The fact of these arrangements was received in evidence subject to a later check by the Commission of the official records of the Alcohol Tax Unit and the Federal Alcohol Administration Divisions of the United States Treasury Department. Such subsequent check showed, and the Commission finds, that this respondent's basic permit D-697 was cancelled on December 28, 1936.

A check of said records also shows, and the Commission finds, that during April of 1934, the production and operation, above referred to, of Seagram Distillery No. 1, at Lawrenceburg, Indiana, was by Joseph E. Seagram & Sons Corporation, operating during that month under the name and style of James Clark Distilling Corporation, which was legally permissible arrangement. This respondent, however, filed no notice of intention to distill, no bond, application, or other document to qualify as a distiller under the Internal Revenue laws and was not at that time so qualified. Neither did it apply for, or receive, a basic distiller's permit from the former Federal Alcohol Control Administration under the then existing laws and regulations.

PAR. 2. Upon the premises of respondent James Clark Distilling Corporation are one or more stills used for the production of gin by a process of rectification whereby tax-paid alcohol, purchased but not produced by respondent, is distilled over juniper berries and other aromatics. This gin constitutes approximately 10 percent of this respondent's total rectifying business.

A method generally used in this country of producing so-called distilled gin is to redistill either purchased or manufactured alcohol over juniper berries and other aromatics usually used in the production of gin and this gin derives its main characteristic flavor from the juniper berries. The purchasing public has no preference in gins by reason of the method of manufacture as it is possible to make gin of equivalent quality by processes of original distillation, redistillation, or compounding. The public preference is predicated solely on the quality of the ingredients and the skill and reputation of the manufacturer insofar as the gin itself is concerned.

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. Recti-

fiers 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 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, 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-24" designates the James Clark 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.

The James Clark Distilling Corporation does not now and never has produced or manufactured distilled spirits of any kind from mash, wort, or wash, although its charter did authorize it to do so and although between January 28, 1936 and December 28, 1936, it was the holder of a basic distiller's permit, a warehousing and bottling permit, and otherwise qualified to own, operate, and control a place where spirituous liquors were so produced. The Commission finds that the so-called lease arrangements of August 2, 1935, and the subsequent modification thereof dated August 26, 1935, constituted a contract for the purchase by respondent of distilled spirits manufactured pursuant to such arrangement by the Tom Moore Distillery, and that during such period of time this respondent did not operate, own, or control a distillery, and was not a distilling company in the sense or significance in which such terms are generally under-

stood in the trade and by a substantial portion of the consuming public.

Section 3247 of the Revised Statutes (U. S. C. A. Title 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 respondent 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, and the Commission finds, 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, and with few exceptions, their testimony was to the effect, and the Commission also finds it to be a fact, 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 the corporate name of James Clark Distilling Corporation printed on stationery, catalogs, and on the labels attached to the bottles in which respondents sell and ship these said products, and in various other ways, respondents represent to their customers and furnish them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent James Clark Distilling Corporation, is a distiller and that the said whiskies, gins, cordials, brandies, and other alcoholic beverages therein contained were by said respondent manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, James Clark Distilling Corporation is not a distiller, does not distill the said whiskies, gins, and other alcoholic beverages by respondents so bottled, labeled, sold, and transported, and, merely by the use of a still operated as aforesaid in the production of gin, James Clark Distilling Corporation does not distill the whiskies, gins, and other spirituous beverages by respondents 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. Neither respondent owns, operates, or controls 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 respondents engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate 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, rectify-

ing, 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 respondents, 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 James Clark Distilling Corporation 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 respondents are manufactured or distilled by James Clark Distilling Corporation 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 James Clark Distilling Corporation. The Commission finds that the whole situation in this industry is such that the foregoing representations have a distinct tendency to give respondents what amounts to unfair competitive advantage over those of their 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 consumers, is a distillery-bottled package and this in turn tends to divert trade to respondents from such competitors and thereby respondents do 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 James Clark Distilling Corporation by redistillation of alcohol over juniper berries and other aromatics from the prohibitions of its order.

PAR. 8. The Commission's complaint in this case was issued on the same day as 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 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 respondents, James Clark Distilling Corporation and D. & B. Products Corporation, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, 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, brief filed herein by PGad B. Morehouse and DeWitt T. Puckett, counsel for the Commission, brief and oral argument by Mortimer S. Gordon and Herman Keller, counsel for respondents having been waived, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondents, James Clark Distilling Corporation and D. & B. Products Corporation, their officers, representatives, agents, and employees, in connection with the offering for sale or sale and distribution by them in interstate commerce or in the District of Columbia of whiskies, gins, or other spirituous beverages (except gins produced by them through a process of rectification whereby alcohol purchased but not produced by respondents is redistilled over juniper berries and other aromatics) do cease and desist from:

Representing, through the use of the word "distilling" in the corporate name of respondent James Clark Distilling Corporation, on all stationery, advertising, or labels attached to the bottles in which the James Clark Distilling Corporation products are sold and shipped, or in any other way by word or words of like import, (a) that James Clark Distilling Corporation is a distiller of whiskies,

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gins, or other spirituous beverages; or (b) that the said whiskies, gins, or other spirituous beverages were by James Clark Distilling Corporation manufactured through the process of distillation; or (c) that James Clark Distilling Corporation 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 James Clark Distilling Corporation 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 respondents, within 60 days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
I. S. U. RANK AND FILE GROUP, 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 2694. Complaint, Aug. 1, 1936¹—Decision, June 29, 1937

Where a union, known as the International Seamen's Union, with some 60,000 members scattered along the Atlantic, Pacific, and Gulf coasts and the Great Lakes, had long engaged in the regular publication and circulation of an official paper known as the "Seamen's Journal," and letters "I. S. U." through their use by said union and its local branches, had become known and understood by aforesaid and other unions and by the general public as initials for said union and as a designation thereof; and thereafter, various individual members of I. S. U. Rank and File Group, and groups and organizations thus indicated, and a corporation—

Made use of designation "I. S. U. Pilot" for a periodical sold and solicited, in competition with such "Seamen's Journal," by aforesaid individuals, acting personally and through and by said groups, notwithstanding fact said groups were not committees of the International Seamen's Union, and aforesaid "I. S. U. Pilot" was not publication of said union;

With capacity and tendency, through such unauthorized use of name "I. S. U. Pilot," to mislead and deceive members of aforesaid union, and members of other labor unions and purchasing public, into the beliefs that periodical in question was a publication of said union and into purchase of same in such erroneous beliefs, and with result that trade was thereby diverted to said individuals and groups from their competitors, who do not mislead and deceive, and have not misled and deceived, purchasing public by such misuse of name for their publications; 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. Wm. T. Chantland, for the Commission.

Mr. Hyman N. Glickstein, of New York City, for Joseph Curran and Uptown Cooperative Press, Inc.

Mr. M. Herbert Syme, of Philadelphia, Pa., for Albert Fleming.

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 I. S. U.

¹ Amended.

Complaint

Rank and File Group, I. S. U. Rank and File Members, Rank and File Committee of the I. S. U., Rank and File International Seamen's Union, hereinafter referred to as respondent associations, James L. Reamey, Charles Rubin, Mrs. Charles Rubin, Watson Myers, Joseph Curran, Louis Weinstock, Abraham Baskoff, Richard M. Kroon, Frank Mozer, John Anderson, William Allen, Elmer Johnson, Robert Brown, Harry Bridges, David Gordon, Elmer Brown, Ben Gerjoy, Dora Zucker, Luigi Genovese, A. W. McPherson, E. Crews, Albert Fleming, and Charles B. Killinger, hereinafter referred to as respondent individuals, and the Uptown Cooperative Press, Inc., 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 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. Each and every one of the respondent associations, "I. S. U. Rank and File Group," "I. S. U. Rank and File Members," "Rank and File Committee of the I. S. U.," and "Rank and File International Seamen's Union," is an unincorporated, voluntary association of persons, having its principal office and place of business at 1 Union Square, New York City, in the State of New York. Respondent individuals, James L. Reamey, Charles Rubin, Mrs. Charles Rubin, Watson Myers, Joseph Curran, Louis Weinstock, Abraham Baskoff, Elmer Brown, Ben Gerjoy, Dora Zucker, all of the city of New York, State of New York; Richard M. Kroon, William Allen, both of the city of Detroit, State of Michigan; Frank Mozer and Albert Fleming, both of the city of Philadelphia, State of Pennsylvania; E. Crews and A. W. McPherson, both of the city of Pittsburgh, State of Pennsylvania; Robert Brown of the city of Butte, State of Montana; Harry Bridges, of the city of San Francisco, State of California; John Anderson of the city of Washington, District of Columbia; Elmer Johnson of the city of Chicago, State of Illinois; David Gordon of Middle Village, Long Island, State of New York; Luigi Genovese of the city of Rochester, State of New York; Charles B. Killinger of the city of Flint, State of Michigan; and other persons whose names or addresses are known, are members of each and every one of the respondent associations and compose committees for the purpose of supervising and directing all of the activities of all the said respondent associations, including the publication and distribution by them of the "I. S. U. Pilot," a weekly paper, the "I. S. U. Guide," the "Union Seaman," and "The Pilot." The Uptown Cooperative Press, Inc., with office and place

of business at 347 East 72nd Street, New York City, N. Y., is a corporation duly organized and existing under the laws of the State of New York, prints the said publications for the other respondents.

One of the principal purposes for the organization of the respondent associations by the respondent individuals was and is the publication by respondent individuals and respondent associations of the aforesaid paper and magazines called by them "The I. S. U. Pilot," "The I. S. U. Guide," "The Union Seaman," and "The Pilot," all of which said publications have been represented therein and are still being represented therein by the respondent individuals and respondent associations as being published by one or another of such respondent associations.

PAR. 2. In the course and conduct of the business of publishing and circulating the aforesaid magazines, "The I. S. U. Pilot," "The I. S. U. Guide," "The Union Seaman," and "The Pilot," the respondent individuals and their associates in the respondent associations, acting personally and through and by the aforesaid respondent associations, sell and solicit the sale of the aforesaid paper and magazines between and among the various States of the United States and in the District of Columbia, and cause copies of the aforesaid publications when sold, to be transported from the place of their publication and the principal place of business of the respondent associations in New York City, and from branch offices in Baltimore, New Orleans, Philadelphia, and other cities, to the purchasers of such copies, some located in the States of New York, Pennsylvania, Maryland, and Louisiana, and others located in various other States of the United States, and there is now and has been for more than one year last past a constant current of trade and commerce carried on by the respondent associations, respondent individuals and the Uptown Cooperative Press, Inc., in such paper and magazines between and among the various States of the United States.

In the course and conduct of their business the respondent associations, the individual respondents and their associate members of said associations, and the Uptown Cooperative Press, Inc., are now and for more than one year last past have been in substantial competition with other associations and individuals, and with corporations, firms, and partnerships engaged in the sale of papers and magazines between and among the various States of the United States. Among such competitors is the International Seamen's Union of America, hereinafter described, which now and for more than one year last past has published a monthly magazine known as the "Seamen's Journal," hereinafter described.

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PAR. 3. The International Seamen's Union of America, an unincorporated association, was organized in the United States in 1892. It is composed of mariners, seamen, and other shipping employees, with local unions and branches in the principal seacoast, lake, bay, and river ports of the United States. It has become known and has been referred to for more than twenty years last past as the "I. S. U." The initials "I. S. U.," through their use by the International Seamen's Union of America, by its local unions and branches in the various cities in the United States are now and for more than one year last past have been known and understood by the International Seamen's Union of America, its local unions and branches, the members thereof and by the general public, to mean and designate and as another name of the aforesaid International Seamen's Union of America.

The International Seamen's Union of America has since 1892 published monthly as its official magazine the "Seamen's Journal," which has had and still has a wide circulation throughout the various States of the United States.

PAR. 4. The aforesaid use by the respondents of the names "I. S. U. Rank and File Group," "I. S. U. Rank and File Members," "Rank and File Committee of the I. S. U.," "Rank and File International Seamen's Union," and of the names of said publications, "The I. S. U. Pilot," "The I. S. U. Guide," "The Union Seaman," and "The Pilot" has been and is without the authority or sanction of the aforesaid International Seamen's Union of America and the use of such names has a capacity and tendency to mislead and deceive members of the International Seamen's Union of America and the purchasing public into the beliefs that the respondent associations are committees of the aforesaid International Seamen's Union of America, that their activities are sanctioned by the aforesaid International Seamen's Union of America and that the aforesaid publications, "The I. S. U. Pilot," "The I. S. U. Guide," "The Union Seaman," and "The Pilot," are publications of the International Seamen's Union of America, and to induce them into purchasing the aforesaid "I. S. U. Pilot," "I. S. U. Guide," "Union Seaman," and "The Pilot," in such erroneous beliefs; thereby trade is diverted by respondent associations and respondent individuals from their competitors who do not by the use of false and misleading names for their publications or by the use of false and misleading names for associations, mislead and deceive the purchasing public. Thereby substantial injury is done by respondent associations and respondent individuals to competition in interstate commerce.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on August 1, 1936, issued and served its amended complaint in this proceeding upon respondents James L. Reamey, Joseph Curran, Louis Weinstock, Abraham Baskoff, Richard M. Kroon, John Anderson, William Allen, Elmer Johnson, Robert Brown, Harry Bridges, David Gordon, Elmer Brown, Doris Zucker, Luigi Genovese, A. W. McPherson, Albert Fleming, Charles B. Killinger, and Uptown Cooperative Press, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. None of the served respondents answered, but all were in default and none appeared or offered any testimony. Thereafter, testimony and other evidence in support of the allegations of said amended complaint were introduced by William T. Chantland, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence in support of the allegations of the amended complaint were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said amended complaint, testimony and evidence, and brief in support of the amended complaint, but without oral argument; and none of the respondents having filed brief nor requested oral argument, though given opportunity so to do, and the Commission having duly considered the record and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, James L. Reamey, Joseph Curran, Louis Weinstock, Abraham Baskoff, Richard M. Kroon, John Anderson, William Allen, Elmer Johnson, Robert Brown, Harry Bridges,

David Gordon, Elmer Brown, Dora Zucker, Luigi Genovese, A. W. McPherson, Albert Fleming, and Charles B. Killinger, are members of I. S. U. Rank and File Group, I. S. U. Rank and File Members, Rank and File Committee of the I. S. U., and Rank and File International Seamen's Union, and together with respondent, Uptown Cooperative Press, Inc., are and for more than two years last past have been associated within such groups for the purpose of causing the publication and distribution of a newspaper called "I. S. U. Pilot." Respondent, Uptown Cooperative Press, Inc., has printed said paper for the other respondents.

PAR. 2. In the course and conduct of the business of publishing the "I. S. U. Pilot," hereinbefore mentioned, the respondent individuals, acting personally and through and by the aforesaid groups, sold and solicited the sale of the aforesaid magazine between and among the various States of the United States and in the District of Columbia, and caused copies of the aforesaid magazine when sold, to be transported from the place of publication in New York City to the purchasers of such copies, some located in the State of New York and others located in various other States of the United States, and there was for two years last past a constant current of trade and commerce by the respondent individuals in such paper between and among the various States of the United States.

In the course and conduct of their business the respondents have been in substantial competition with others engaged in the sale of papers between and among the various States of the United States. Among such competitors is the International Seamen's Union, hereinafter described, which now and since about 1895 has regularly published and circulated an official paper known as the "Seamen's Journal."

PAR. 3. The International Seamen's Union has been in existence since 1892 and for more than a quarter of a century has been habitually known and generally accepted as the "I. S. U." It has a membership of 60,000 scattered along the Atlantic, Pacific, and Gulf Coasts and the Great Lakes. Its purpose is to improve the conditions of the men who follow the sea for their livelihood.

The initials "I. S. U.," through their use by the International Seamen's Union and by its local branches, are now and for many years last past have been known and understood by the International Seamen's Union and other labor unions, and by the general public, as initials for the aforesaid International Seamen's Union, and as a designation of the aforesaid organization.

PAR. 4. Respondent groups were not committees of the International Seamen's Union nor was the aforesaid "I. S. U. Pilot" a publi-

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cation of the International Seamen's Union. The use by the respondents of the name "I. S. U. Pilot" was without the authority or permission of the International Seamen's Union.

PAR. 5. The use by the respondent groups and respondent individuals of the name "I. S. U. Pilot" has had the capacity and tendency to mislead and deceive members of the International Seamen's Union, and members of other labor unions, and the purchasing public into the beliefs that the said publication was a publication of the International Seamen's Union, and to purchase the aforesaid "I. S. U. Pilot" in such erroneous beliefs; thereby trade has been diverted by respondents from their competitors who do not mislead and deceive and who have not misled and deceived the purchasing public by such misuse of names for their publications. Thereby substantial injury has been done by respondents to substantial competition in interstate commerce.

CONCLUSION

The aforesaid acts and practices of the respondents, James L. Reamey, Joseph Curran, Louis Weinstock, Abraham Baskoff, Richard M. Kroon, John Anderson, William Allen, Elmer Johnson, Robert Brown, Harry Bridges, David Gordon, Elmer Brown, Dora Zucker, Luigi Genovese, A. W. McPherson, Albert Fleming, Charles B. Killinger, and the Uptown Cooperative Press, Inc., 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 complaint of the Commission, the 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 the amended complaint (the served respondents not answering, but all being in default), and brief filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents, James L. Reamey, Joseph Curran, Louis Weinstock, Abraham Baskoff, Richard M. Kroon, John Anderson, William Allen, Elmer Johnson, Robert Brown, Harry Bridges, David Gordon, Elmer Brown, Dora Zucker, Luigi Genovese, A. W. McPherson, Albert Fleming, Charles B. Killinger, and the Uptown Cooperative Press, Inc., have violated the provisions of an Act of

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

It is hereby ordered, That the respondent individuals, James L. Reamey, Joseph Curran, Louis Weinstock, Abraham Baskoff, Richard M. Kroon, John Anderson, William Allen, Elmer Johnson, Robert Brown, Harry Bridges, David Gordon, Elmer Brown, Dora Zucker, Luigi Genovese, A. W. McPherson, Albert Fleming, and Charles B. Killinger, and the Uptown Cooperative Press, Inc., and their respective agents, servants and employees, in connection with the sale and offering for sale of newspapers in interstate commerce or in the District of Columbia, do forthwith cease and desist from the use of the name "I. S. U. Pilot" and of any other name for its newspapers or other publications indicating or suggesting that the said respondents or any of their groups constitute an authorized committee of the International Seamen's Union, or that any publication by them or by any of them so sold and offered for sale is a publication of the International Seamen's Union, or authorized by it.

And it is hereby further ordered, That the aforesaid respondents, James L. Reamey, Joseph Curran, Louis Weinstock, Abraham Baskoff, Richard M. Kroon, John Anderson, William Allen, Elmer Johnson, Robert Brown, Harry Bridges, David Gordon, Elmer Brown, Dora Zucker, Luigi Genovese, A. W. McPherson, Albert Fleming, Charles B. Killinger, and the Uptown Cooperative Press, Inc., shall within 60 days after service upon them of this order, file with this Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
SCHWABACHER BROTHERS & 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 2861. Complaint, June 30, 1936—Decision, June 29, 1937

Where a corporation engaged in manufacture, sale, and distribution, to retail dealers in State of Washington and Territory of Alaska, of assortments of candy so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and consisting of a number of boxes of assorted chocolates, additional article of merchandise, and a punchboard, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for five cents paid, one of said boxes, value of which exceeded said amount, or nothing other than privilege of making a punch, depending upon number thus secured by chance, and under which purchaser of last punch on board received said article of merchandise, and last five punches in each sections into which board was divided were without cost to person making same—

Sold, to retailers for display and resale to purchasing public, in accordance with aforesaid plan, such assortments, and thereby supplied to and placed in the hands of others 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 and sell candy so packed and assembled, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance, refrain therefrom, and with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance, or other method contrary to public policy;

With result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing the same and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase such candy, so 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 and custom from its said competitors who do not use such or equivalent practice or method, exclude from candy trade all competitors who are unwilling to and do not use such or equivalent method as unlawful, lessen competition in said trade and tend to create a monopoly thereof in it and such other distributors as used same or equivalent practice or method, and deprive purchasing public of benefit of free competition therein, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and 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.

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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 Schwabacher Brothers & Company, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act 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, Schwabacher Brothers & Company, Inc., is a corporation organized and operating under the laws of the State of Washington, with its principal office and place of business located at 304 Occidental Avenue, Seattle, Wash. Respondent is now, and for several years last past has been, engaged in the sale and distribution of candy to retail dealers located in the State of Washington and the Territory of Alaska, and causes and has caused its said product, when sold, to be transported from its principal place of business in Seattle, Wash., to purchasers thereof in the Territory of Alaska 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 the State of Washington and the Territory of Alaska. 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, and between such States and the Territory of Alaska.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to retail dealers 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, distributed by the respondent, is composed of a number of boxes of assorted chocolate candies and another article of merchandise, together with a device commonly called a "punchboard." The said boxes of candy and additional article of merchandise are distributed to the consuming public by means of said punchboard in the following manner: The sales by means of said punchboard are 5 cents each, and when a punch is made from said board a number is disclosed. The numbers begin with 1 and continue

to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the prospective customer as to which numbers receive a box of candy. The purchaser of the last punch on the board receives the additional article of merchandise. The last five punches on each of ten sections of a 1,200 hole board are free. On a so-called twelve hundred hole board thirty-four numbers call for a prize box of candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by punching the last number on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5 cents. The numbers on said boards are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy and the additional article of merchandise in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance.

PAR. 3. Retail dealers to whom respondent sells said assortment 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 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 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.

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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 June 30, 1936, issued and served

its complaint in this proceeding upon the respondent, Schwabacher Brothers & Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's request 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 argument of counsel having been waived; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Washington, with its principal office and place of business located at 304 Occidental Avenue, in the city of Seattle, State of Washington. Respondent is now, and for several years last past has been, engaged in the sale and distribution of candy to retail dealers located in the State of Washington and the Territory of Alaska. It causes and has caused its said products when sold to be transported from its principal place of business in Seattle, Wash., to purchasers thereof in the Territory of Alaska at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between the State of Washington and the Territory of Alaska. 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, and between such States and the Territory of Alaska.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to retail dealers 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 distributed by the respondent is composed of a number of boxes of assorted chocolate candies and another article of

Findings

merchandise, together with a device commonly called a "punch-board." The said boxes of candy and additional article of merchandise are distributed to the consuming public by means of said punch-board in the following manner: Sales are 5¢ each, and when a punch is made from said board a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing customers and prospective customers as to which numbers receive a box of candy, and the statement that the purchaser of the last punch on the board receives the other article of merchandise. The punches on said board are arranged in sections, and the last five punches in each section are free. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy, or by punching the last number on the board, receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5¢ each, and a purchaser obtaining one of the numbers calling for a box of candy receives the same for the price of 5¢. The numbers on said board are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy and the additional article of merchandise in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance.

PAR. 3. Retail dealers to whom respondent sells said assortment expose said assortment for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth, 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 its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a box of candy or another article of merchandise. 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 described, are unwilling to offer for sale or sell candy so packed and assembled as above described, 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.

CONCLUSION

The aforesaid acts and practices of the respondent, Schwabacher Brothers & Company, Inc., a corporation, are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent dated August 10, 1936, 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, Schwabacher Brothers & Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce and between the State of Washington and the Territory of Alaska, do forthwith cease and desist from:

1. Selling and distributing 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 assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.
3. Supplying to or placing in the hands of retail dealers assortments of candy, together with a device commonly called a "punch-board," for use, or which may be used, in distributing or selling candy to the public at retail.
4. Furnishing to retail dealers a device commonly called a "punch-board," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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, Schwabacher Brothers & Company, Inc., a corporation, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
GLENN LABORATORIES, INC.

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

Docket 3061. Complaint, Feb. 16, 1937—Decision, June 29, 1937

Where a corporation engaged in manufacture, sale and distribution of "Dr. Thomas' I\&L 157" obesity treatment, composed of several ingredients, including, undisclosed, as only one effective in ridding body of fat, powerful and dangerous drug desiccated thyroid, which (1) is indicated only in relatively rare cases of obesity due to deficiency of thyroid gland, (2) is dangerous to use, in quantities contained in said preparation and in dosage suggested, in all other cases without examination and advice and direction of a competent physician, (3) may not be taken by some people in their natural and normal state without harmful results, (4) is harmful to take, present certain conditions or defects or abnormalities, and (5) possibility of use of which, in a given case, without harmful results, is contingent upon thorough examination by competent physician, or experimental use by person in question under medical supervision, or both—

Represented, in advertising aforesaid preparation and treatment in newspapers and periodicals of general circulation, and by radio broadcasts, and in pamphlets and by other methods, directly or by implication, that aforesaid product was new and constituted a simple new method, use of which converted food into fuel and energy, and that it could be taken safely by members of the laity without direction from a physician, and that it was safe, harmless and efficacious in all types or classes of obesity, without disclosing presence, as hereinbefore set forth, of said desiccated thyroid and implications of such presence in quantity and dosage involved in preparation in question, and notwithstanding fact that such thyroid has been used by physicians in type of obesity due to defective thyroid glands for many years, use thereof does not always convert food into fuel and energy, or either of them, inability of the laity, unskilled in medical science and necessarily dependent, in many cases, when seeking a remedy for excess weight, for their information as to what treatment, remedy, method or system they may safely purchase, take or use, upon statements and representations, largely, of makers and sellers thereof, to tell whether or not their obesity is due to deficient thyroid gland, which may only be ascertained by examination of competent physician, and notwithstanding facts implicit in aforesaid nondisclosure;

With tendency and capacity to induce members of the public and prospective purchasers to form the mistaken and erroneous belief that such representations were true, and that said product was a safe, harmless and competent remedy or treatment for all classes and types of obesity, and to induce them to purchase said preparation in preference to, and to the exclusion of, preparations, systems, methods or other means of treatment offered for sale in commerce by competitors thus engaged, and with result of unfairly diverting thereby trade to it from its said competitors; 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. E. J. Hornibrook 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 Glenn Laboratories, Inc., a corporation, 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Glenn Laboratories, 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 287 W. 127th Street, New York City, in said State.

Respondent corporation is now and for several years last past has been engaged, among other things, in the manufacture, sale, and distribution of a proprietary remedy or medicine which it calls "Dr. Thomas' B; 157" for use in the treatment of obesity. Respondent ships, or causes to be shipped or transported, its said product, when sold, from its place of business in the State of New York to purchasers thereof located at points in various States of the United States other than the State of New York. Respondent sells its said product to wholesale and retail druggists. Said wholesale druggists sell and ship the same to retail druggists. Retail druggists in various States of the United States sell the same to their customers, who are generally members of the laity. There is now, and has been during all the times herein mentioned, a constant current of trade in such product so sold by the respondent 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 said business respondent corporation is now and has been during all the times herein mentioned, engaged in substantial competition with various other corporations, copartners, firms, and individuals, selling and offering for sale obesity remedies or like or otherwise competitive products, to wit: preparations, systems, methods, or other means of treatment for obesity or reduction of weight of the human body.

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PAR. 3. Respondent in aid of so offering for sale and selling said "Dr. Thomas' I \ddot{b} 157," as aforesaid, has advertised the same in newspapers, magazines, periodicals of general circulation, by means of radio broadcasts and in pamphlets, and in, by and through other advertising media. In, by and through each and all of the advertising media above enumerated, respondent represents, expressly or by implication:

- A. That said product is new;
- B. That its use constitutes a simple new method;
- C. That the use of said product converts food into fuel and energy;
- D. That said product can be safely taken by members of the laity without the advice and direction of a physician;
- E. That said product is safe, harmless, and efficacious in all types of classes of obesity.

Typical of its said advertisements are the following which are caused to be published by respondent in newspapers in cities and towns in various States of the United States where said product is handled by druggists:

NO MORE UGLY FAT

Pounds of ugly fat melt away as if by magic! No starvation diet or strenuous exercise! Eat as much as you want—everything you like within reason! Away goes that hideous flesh! New Beauty—new health—for you! I \ddot{b} 157 is a Doctor's prescription! Simply take one capsule after each meal. Get a bottle of Dr. Thomas' I \ddot{b} 157 at your drug store and begin taking it TODAY. Two sizes \$1 and \$2.50. Guaranteed not to contain dinitrophenol. REMEMBER; RESULTS GUARANTEED OR MONEY REFUNDED! Sold at Grant Drug Co., Morgan Drug Co., Tarrant Drug Co., L. T. Wright Drug Co., and all other good drug stores.

If everything you eat seems to turn to fat, the chances are your system is lacking in natural glandular substance which nature provides to control the fat making process. Instead of fat turning into energy, it remains unused. However, through a New York Doctor's prescription, you can provide this natural regulating substance.

PAR. 4. Dr. Thomas' I \ddot{b} 157 is a product made of several ingredients. Its only ingredient which is effectual in ridding human bodies of portions of fat or other body tissue or weight is desiccated thyroid. The reducing effect produced by the use of "Dr. Thomas' I \ddot{b} 157" is the same as the effect produced by taking an equal amount of desiccated thyroid. "Dr. Thomas' I \ddot{b} 157" contains $\frac{1}{2}$ grain of desiccated thyroid. It is put up in capsules and is to be taken three times daily orally—amounting to $1\frac{1}{2}$ grains of desiccated thyroid per day.

Desiccated thyroid is made from the thyroid glands of domestic animals. It is a powerful and dangerous drug.

There are persons whose bodies in their natural and normal state are so constituted that they 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 result to the body, is through examination by a competent physician or by experimental use by such person under medical supervision, or by both such methods combined. Only by the same means may it be ascertained in how large a quantity thyroid may be taken or used by such person without harmful results.

There are conditions of the human body which make it harmful to take or use thyroid. Among these is pregnancy. Other such conditions are defects, or abnormalities of the heart or kidneys. Any defect or abnormality of the body is apt to make the taking or use of thyroid harmful to the user.

Only by examination made by a competent physician may it be ascertained whether or not the body of such person has any such condition, defect or abnormality which makes it harmful for such person to take or use thyroid.

Obesity is generally caused from over-eating but it may be the result of more than one cause. One of the causes is a deficient or abnormally active thyroid gland. Deficiency of thyroid glands causes obesity or abnormal excess fat in only the rare and exceptional 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 weight is the result of a cause or causes other than deficient thyroid glands. Only in cases of obesity due to deficiency of thyroid glands is the use of desiccated thyroid indicated. In all other cases it is dangerous for a person to use thyroid in the quantities contained in "Dr. Thomas' I 157" without an examination and the advice and direction of a competent physician. The laity cannot tell whether or not obesity is due to a deficient thyroid gland. This can only be ascertained by the examination of a competent physician.

PAR. 5. 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 weight or other weight or flesh.

Such persons are unskilled in medical science and depend for their information as to what treatment, remedy, method, or system they may safely purchase, take or use, largely upon statements and representations of the makers and sellers thereof.

PAR. 6. Respondent's said advertising described in paragraph 3 above is false, misleading, and deceptive in that:

1. Desiccated thyroid has been used by physicians in the type of obesity due to defective thyroid gland for many years and is not new;

2. The use of desiccated thyroid does not always convert food into fuel and energy or either of them;

3. In that respondent fails to disclose that:

(a) Dr. Thomas' R 157 contains desiccated thyroid in quantities such as to make it a powerful and dangerous medicine;

(b) That it is only suitable as a medicine for obesity in the cases of deficiency of the thyroid gland and that these cases are rare and exceptional and can only be diagnosed as such by a competent physician;

(c) That medical science and physicians justify the use of thyroid as a treatment for obesity or excess weight only in cases where obesity or excess abnormal fat is caused by deficiency of thyroid gland and that competent physicians prescribe its use only in such cases;

(d) That in cases of obesity or abnormal fat not caused by deficiency of thyroid gland the use of thyroid is not indicated and its use therein may be and is likely to be harmful to the health of the user;

(e) That many persons are so constituted that they may not use Dr. Thomas' R 157 with safety to physical health;

(f) That respondent's preparation, Dr. Thomas' R 157, is one which can not be used with safety to physical health except under medical prescription and advice.

PAR. 7. Said statements and representations so made by respondent and said failures to disclose have the tendency and capacity to induce the members of the public and prospective purchasers to form the mistaken and erroneous belief that said representations as set out in paragraph 3 are true and that said product is a safe, harmless and competent remedy or treatment for all classes and types of obesity and into the purchase of Dr. Thomas' R 157 in preference to and to the exclusion of preparations, systems,, methods or other means of treatment being offered for sale in said commerce by said competitors of respondent as hereinabove alleged. Thereby trade is unfairly diverted to respondent from its said competitors to the injury of competition in commerce among and between the various States of the United States and to the injury of the public.

PAR. 8. The above alleged acts and practices are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade

Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 16th day of February 1937, issued, and on February 18, 1937, served its complaint in this proceeding upon respondent, Glenn Laboratories, 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 duly advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Glenn Laboratories, 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 287 West 127th Street, New York City, in said State.

Respondent corporation is now and, for several years last past, has been engaged, among other things, in the manufacture, sale, and distribution of a proprietary remedy or medicine which it designates and calls "Dr. Thomas' B 157" and is for use in the treatment of obesity. Respondent ships, or causes to be shipped or transported, its said product, when so sold, from its place of business in the State of New York to purchasers thereof located at points in various States of the United States other than in the State of New York.

Respondent sells its said product to wholesale and retail druggists. Said wholesale druggists sell and ship the same to retail druggists.

Such retail druggists in various States of the United States sell the same to their customers, who are usually members of the laity. There is now and has been during all the times herein mentioned, a constant current of trade in such product so sold by the respondent 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 said business respondent corporation is now and during all of the times herein mentioned engaged in substantial competition with various other corporations, copartnerships, firms, and individuals, selling and offering for sale, obesity remedies of like or otherwise competitive products, to wit: preparations, systems, methods, or other means of treatment for obesity or reduction of weight from the human body.

PAR. 3. Respondent in aid of so offering and selling "Dr. Thomas' B 157" as aforesaid, advertised the same in newspapers, magazines, periodicals of general circulation, by means of radio broadcasts, in pamphlets and in and by other methods of advertising media. In, by and through each of the advertising media above-enumerated, respondent represents expressly, or by implication, (a) that said product is new; (b) that its use constitutes a simple new method; (c) that the use of said product converts food into fuel and energy; (d) that said product can be safely taken by members of the laity without direction from a physician; (e) that said product is safe, harmless and efficacious in all types or classes of obesity.

Typical of its said advertisements are the following, which are caused to be published by respondent in newspapers, in cities and towns in various States of the United States where said product is handled by druggists:

NO MORE UGLY FAT

Pounds of ugly fat melt away as if by magic! No starvation diet or strenuous exercise! Eat as much as you want—everything you like within reason! Away goes that hideous flesh! New Beauty—new health—for you! B 157 is a Doctor's prescription! Simply take one capsule after each meal. Get a bottle of Dr. Thomas' B 157 at your drug store and begin taking it TODAY Two sizes—\$1 and \$2.50. Guaranteed not to contain dinitrophenol. REMEMBER: RESULTS GUARANTEED OR MONEY REFUNDED! Sold at Grant Drug Co., Morgan Drug Co., Tarrant Drug Co., L. T. Wright Drug Co., and all other good drug stores.

If everything you eat seems to turn to fat, the chances are your system is lacking in natural glandular substance which nature provides to control the fat-making process. Instead of fat turning into energy, it remains unused. However, through a New York Doctor's prescription, you can provide this natural regulating substance.

PAR. 4. Dr. Thomas' B 157 is a product made of several ingredients. Its only ingredient which is effectual in ridding human bodies of portions of fat or other body tissue or weight, is desiccated thyroid. The reducing effect produced by the use of Dr. Thomas' B 157 is the same as the effect produced by taking an equal amount of desiccated thyroid. Dr. Thomas' B 157 contains one-half grain of desiccated thyroid. It is put up in capsules and is to be taken three times daily orally, i. e. one and one-half grains of desiccated thyroid per day.

Desiccated thyroid is made from the thyroid gland of domestic animals. It is a powerful and dangerous drug.

There are persons whose bodies in their natural and normal state are so constituted that they 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 the body, is through examination by a competent physician or by experimental use by such person under medical supervision, or by both such methods combined. Only by the same means may it be ascertained in how large a quantity thyroid may be taken or used by such a person without harmful results.

There are conditions of the human body which make it harmful to take or use thyroid. Among these is pregnancy. Other such conditions are defects, or abnormalities of the heart or kidneys. Any defect or abnormality of the body is apt to make the taking or the use of thyroid harmful to the user.

Only by examination made by a competent physician may it be ascertained whether or not the body of such person has any such condition, defect, or abnormality which makes it harmful for such person to take or use thyroid.

Obesity is generally caused from overeating, but it may be the result of more than one cause. One of the causes is a deficient or abnormally inactive thyroid gland. Deficiency or abnormal inactivity of thyroid glands causes obesity or abnormal excess fat in only rare and exceptional cases. In a large majority of the total number of cases of obesity the persons affected do not have deficient thyroid glands and such obesity or abnormal excess weight is the result of a cause or causes other than deficient thyroid glands. Only in cases of obesity due to deficiency of thyroid glands is the use of desiccated thyroid indicated. In all other cases it is dangerous for a person to use thyroid in the quantities contained in Dr. Thomas' B 157 and in the dosage suggested by respondent without an examination and

the advice and direction of a competent physician. The laity cannot tell whether or not obesity is due to a deficient thyroid gland. This can only be ascertained by the examination of a competent physician.

PAR. 5. 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 weight or other weight or flesh.

Such persons are unskilled in medical science and depend for their information as to what treatment, remedy, method, or system they may safely purchase, take, or use, largely upon the statements and representations of the makers and sellers thereof.

PAR. 6. Respondent's said advertising described in paragraph 3 above is false, misleading, and deceptive in that:

1. Desiccated thyroid has been used by physicians in the type of obesity due to defective thyroid gland for many years and is not new;

2. The use of desiccated thyroid does not always convert food into fuel and energy or either of them;

3. In that respondent fails to disclose:

(a) Dr. Thomas' B; 157 contains desiccated thyroid in quantities such as to make it a powerful and dangerous medicine;

(b) That it is only suitable as a medicine for obesity in the cases of deficiency of the thyroid gland and that these cases are rare and exceptional and can only be diagnosed by a competent physician;

(c) That medical science and physicians justify the use of thyroid as a treatment for obesity or excess weight only in cases where obesity or excess abnormal fat is caused by deficiency of the thyroid gland, that competent physicians prescribe its use only in such cases;

(d) That in cases of obesity or abnormal fat not caused by deficiency of thyroid gland the use of thyroid is not indicated and its use therein may be and is likely to be harmful to the user;

(e) That many persons are so constituted that they may not use Dr. Thomas' B; 157 with safety to physical health;

(f) That respondent's preparation, Dr. Thomas' B; 157, is one which cannot be used with safety to physical health except under medical prescription and advice.

PAR. 7. Said statements and representations so made by respondent and said failures to disclose as set forth in paragraph 6 hereof have the tendency and capacity to induce the members of the public and prospective purchasers to form the mistaken and erroneous belief that such representations as set forth in paragraph 3 are true and

that said product is a safe, harmless and competent remedy or treatment for all classes and types of obesity and to induce them to purchase "Dr. Thomas' B 157" in preference to and to the exclusion of preparations, systems, methods, or other means of treatment being offered for sale in said commerce by said competitors of respondent as hereinabove alleged; thereby trade is unfairly diverted to respondent from its said competitors to the injury of competition in commerce among the various States of the United States and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Glenn Laboratories, 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 substitute answer filed herein on the 29th day of March 1937, by respondent, admitting all of the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That respondent, Glenn Laboratories, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of "Dr. Thomas' B 157" in interstate commerce or in the District of Columbia, so long as said product contains desiccated thyroid or other form of thyroid, do forthwith cease and desist from representing, expressly or by implication, in newspapers, magazines, periodicals, in radio broadcasts, in pamphlets, on cartons containing said product, and in, by and through other advertising media:

1. That said product is new;
2. That its use constitutes a simple new method of treating obesity;
3. That the use of said product converts food into fuel and energy;
4. That said product can be safely taken by members of the laity

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without a physical examination by a competent physician and without the advice and direction of a competent physician during the taking thereof;

5. That said product is safe, harmless, and efficacious, or either of them, in all types or classes of obesity;

6. Or any other statement or representation of like import, including failure to affirmatively disclose by, in and through each and all of the said media that said product contains a dangerous and powerful ingredient and cannot be safely taken by members of the laity without a physical examination by a competent physician and without the advice and direction of a competent physician during the taking thereof.

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
EUCATHOL COMPANY, INC.¹

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

Docket 3069. Complaint, Mar. 4, 1937—Decision, June 29, 1937

Where a corporation engaged in manufacture and sale of "Eucathol" compound or medicine for use in treatment of coughs, colds, scalds and other afflictions, and also for use as after-shaving cream, through rubbing or massaging same on skin or through inhalation of vapors thereof, in substantial competition with those engaged in sale or offer to general public of compounds, medicines, salves, and ointments used for purposes for which its said preparation was offered—

Falsely represented, in advertising its said product in newspapers and periodicals of general circulation, and through radio broadcasts, and in pamphlets and printed testimonials, and other printed matter, as set forth, through use of photographs, pictures, and legends, on cartons containing same, and in circulars enclosed therewith, and in other advertising media, that use of such "Eucathol" would prevent and cure, or was beneficial in treatment of "insect bites, sunburn, piles and hemorrhoids, asthma and hay-fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, flu and pneumonia";

With tendency and capacity to induce members of the public and prospective purchasers to form mistaken and erroneous beliefs that said statements and representations were true, and with result that such purchasing public, acting in such erroneous belief, was induced to buy and bought its said product, and thereby unfairly diverted trade to it from its competitors; to the injury of competition in commerce, and to 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. E. J. Hornibrook for the Commission.

Stanard, Carey & Stanard, of Shawnee, Okla., 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 Eucathol Company, Inc., a corporation, 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 and states its charges in that respect as follows:

¹ See modified findings and order, as of Nov. 3, 1937, in this case, *infra*, at page 1290.

PARAGRAPH 1. Respondent, The Eucathol Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located in the city of Shawnee, in said State. Respondent is now, and has been for several years last past, engaged at said location in the manufacture and sale of a compound for use in the treatment of coughs, colds, scalds, burns, sunburn, insect bites, hay fever, asthma, and other human afflictions. Said compound is also sold for use as an after shaving cream. Said compound is put up in containers and is to be applied by rubbing or massaging it onto the flesh, or by inhaling its vapors. Respondent has designated said compound as "Eucathol." Respondent sells said product to wholesale druggists who sell said product to retail druggists, and also direct to retail druggists. The retail druggists sell said product directly to the consumers thereof.

In the course and conduct of said business respondent ships, or causes to be shipped or transported, said product when so sold from the city of Shawnee in the State of Oklahoma to said wholesale and retail druggists, many of whom are located in points in various States other than the State of Oklahoma. There is now, and has been during all of the times herein mentioned, a constant current of trade in said product so sold by said respondent 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 said business, respondent is now, and has been during all of the times herein mentioned, engaged in substantial competition with various corporations, firms, and individuals selling, or offering for sale, to the general public compounds, medicines, salves, and ointments and other remedies used for the purposes described in paragraph 1 hereof.

PAR. 3. In the course and conduct of the business as aforesaid, respondent, in soliciting the sale of and selling said product, has advertised the same in newspapers, magazines, periodicals of general circulation, by means of radio broadcasts, and in pamphlets, printed testimonials, and other printed matter. It has also made use of photographs, other pictures and legends on cartons containing said compound and in circulars inclosed in said cartons, and in other advertising media. In and through each and all of the advertising media above enumerated, respondent has made, and is making, expressly or by implication, the following representations:

That the use of Eucathol will prevent and cure, or is beneficial in the treatment of: insect bites, sunburn, piles and hemorrhoids, asthma and hay fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, flu and pneumonia, and other ailments.

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PAR. 4. The representations described and set forth in paragraph 3 above are false and misleading, in that the use of Eucathol will not prevent and cure, and is not beneficial in the treatment of, insect bites, sunburn, piles and hemorrhoids, asthma and hay fever, catarrh, colds, skin irritations, skin disorders, scalds and burns, flu and pneumonia, or other ailments or afflictions of the human body for which it is recommended by the respondent.

PAR. 5. Said statements and representations set forth in paragraph 3 so made by respondent have, and have had, the tendency and capacity to induce members of the public and prospective purchasers to form the mistaken and erroneous belief that said statements and representations are true, and, acting in such erroneous belief, the said purchasing public has been induced to purchase, and has purchased, respondent's product, thereby unfairly diverting trade to respondent from its said competitors, to the injury of competition in commerce among and between the various States of the United States, and to the injury of the public.

PAR. 6. The above alleged acts and practices 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 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 4th day of March 1937, issued and served its complaint in this proceeding upon respondent, Eucathol Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the 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 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, the Eucathol Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located in the city of Shawnee, in said State.

Respondent is now, and has been for several years last past, engaged at said location in the manufacture and sale of a compound, or medicine, for use in the treatment of coughs, colds, scalds, burns, sunburn, insect bites, hay fever, asthma, influenza and other human afflictions. Said compound is also sold for use as an after-shaving cream. Said compound is put up in containers and is to be applied by rubbing or massaging it on the flesh, or by inhaling its vapors. Respondent has designated the said compound as "Eucathol." Respondent sells said product to wholesale druggists who sell said product to retail druggists, and also direct to retail druggists. The retail druggists sell said product directly to the consumers thereof.

In the course and conduct of said business respondent ships, or causes to be shipped or transported, said product when so sold, from the city of Shawnee in the said State of Oklahoma to said wholesale and retail druggists, many of whom are located at points in various States other than the State of Oklahoma. There is now, and has been, during all the times herein mentioned, a constant current of trade in said product so sold by said respondent 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 said business, respondent is now and has been, during all of the times herein mentioned, engaged in substantial competition with various corporations, copartnerships, firms, and individuals, selling, or offering for sale, to the general public, compounds, medicines, salves, and ointments and other medicines used for the purposes described in paragraph 1 hereof.

PAR. 3. In the course and conduct of the business as aforesaid, respondent, in soliciting the sale and selling said product, has advertised the same in newspapers, magazines, periodicals of general circulation by means of radio broadcasts, and in pamphlets, printed testimonials and other printed matter, and in, by and through the use of photographs, other pictures and legends on cartons containing the said compound, and in circulars enclosed in said cartons, and in

other advertising media. In and through each and all of the advertising media above enumerated, respondent has made and is making, expressly or by implication, the following representations: That the use of Eucathol will prevent and cure, or is beneficial in the treatment of insect bites, sunburn, piles, hemorrhoids, asthma, and hay fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, influenza, pneumonia and other ailments.

PAR. 4. The statements and representations set forth in the preceding paragraph are false and misleading in that the use of Eucathol will not prevent and cure, nor is its use beneficial in the treatment of "insect bites, sunburn, piles and hemorrhoids, asthma and hay fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, flu and pneumonia."

PAR. 5. Said statements and representations set forth in paragraph 3 herein, so made by respondent, have, and have had a tendency and capacity to induce members of the public and prospective purchasers to form the mistaken and erroneous belief that said statements and representations are true and, acting in such erroneous belief, the said purchasing public has been induced to purchase, and has purchased, respondent's said product, thereby unfairly diverting trade to respondent from its said competitors to the injury of competition in commerce among and between the various States of the United States and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Eucathol Company, Inc., a corporation, are 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 substitute answer filed herein on the first day of May 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

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

It is ordered, That the respondent, Eucathol Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its product now known as “Eucathol” in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, expressly or by implication, in newspapers, magazines, periodicals, in radio broadcasts, in pamphlets, and in, by and through other advertising media, that the use of its said product “Eucathol,” or any other product composed of substantially the same ingredients as the product now known as “Eucathol,” will prevent or cure, or is beneficial in the treatment of insect bites, sunburn, piles and hemorrhoids, asthma and hay fever, catarrh, colds, skin irritations, scalds, and burns, skin disorders, influenza and pneumonia.

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

GEORGE C. MILLER & 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 3106. Complaint, Apr. 15, 1937—Decision, June 29, 1937

Where a corporation engaged in manufacture and sale of candy, including assortments so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumers thereof, and consisting of a number of boxes or packages of candy of varying size, together with punch-board, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser received, for five cents paid, one of said boxes or packages as a prize and without additional charge, or, except as hereinbelow set forth, nothing other than privilege of making a punch, depending upon number secured by chance, and purchaser of last punch in each section, and purchaser of last punch on board, similarly received specified box or package without additional charge—

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 means of conducting lotteries in sale of 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 and sell candy so packed and assembled, or otherwise arranged and packed for sale to the purchasing public, as to involve game of chance, refrain therefrom;

With capacity and tendency of inducing purchasers to buy its said products in preference to candy offered and sold by its competitors, and 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 scheme of chance, to divert to it trade and custom from its said competitors who do not use same or equivalent methods, exclude from such trade all competitors who are unwilling to and do not use such or an equivalent method as unlawful, lessen competition therein and tend to create a monopoly thereof in it and such other competitors as use same or equivalent method, deprive purchasing public of benefits 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 equivalent method:

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.

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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 George C. Miller & 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 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 and doing business under the laws of the State of Massachusetts, with its principal office and place of business located at 927 Washington Street, in the city of Boston, State of Massachusetts. It is now, and for several years last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States. It causes and has caused its said products when sold to be transported from its principal place of business in Boston, Mass., to purchasers thereof in the State of Massachusetts and in other States of the United States at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States.

In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Such assortments are composed of a number of boxes or packages of candy of varying size, together with a device commonly called a "punchboard." The boxes or packages of candy contained in said assortments are distributed to purchasers in substantially the following manner:

Said punchboards contain a number of holes divided into sections. In each hole a slip of paper bearing a printed number is secreted.

The punchboard also bears at the top thereof a number of printed legends or statements informing customers and prospective customers which numbers receive a box of candy and the size thereof. Sales are 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy is entitled to receive the same as a prize without additional charge. The purchaser of the last punch in each section and the purchaser of the last punch on the board are entitled to receive a specified box or package of candy as a prize and without additional charge. Purchasers of punches who do not procure one of the numbers calling for a box of candy receive nothing for their money other than the privilege of punching a number from said board. The numbers on said printed slips secreted in said punchboard are effectively concealed from purchasers and prospective purchasers until a selection has been made and the printed slip separated from the board. The boxes or packages of candy are thus distributed to the consuming public wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments resell the same to retail dealers, and such retail dealers expose said assortments for sale and sell said packages of 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. Such 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 its competitors.

PAR. 4. The sale of 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 or package 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 competitors of respondent 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 competitors of candy as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity 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. The aforementioned method, acts, and practices of 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, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on April 15, 1937, issued and on April 16, 1937, served its complaint in this proceeding upon the respondent, George C. Miller & Co., Inc., a corporation charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent filed answer thereto admitting all the material allega-

Findings

tions 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 complaints and answer thereto, briefs and oral argument of counsel having been waived; and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and doing business under the laws of the State of Massachusetts, with its principal office and place of business located at 927 Washington Street, in the city of Boston, State of Massachusetts. It is now, and for several years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States. It causes and has caused its said products when sold to be transported from its principal place of business in Boston, Mass., to purchasers thereof in the State of Massachusetts and in other States of the United States at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Such assortments are composed of a number of boxes or packages of candy of varying size, together with a device commonly called a "punchboard." The boxes or packages of candy contained in said assortments are distributed to purchasers in substantially the following manner: Said punchboards contain a number of holes divided into sections. In each hole a slip of paper bearing a printed number is secreted. The punchboard also bears at the top thereof a number of printed legends or statements informing customers and prospective customers which numbers receive a box of candy and

the size thereof. Sales are 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy is entitled to receive the same as a prize without additional charge. The purchaser of the last punch in each section and the purchaser of the last punch on the board are entitled to receive a specified box or package of candy as a prize and without additional charge. Purchasers of punches who do not procure one of the numbers calling for a box of candy receive nothing for their money other than the privilege of punching a number from said board. The numbers on said printed slips secreted in said punchboard are effectively concealed from purchasers and prospective purchasers until a selection has been made and the printed slip separated from the board. The boxes or packages of candy are thus distributed to the consuming public wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments resell the same to retail dealers, and such retail dealers expose said assortments for sale and sell said packages of 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. Such 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 its competitors.

PAR. 4. The sale of candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a box or package 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 competitors of respondent 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 are unwilling to offer for sale or sell candy so packed and assembled as above described, 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 an equivalent method. 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 competitors of candy as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity 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.

CONCLUSION

The aforesaid acts and practices of the respondent, George C. Miller & Co., 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 April 29, 1937 by the respondent admitting all the material allegations of the complaint to be true, and the respondent having waived filing of briefs and 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."

Order

25 F. T. C.

It is ordered, That the respondent, George C. Miller & Co., Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of candy in interstate commerce, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers candy so packed and assembled that sales of such candy to the general public are to be made, or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers or jobbers assortments of candy which are used, or which may be used without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Supplying to or placing in the hands of wholesale dealers or jobbers assortments of candy, together with a device commonly called a "punchboard" for use, or which may be used, in distributing or selling said candy to the public at retail.

4. Furnishing to wholesale dealers or jobbers a device commonly called a "punchboard," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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, George C. Miller & Co., Inc., a corporation, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

WOLF CREEK SOAP COMPANY

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

Docket 3116. Complaint, Apr. 26, 1937—Decision, June 29, 1937

Where a corporation engaged in manufacture, sale, and distribution of soap to retailers and peddlers and direct to consuming public, in substantial competition with those engaged in manufacture and distribution of like and similar products and sale thereof in commerce among the various States and in the District of Columbia—

- (a) Described many articles and items listed in its price lists as possessing retail values or prices many times in excess of their actual selling price to retailer or other purchaser, and many times in excess of actual retail price thereof, and thus included items and articles such as soaps and cold creams and combinations with retail prices stamped or printed thereon, or on labels attached thereto, or on containers in which offered and sold to public, which similarly exceeded actual selling price of particular item or article sold by peddler or retailer to consuming public, and were many times in excess of true and actual value, and constituted false and fictitious retail prices representing in no sense either true value or selling price of articles thus marked, and thus placed in hands of aforesaid peddler and retailer purchasers instrument and means enabling them to commit a fraud upon substantial portion of consuming public through representing and offering said articles as genuinely superior products produced by manufacturers for sale in usual course of trade to general consuming public at and for retail price stamped thereon or on containers thereof; and
- (b) Falsely represented, through use of abbreviation "Dr.", and name of individual, and word "Medicated" in name of one of its aforesaid products or offerings, that medical doctor was connected with derivation of formula from which said soap combination was made, and that it had ingredients of such a character as to give it substantial therapeutic value as a true medicated soap, facts being no physician was in any way connected with such formula or manufacture of said product, which contained no ingredients of the therapeutic nature in such quantities, if present at all, as to give such soap any such value;
- With effect of misleading substantial portion of consuming public in the several States and in said District by inducing them mistakingly and erroneously to believe that items of merchandise described as aforesaid were of superior value and sold and distributed by it with intent that they should be resold at retail prices closely approximating those stamped thereon, and that such products, because of prices thus affixed or stamped, were composed of superior ingredients and ordinarily retailed, in usual course of trade, for prices closely approximating those marked thereon as aforesaid, and that a doctor of medicine derived formula from which aforesaid soap combination was made, or was connected with manufacture thereof, and with tendency and capacity to mislead and deceive distributors and

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25 F. T. C.

purchasing public into erroneous and mistaken belief that such statements and representations were true, and with effect of inducing members of public to buy its said products by reason of such erroneous beliefs, and of thereby unfairly diverting trade to it from competitors who do not make use of same or similar acts or practices; to the substantial injury of competition in commerce:

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

Mr. S. Brogdyne Teu II for the Commission.

Holland & Holland, of Dayton, 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 the Wolf Creek Soap Company, an Ohio corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Wolf Creek Soap Company, is a corporation organized and doing business under the laws of the State of Ohio, having its principal place of business in the city of Dayton, State of Ohio. It is now, and has been for more than one year last past, engaged in the manufacture and in the sale and distribution of soap 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 said business, respondent is now and has been in substantial competition with other corporations, and with individuals, firms, and partnerships likewise engaged in the business of manufacturing and selling soaps and other household novelties in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. When said products are sold, respondent transports, or causes same to be transported, from its place of business in the State of Ohio to purchasers thereof located in States of the United States other than the State of Ohio, 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 sold by respondent between and among the various States of the United States and in the District of Columbia.

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PAR. 4. Respondent in soliciting the sale and in the selling of its commodities, and for the purpose of creating a demand on the part of the consuming public for certain commodities, has advertised its commodities through the media of price lists and other printed matter published, issued and circulated through the United States mails to its customers and prospective customers in the various States of the United States and in the District of Columbia.

PAR. 5. In the aforesaid ways and by the aforesaid means, respondent makes and has made to the general public false and misleading statements with reference to the commodities offered for sale by it. Many articles and items of merchandise are priced and described as possessing retail prices and values greatly in excess of the respondent's actual selling price to the retailers or other purchasers, and greatly in excess of the actual value thereof. A number of the said items and articles of merchandise described as aforesaid have fictitious retail prices stamped on the product itself or printed on the labels attached thereto, or on the containers in which they are offered for sale and sold to the public.

PAR. 6. Representative of such statements and representations made by respondent on the containers regarding the selling price and value of the commodities thus offered by it for sale, are the following: "Majestic Assortment of Toilet Soaps—Estimated total value \$1.00;" "Majestic Baby Castile Soap—Price \$.50;" "Lady Estel Cold Cream Soap Combination—Price 75¢;" and "Dr. Bernard's Medicated Health Soap Combination—Price 75¢."

On other labels and cartons used by the respondent many other fictitious retail prices are imprinted. As a result of the use of such fictitious price marks as described, the respondent has led the members of the purchasing public to mistakenly believe that said soaps have retail values approximating said fictitious prices and are made from superior ingredients and are of superior quality.

As a result of the use of the words "Dr. Bernard's" the purchasing public is led into the mistaken and erroneous belief that a medical doctor was, or is, connected with the formation of the formula from which the so-called "Dr. Bernard's Medicated Health Soap Combination" is made, and that said soap has ingredients of such character as to give it substantial therapeutic value as a true medicated soap.

PAR. 7. In truth and in fact, the Majestic Assortment of Toilet Soaps is sold to retail dealers for 8¢ per unit; Majestic Baby Castile Soap is sold to retail dealers for 8¢ per unit; Lady Estel Cold Cream Soap Combination is sold to retail dealers for 8¢ per unit; and Dr. Bernard's Medicated Health Soap is sold to retail dealers for 8¢ per unit.

All of said soaps are in fact made from cheap and inferior ingredients and said soaps themselves are of cheap and inferior quality and are not of such quality as to justify a retail price in any way closely approximating the retail price or value represented.

Further, in truth and in fact, no doctor or physician was in any way connected with the discovery of the formula for, or is now in any way connected with the manufacture of, the so-called "Dr. Bernard's Medicated Health Soap." Said soap does not contain any ingredients that are of therapeutic character in such quantity, if at all, as to give said soap any therapeutic value.

PAR. 8. The respective items above referred to are usually and regularly sold to retail dealers and peddlers for the price indicated in paragraph 7.. The said retail prices at which the products are actually sold to retail customers do not appear on the containers.

PAR. 9. Over a period of many years, manufacturers in many trades have adopted and followed the custom of marking or stamping on an article or item of manufacture, or on the carton thereof, the retail price at which the said manufacturer suggests that the retailer should sell the item or article to the ultimate consumer or purchaser. This suggested retail price so stamped or marked is intended to represent the cost to the manufacturer of the article, plus a reasonable profit for the manufacturer and retailer, and, consequently, to represent the approximate retail sale value of the item. The public generally understands this custom, and has been lead to and does place its confidence in the price marking so stamped and the representations so made as to the quality of the product, to the extent that it purchases a substantial volume of merchandise in reliance upon this aforesaid custom.

PAR. 10. For many years a substantial part of the consuming public has had and has expressed a preference for soaps and for similar household articles which are composed of superior ingredients, and which are produced by the manufacturers thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products or for products made of inferior ingredients. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail price on said products as indicating the superior quality and character of the products and their higher value.

Whenever a genuinely superior product so stamped or marked with the retail price thereon is offered for sale at a substantially reduced price, the general purchasing public is lead to believe and does believe that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing

public has a preference for purchasing genuinely superior products sold at less than the customary retail price thereof over ordinary products sold for their regular price, which is lower than the normal retail value of the superior products in the customary course of trade:

PAR. 11. The retail prices so stamped or printed as aforesaid upon respondent's products are greatly in excess of the selling price of the said items or articles or merchandise by the retailer to the consuming public and are in excess of their true and actual value. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the selling price of the articles so price-marked.

PAR. 12. The aforesaid false and misleading advertising and representations, together with the aforesaid false and fictitious price-markings on the part of the respondent, place in the hands of the aforesaid peddlers and retailers buying for resale, an instrument and means whereby said peddlers and retailers may commit a fraud upon a substantial portion of the consuming public, by enabling such dealers to represent and offer for sale and sell respondent's soaps as being genuinely superior products produced by the manufacturer thereof with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for approximately the retail price stamped on said products or on their containers.

PAR. 13. There are among the competitors of the respondent in commerce, as described in paragraph 2 above, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and value of their respective products. There are also among the competitors of the respondent manufacturers and distributors of like and similar products who refrain from representing, by fictitious price markings, that the merchandise offered for sale by them has merit or value that it does not have.

PAR. 14. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale such items of merchandise as hereinbefore referred to, is to mislead a substantial portion of the purchasing and consuming public in the several States of the United States by inducing them to erroneously and mistakenly believe:

1. That the various soaps sold and distributed by respondent were and are of superior value and were and are made and compounded by respondent with the intent and purpose that said products should be sold at retail prices closely approximating the prices stamped thereon.

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2. That the said products, because of the price marks stamped or fixed thereon, are composed of superior ingredients and are products which ordinarily retail in the usual course of trade for prices closely approximating the prices stamped on the merchandise.

3. That a medical doctor is connected with the compounding and manufacturing of Dr. Bernard's Medicated Health Soap; that said product is made under the formula of a medical doctor; and that said product has substantial therapeutic value.

PAR. 15. The foregoing false and misleading statements and representations on the part of respondent have induced, and still induce, a substantial number of retail merchants, as well as the consumer purchasers of said commodities, to buy the products offered for sale, sold, and distributed by respondent, on account of the aforesaid erroneous and mistaken beliefs. As a result thereof, trade has been diverted from those competitors of respondent engaged in similar businesses, referred to in paragraph 13 above. As a consequence thereof, substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 16. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors, as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on April 26, 1937, issued and served its complaint in this proceeding upon respondent, Wolf Creek Soap 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 entered into between W. T. Kelley, Chief Counsel of the Commission, and George F. Holland, counsel for respondent, which said stipulation was thereafter approved by the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, and the stipulation as to the facts (respondent having waived the filing of a brief); and the Commission

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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, Wolf Creek Soap Company, is an Ohio corporation organized and doing business by virtue of and under the laws of the State of Ohio.

PAR. 2. Respondent has been for more than one year last past engaged in the business of manufacturing, selling, and distributing soap to retailers and peddlers, and direct to the consuming public.

PAR. 3. In the sale of said product respondent has transported or caused the same to be transported from its principal place of business in the State of Ohio to purchasers thereof located in States of the United States other than the State from which shipment originated, and in the District of Columbia.

There has been for more than one year last past, and still is, a constant current of trade and commerce in said soap so sold and distributed by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 4. For more than one year last past the respondent has been engaged in substantial competition with other individuals, partnerships, firms, and corporations engaged in the manufacture and distribution of like and similar products and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business as aforesaid the respondent, in soliciting the sale of and in selling its product, and for the purpose of creating a demand on the part of the consuming public for said product, has for more than one year last past caused its product to be advertised through the media of price lists and other printed matter published, issued, and circulated through the United States mails to its customers and prospective customers in the various States of the United States and in the District of Columbia. In said ways and by said means, respondent has made to the general public many unfair, false, and misleading statements with reference to the commodities offered by it for sale.

PAR. 6. Many articles and items of merchandise listed in said price lists have been described as possessing retail values or prices many times in excess of the actual selling price by the respondent to the retailer or other purchaser, and many times in excess of the actual retail price thereof.

A number of the said items and articles of merchandise described in said price lists have retail prices stamped or printed thereon, on the labels attached thereto, or on the containers in which they have been offered for sale and sold to the public.

The retail prices so stamped or printed as aforesaid are many times in excess of the actual selling price of the said items or articles of merchandise sold by the peddler or retailer to the consuming public, and are many times in excess of their true and actual value. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

PAR. 7. Among the misleading and fictitious price markings, false branding, and mislabeling appearing on cartons and containers and described by respondent in its price lists and other advertising matter are the following:

1. "Majestic Assortment of Toilet Soaps—estimated total value \$1," whereas this item is sold by respondent at retail for 8¢ per unit.
2. "Majestic Baby Castile Soap—price 50¢," whereas this item is sold by respondent at retail at 8¢ per unit.
3. "Lady Estel Cold Cream Soap Combination—price 75¢," whereas this item is sold by respondent at retail for 8¢ per unit, and
4. "Dr. Bernard's Medicated Health Soap Combination—price 75¢," whereas this item is sold by respondent at retail for 8¢ per unit.

PAR. 8. The false and misleading advertising and representations hereinabove set out together with the false and fictitious price markings herein set out on the part of the respondent place in the hands of the aforesaid peddlers and retailers buying for resale an instrument and means whereby said peddlers and retailers may, and do, commit a fraud upon a substantial part of the consuming public by enabling such dealers to represent and offer for sale and sell the said soaps as genuinely superior products produced by the manufacturers thereof with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for the retail price stamped on the products or on their containers.

PAR. 9. Over a period of many years manufacturers have in many trades formed the custom of marking or stamping on the article or item of manufacture, or on the container thereof, the retail price at which said manufacturer suggests the retailer should sell the item or article to the ultimate consumer purchaser. This suggested retail price so stamped or marked is intended to represent the cost of the manufacture of the article, plus a reasonable profit for the manufacturer and retailer and, consequently, to represent the approximate retail sales value of the item. The range of the suggested retail price

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is intended by the manufacturer to be indicative of the quality and character of the ingredients used and the process by which the item is manufactured. The public generally understands the custom herein detailed and has been led to, and does, place its confidence in the price markings so stamped and the representations thereby made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

PAR. 10. For many years a substantial portion of the consuming public has expressed, and has had, a marked preference for soaps and toilet articles that are composed of superior ingredients and are produced by the manufacturer thereof with the intent and the design of selling said products for the prices in excess of the general and usual range of prices for similar products manufactured with the usual and customary ingredients. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail prices on said products as an indication of the superior quality and character of the product in its resulting higher value. Whenever a genuinely superior product so stamped or marked with the retail price thereof is offered for sale at a substantially reduced price the general purchasing public has been led to believe, and does believe, that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail value thereof over ordinary products sold for the regular price, which is lower than the normal retail price of the superior product in the customary course of trade.

PAR. 11. Through the use of the words "Dr. Bernard's" the purchasing public is led into the mistaken and erroneous belief that a medical doctor was or is connected with the derivation of the formula from which the so-called "Dr. Bernard's Medicated Health Soap Combination" was and is made and that said soap has ingredients of such character as to give it substantial therapeutic value as a true medicated soap.

No doctor or physician was or is in any way connected with the derivation of the formula for, or in any way connected with the manufacture of, the so-called "Dr. Bernard's Medicated Health Soap Combination." The said soap does not contain any ingredients that are of therapeutic nature in such quantity, if present at all, as to give the said soap any therapeutic value.

PAR. 12. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale the items of merchandise herein described is to mislead a substan-

tial portion of the consuming public in the several States of the United States and in the District of Columbia by inducing them to mistakenly and erroneously believe:

1. That the various items of merchandise described in respondent's price lists and other advertising media are of superior value and are sold and distributed by respondent with the intent and purpose that said products should be sold at retail prices closely approximating the prices stamped thereon.

2. That the said products, because of the price marks affixed or stamped thereon, are composed of superior ingredients and are products which ordinarily retail in the usual course of trade for prices closely approximating the prices stamped on the merchandise.

3. That a medical doctor or doctor of medicine derived the formula from which the so-called "Dr. Bernard's Medicated Health Soap Combination" is made or is connected with the manufacture of said soap.

PAR. 13. The use of each and all the foregoing false and misleading statements and representations as herein set out has had, and now has, the tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and has induced, and now induces, members of the public to purchase the products of the said respondent on account of such erroneous beliefs. Said representations have thereby unfairly diverted trade to said respondent from competitors who do not make use of the same or similar acts and practices and substantial injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforementioned acts and practices of the respondent, Wolf Creek Soap 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 of facts entered into between

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the respondent herein, Wolf Creek Soap 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, Wolf Creek Soap Company, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of soap in commerce among and between the various States of the United States and in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, through use of the word "Doctor" or the abbreviation "Dr.," alone or in conjunction with any other word or words or through the use of any other word or words of similar import, meaning, and effect, or through any other means or device, or in any other manner, that any of its soap products is made pursuant to the formula of, or under the supervision and direction of, any doctor;

2. Representing, directly or indirectly, through the use of the word "Medicated," alone or in conjunction with any other word or words, or through the use of any other word or words of similar import, meaning and effect, or through any other means or device, or in any other manner that any of its soaps and soap products have any medicinal and therapeutic properties or value unless said products actually contain ingredients of a medicinal and therapeutic nature in such quantity as to give said products a substantial medicinal and therapeutic value;

3. Representing, directly or indirectly, through use of fictitious or exaggerated price markings and labels, or through any other means or device, or in any manner, that its soaps and soap products have retail values or prices in excess of their actual retail values or prices or in excess of the prices at which they are ordinarily sold or offered for sale at retail.

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

IN THE MATTER OF
WOLVERINE GUM, INC.

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

Docket 3145. Complaint, June 4, 1937—Decision, June 29, 1937

Where a corporation engaged in manufacture, sale, and distribution of chewing gum including assortments which were so packed and assembled as to involve, or which might involve, use of a lottery scheme when sold and distributed to ultimate consumers thereof, and which consisted of a number of individually wrapped penny sticks of gum, of which a relatively few of the individual wrappers differed from that of the majority, together with a number of other articles of merchandise, to be given as prizes to chance purchasers of individual sticks, wrappers of which, upon opening, were thus found to differ as aforesaid—

Sold, to wholesalers and jobbers for display and resale by retailer-customers to purchasing public, in accordance with said sales plan, said assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its 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 sell gum or other confections so packed and assembled, or otherwise arranged and packed for sale to purchasing public as to involve a game of chance, refrain therefrom;

With result that many dealers in and ultimate purchasers of chewing gum or other confections were attracted by said method and manner of packing said gum and by element of chance involved in sale thereof as aforesaid, and were thereby induced to purchase such gum, thus packed and sold by it, in preference to gum or other confections 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 and custom from its said competitors who do not use same or equivalent practice or method, exclude from trade involved all competitors who are unwilling to and do not use same or equivalent method as unlawful, lessen competition in said trade, and tend to create a monopoly thereof in it and in such other distributors of such products as do use same or equivalent practice or method, deprive purchasing public of benefit of free competition in said chewing gum trade, 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.

Mr. Henry C. Lank and Mr. P. C. Kolinski for the Commission.

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 Wolverine Gum, 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. The respondent, Wolverine Gum, Inc., is a corporation organized and doing business under the laws of the State of Michigan, with its principal office and place of business located at 5625 Lauderdale Avenue, in the city of Detroit, State of Michigan. Respondent is now, and for several years last past has been, engaged in the manufacture of chewing gum 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. Respondent causes and has caused its said products when sold to be transported from its principal place of business in the city of Detroit, State of Michigan, to purchasers thereof in Michigan and in other States of the United States and the District of Columbia at their respective points of location. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such chewing gum 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 chewing gum and other confections and in the sale and distribution thereof 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 described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers assortments of chewing gum so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof. Such assortments are composed of a number of sticks of chewing gum and a number of other articles of merchandise, which said other articles of merchandise are to be given as prizes to purchasers of individual sticks of chewing gum in the following manner: The said sticks of chewing gum in said assortments are wrapped in individual wrappers, and the majority of the said wrappers are

identical but a small number of said wrappers are different from the majority of the wrappers. The individual sticks of chewing gum retail at the price of 1¢ each, and the purchaser who procures a stick of chewing gum contained within a wrapper different from the majority is entitled to receive free of charge and is to be given as a prize one of the other articles of merchandise in said assortments. The fact as to which wrappers are different from the majority is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The articles of merchandise other than chewing gum contained in said assortments are thus distributed to purchasers of chewing gum from said assortments wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers 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 chewing gum 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 products in preference to chewing gum or other confections offered for sale and sold by its competitors.

PAR. 4. The sale of said chewing gum to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondent of said method in the sale of chewing gum, and the sale of chewing gum 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 chewing gum trade 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 chewing gum or other confections in competition with respondent, as above alleged, are unwilling to offer for sale or sell chewing gum or other confections 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 chewing gum or other confections are attracted by respondent's said method and manner of packing said chewing gum and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said chewing gum so packed and sold by respondent in preference to chewing gum or other confections offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. 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 chewing gum 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 chewing gum trade and to tend to create a monopoly of said chewing gum trade in respondent and in such other distributors of chewing gum or other confections as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said chewing gum trade. The use of said method by respondent has the tendency and capacity to eliminate from said chewing gum 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. The aforementioned method, acts and practices of 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, 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 4, 1937, issued and on June 7, 1937, served its complaint in this proceeding upon respondent, Wolverine Gum, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent filed answer thereto admitting all the material allegations of the complaint to be true and waiving hearing on the charges set forth in said complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission upon 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. The respondent, Wolverine Gum, Inc., is a corporation organized and doing business under the laws of the State of Michigan, with its principal office and place of business located at 5625 Lauderdale Avenue, in the city of Detroit, State of Michigan. Respondent is now, and for several years last past has been engaged in the manufacture of chewing gum 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. Respondent causes and has caused its said products when sold to be transported from its principal place of business in the city of Detroit, State of Michigan, to purchasers thereof in Michigan and in other States of the United States and the District of Columbia at their respective points of location. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such chewing gum 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 chewing gum and other confections and in the sale and distribution thereof 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 described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers assortments of chewing gum so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof. Such assortments are composed of a number of sticks of chewing gum and a number of other articles of merchandise, which said other articles of merchandise are to be given as prizes to purchasers of individual sticks of chewing gum in the following manner: The said sticks of chewing gum in said assortments are wrapped in individual wrappers, and the majority of the said wrappers are identical, but a small number of said wrappers are different from the majority of the wrappers. The individual sticks of chewing gum retail at the price of 1¢ each, and the purchaser who procures a stick of chewing gum contained within a wrapper different from the ma-

majority is entitled to receive free of charge and is to be given as a prize one of the other articles of merchandise in said assortments. The fact as to which wrappers are different from the majority is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper removed. The articles of merchandise other than chewing gum contained in said assortments are thus distributed to purchasers of chewing gum from said assortments wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers 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 chewing gum 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 products in preference to chewing gum or other confections offered for sale and sold by its competitors.

PAR. 4. The sale of said chewing gum to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure other articles of merchandise. The use by respondent of said method in the sale of chewing gum, and the sale of chewing gum 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 chewing gum trade 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 chewing gum or other confections in competition with respondents are unwilling to offer for sale or sell chewing gum or other confections so packed and assembled as above described, 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 chewing gum or other confections are attracted by respondent's said method and manner of packing said chewing gum and by the element of chance

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involved in the sale thereof in the manner above described, and are thereby induced to purchase said chewing gum so packed and sold by respondent in preference to chewing gum or other confections offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. 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 chewing gum 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 chewing gum trade and to tend to create a monopoly of said chewing gum trade in respondent and in such other distributors of chewing gum or other confections as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said chewing gum trade. The use of said method by respondent has the tendency and capacity to eliminate from said chewing gum trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, Wolverine Gum, 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 June 10, 1937, by the respondent admitting all the material allegations of the complaint to be true and waiving hearing on the charges set forth in said complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Wolverine Gum, Inc., a corporation its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of chewing gum in interstate commerce, do forthwith cease and desist from:

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1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, chewing gum so packed and assembled that sales of such chewing gum to the general public are to be made, or are designed to be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of chewing gum 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 chewing gum contained in said assortments to the public.

3. Packing or assembling in the same package or assortment of chewing gum for sale to the public at retail pieces of chewing gum contained within individual wrappers of the same general design and appearance but differing in particular respects, together with other articles of merchandise, which other articles of merchandise are to be given as prizes to the purchaser procuring a piece of chewing gum contained within a wrapper of a particular design, pattern, or composition.

It is further ordered, That the respondent, Wolverine Gum, Inc., a corporation, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF

CRYSTALSTONE RADIO CORPORATION AND SAMUEL
GLICK, INDIVIDUALLY, AND TRADING AS PONTIAC
RADIO COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2225. Complaint, Aug. 18, 1934—Decision, June 30, 1937*

Where the names and symbols "Edison," "Victor," and "Brunswick," as names and designations of well-known, famous, or long-established individuals or companies and corporations, had long been extensively advertised and featured by the various owners thereof and had come to be standard brands and symbols when used as company, corporate, and trade names and as well-known marks and brands on radio sets, radio parts, and like products which, thus marked, had a fixed and stable value in the trade and industry generally throughout the United States and foreign countries, and were relied upon by purchasing public, when used on radio sets and like products, and in said industries as indicating high standard, reliable, and genuine products, and use thereof influenced purchase of such products and increased sales, value of which were increased by number of dealers in said products, and said names, letters, and symbols, attached to said products, 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 in their use and employment in commerce; and thereafter, a corporation and an individual, officer, and director thereof, engaged in the manufacture, sale, and distribution of radio sets, upon which they placed, and caused to be placed, escutcheons and name plates with names, letters, marks, brands, and symbols etched or stamped thereon, to designate the makers or brand names of said sets; in furtherance of a scheme to deceive the public and compete unfairly with other manufacturers of and dealers in such products—

Adopted and made use of names, marks, brands, and symbols of corporations and individuals well-known and long-established in the radio and like industries, without the authority of the legal owners and users thereof, and included among such names, marks, brands, and symbols, thus adopted and used by it, "Edison," "Victor," and "Brunswick," and such colorable imitations and simulations thereof as "Edison" with representation of a bell, "Victor International," and "Bronswick," and made, sold, and shipped in interstate commerce their said sets, upon which were placed escutcheons and name plates bearing such names, marks, brands, and symbols;

With result that public was led to believe that products thus sold, marked and identified were those of the well-known companies or interests referred to and identified, there was an appropriation by them of the good will of, and an unfair diversion of business from, such competitor companies and interests and from other competitors who do not resort to such practices, their said goods were given a salability which they would not otherwise have, and they, themselves, had an advantage over their competitors who

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do not similarly misrepresent true origin of their goods and conceal the same under a reputable, but false, origin, and with effect of deceiving public purchasing said products into the false belief that they originated with well-known and reputable concerns, and of placing in the hands of others by whom their said products were sold, means whereby injury might be and was done to competitors dealing in genuine products honestly marked; to the injury of the lawful owners and users of said marks and symbols of said competitor companies and interests, and of competitors, and of manufacturers of and dealers in the legitimate products, and of substantial competition in commerce, and to the prejudice and injury 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. Carrel F. Rhodes for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Crystalstone Radio Corporation and Samuel Glick, individually and trading as Pontiac Radio Company and as Crystalstone Radio Corporation, hereinafter referred to as respondents, have been or are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. (a) Respondent, Crystalstone Radio Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York in November 1933, with its principal office and place of business located at 611 Broadway in the city of New York, State of New York. The officers of respondent corporation are Samuel Glick, president and treasurer, and Edith Marcus, secretary. Since its incorporation, said respondent has been engaged in the business of manufacturing or assembling, and selling and distributing radio sets to the retail trade. Respondent sells its said radio sets to retail dealers located in various States of the United States other than in the State of New York, and when so sold respondent causes said radio sets to be transported from the city of New York, State of New York, through and into other States of the United States, to the purchasers thereof at their respective locations. In the course and conduct of its said business the respondent is in competition with various other persons, partnerships, and corporations engaged in the business of manufacturing or assembling and selling and distributing radio sets to retail dealers and the public in interstate commerce.

(b) Respondent, Samuel Glick, is an individual and from June 1933 to November 1933 was engaged in business under the trade name and style of Pontiac Radio Company, with his principal office and place of business located at 44 Bond Street in the city of New York, State of New York. Said trade name Pontiac Radio Company is owned by said respondent Glick, and is registered as a trade name in the County Clerk's Office of the County of New York, State of New York. During the time that he was engaged in business under the trade name Pontiac Radio Company, respondent Glick manufactured or assembled radio sets and sold them to the retail trade. Respondent Glick sold the radio sets manufactured or assembled by him to retail dealers located in various States of the United States other than in the State of New York, and when so sold respondent caused said radio sets to be transported from the city of New York, State of New York, through and into other States of the United States to the purchasers thereof at their respective locations. In the course and conduct of his said business respondent Glick was in competition with various other persons, partnerships, and corporations engaged in the business of manufacturing or assembling radio sets, and selling them to retail dealers in interstate commerce. Respondent Glick still owns the name "Pontiac Radio Company," which is registered as a trade name, as heretofore set forth.

Immediately upon the incorporation of respondent, Crystaltone Radio Corporation, said respondent succeeded to the business theretofore conducted by the respondent Glick, under the name and style of Pontiac Radio Company and said business is now being conducted by respondent corporation. Respondent Samuel Glick at all times since the organization of the respondent Crystaltone Radio Corporation has been president thereof, has owned and controlled substantially all of its issued and outstanding capital stock, and has controlled and dominated said Crystaltone Radio Corporation. Said respondent Crystaltone Radio Corporation, although a corporation, is a means by which said respondent Samuel Glick as an individual carries on the business hereinbefore described of said Crystaltone Radio Corporation.

PAR. 2. Respondent, Crystaltone Radio Corporation, and respondent Samuel Glick, in the course and conduct of their respective businesses have adopted and followed the scheme or method of appropriating the names of well-known manufacturers and applying them to the radio sets manufactured or assembled and sold by them, thereby appropriating to themselves their goodwill by the sale of their radio sets to the purchasing public as sets made by such manufacturers.

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PAR. 3. For more than thirty years prior to his death on October 18, 1931, Thomas A. Edison had been known and recognized throughout the various States of the United States and foreign countries as the inventor, patentee, owner, and manufacturer of numerous electrical devices of various kinds and descriptions, and of machines for the reproduction of the human voice, which have acquired a wide and favorable reputation, and are in great demand by the trade and purchasing public who desire Edison products. Among the machines for the reproduction of the human voice manufactured by companies which the said Thomas A. Edison organized and controlled are phonographs, dictaphone and transcribing machines, radios, combination radios and phonographs, and many other articles of various kinds and character such as storage batteries, spark plugs, ignition coils, and household electrical appliances. Many of the machines and articles above referred to bear the name "Edison" as part of their brand names, and said name "Edison" has acquired a valuable good will as identifying the manufacturer of such machines or articles.

Among the companies organized and controlled by the said Thomas A. Edison before his death is Thomas A. Edison, Inc., which said company is still engaged in the manufacture of many of the machines and articles invented and developed by Thomas A. Edison. Thomas A. Edison, Inc., during the years 1928 to 1930, inclusive, manufactured and sold radio sets valued at many millions of dollars, and during the said period spent several millions of dollars in advertising its said radio products. All of the radio sets manufactured and sold by Thomas A. Edison, Inc., featured the name "Edison" as part of their brand name.

PAR. 4. Respondents, Crystalstone Radio Corporation and Samuel Glick, individually and trading as Pontiac Radio Company and as Crystalstone Radio Corporation, in the course and conduct of their business have purchased what is known as escutcheon plates, which escutcheon plates bear various names, and which are attached in a prominent place to radio sets. Respondents have purchased and attached to radio sets manufactured or assembled, and sold by them, escutcheon plates bearing the name "Edison" together with the representation of a bell. Respondents have no authority or license from Thomas A. Edison, Inc., to use the name "Edison" on the radio sets manufactured or assembled, and sold by them, and their said use of that name in the manner described has a capacity and tendency to and does mislead and deceive the trade and purchasing public into the erroneous belief that the radio sets manufactured, or assembled and sold, by respondents are radio sets which have been manu-

factured by Thomas A. Edison, Inc., and to cause the trade and purchasing public to buy said radio sets in that belief.

PAR. 5. 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 brand names, which said name has been attached in a prominent place to said machines. 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 Company, which company is engaged in the manufacture and sale of radio sets, combination radio and phonograph sets, and other articles. All of said machines bear the name "Victor," either alone or in combination with other letters or words, in a prominent place on said machines. Said radio sets and combination radio and phonograph sets are sold to the purchasing public by retail dealers throughout the United States. During the past 25 years, the Victor Talking Machine Company and its successor corporation, RCA Victor Company, have spent approximately \$70,000,000 advertising their products, and the word "Victor" has always prominently appeared in said advertising. At the present time the RCA Victor Company is advertising its radio sets in a number of magazines having a large national circulation, and in other publications and newspapers.

PAR. 6. Respondents, Crystaltone Radio Corporation and Samuel Glick, individually and trading as Pontiac Radio Company and as Crystaltone Radio Corporation, in the course and conduct of their business, have purchased radio sets with escutcheon plates attached thereto bearing the words "Victor," and "Victor International," which sets they sell to the retail trade. On the escutcheon plates attached to said radio sets the name "Victor" is in large and prominent letters, and the word "International" is in small letters which are not readily seen by a prospective purchaser. Respondents have no authority or license from the RCA Victor Company to use the name "Victor" on the radio sets sold by them, and their said use of that name, in the manner described, has the capacity and tendency to and does mislead and deceive the trade and purchasing public into the erroneous belief that the radio sets sold by respondents are radio sets which have been manufactured by the RCA Victor Company, and to cause the trade and purchasing public to buy said radio sets in that belief.

PAR. 7. During many years last past the Brunswick-Balke-Collender Company has been a large manufacturer of billiard and pocket billiard tables, bowling alleys, and various other articles, and its products have acquired a wide and favorable reputation, and have been in great demand by the trade and purchasing public. During all this period the products manufactured and sold by said company have featured the name "Brunswick" as part of their brand names, which said name has been attached in a prominent place to said products. In 1915 the Brunswick-Balke-Collender Company began the manufacture and sale of phonographs and phonograph records and sometime later began the manufacture and sale of radio sets and combination radio and phonograph sets, on all of which articles the name "Brunswick" was featured in a prominent place on said machines. In 1930 the radio and phonograph division of the business was sold to Warner Bros. Pictures, Inc., which company organized under the corporate name of "Brunswick Radio Corporation" to operate the business. Said latter company obtained the exclusive right to use the name "Brunswick" in connection with said radio sets, phonographs, and accessories thereto. Until January 1, 1933, Brunswick Radio Corporation continued the manufacture and sale of radio sets and combination radio and phonograph sets, on all of which sets the name "Brunswick" was prominently featured. Since January 1, 1933, the manufacture of radio sets has been stopped, but said Brunswick Radio Corporation still owns the manufacturing plants in which said sets were manufactured, and may resume such manufacture at some time in the future. The radio sets and combination radio and phonograph sets manufactured by Brunswick-Balke-Collender Company and Brunswick Radio Corporation were sold to the purchasing public by retail dealers throughout the United States. During all of the time that the Brunswick-Balke-Collender Company and the Brunswick Radio Corporation were manufacturing and selling radio sets and combination radio and phonograph sets, said companies expended large sums of money advertising said sets, and the name "Brunswick" has at all times been prominently displayed in said advertising.

PAR. 8. Respondents, Crystaltone Radio Corporation and Samuel Glick, individually and trading as Pontiac Radio Company and as Crystaltone Corporation, in the course and conduct of their business have purchased radio sets with escutcheon plates attached thereto bearing the word "Bronswick," which sets they resell to the retail trade. The said name "Bronswick" is so nearly like the name "Brunswick" in appearance and sound that it is difficult for a purchaser to

distinguish the difference, and the use of said name "Brunswick" by respondents in the manner described on radio sets sold by them has the capacity and tendency to and does mislead and deceive the trade and purchasing public into the erroneous belief that the radio sets sold by respondents are radio sets which have been manufactured by the Brunswick Radio Corporation, and to purchase such radio sets in such erroneous belief.

PAR. 9. The use by respondents on the radio sets manufactured, or assembled, and sold by them of the names "Edison," "Victor," "Victor International," and "Brunswick," in the manner set forth hereinabove is false, deceptive and misleading to the trade and purchasing public, and tends to and does, divert trade to respondents from their said competitors who do not use such false, deceptive and misleading names for the radio sets manufactured, assembled, and sold by them. Thereby substantial injury has been done and is being done by all of the said respondents to substantial competition in interstate commerce.

PAR. 10. The above alleged acts and things done by respondents are each and all of them to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in interstate 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 18th day of August 1934, issued, and served, its complaint in this proceeding upon respondents, Crystaltone Radio Corporation and Samuel Glick, individually, and trading as Pontiac Radio Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents filed a consolidated answer to the complaint with the Commission dated June 12, 1937, in which they admit all the material allegations of the complaint to be true, and waive hearings on the charges set forth in the complaint, and consent that without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion drawn therefrom 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 said complaint and answer 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. The respondent, Crystalstone Radio Corporation, is a corporation existing and doing business under the laws of the State of New York. Respondent, Samuel Glick, is an individual operating under the trade name of Pontiac Radio Company, and is also an officer and director of respondent, Crystalstone Radio Corporation. All of the respondents aforesaid have their principal place of business at 44 West 18th Street, New York City, N. Y., and are now, and for several years last past, have been engaged in the manufacture, sale, and distribution of radio sets, upon which said products they place and cause to be placed escutcheons and nameplates, with names, letters, marks, brands, and symbols etched or stamped thereon to designate the makers or brand names of said radio sets. Respondents sell and transport said products so marked from their place of business in the State of New York to purchasers thereof at their respective points of location in the States of the United States other than the State of origin of the shipment, and in the District of Columbia.

PAR. 2. For the purpose of selling radio sets and inducing the public to buy said products, the respondent corporation and respondent individual, individually, and as officer, agent, and representative of said respondent corporation, herein set out and described in paragraph 1, 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 who are in competition with the said respondents in interstate and foreign commerce. In furtherance of said scheme, the respondents have adopted, made, used and sold, and now make, use, sell and ship in interstate commerce to distributors, dealers and others, radio sets upon which are placed 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 of the legal owners and users of said names, marks, brands and symbols.

Among the names, marks, brands, and symbols so adopted and used by the respondents are the following:

"Edison" and also "Edison" with the representation of a bell, which is found to be a colorable imitation and simulation of said name "Edison";

"Victor" and also "Victor International," which is found to be a colorable imitation and simulation of said name "Victor";

"Brunswick" and also "Bronswick," which is found to be a colorable imitation and simulation of said name "Brunswick."

Said respondent corporation and said respondent individual, individually, and trading under the name Pontiac Radio Company, and as officer, agent, and representative of said respondent, Crystalltone Radio Corporation, with respect to radio sets and like products marked and branded with the said well known and established names, marks, brands, and symbols hereinabove set out and described, sell and ship said products so marked from their place 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 commerce without the authority or consent of the legal owners of said names, marks, brands, and symbols.

PAR. 3. (a) 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 1926-30, inclusive, manufactured and

sold radio sets valued at many millions of dollars, and during the said period spent several millions of dollars in advertising its said radio products. All the radio sets manufactured and sold by Thomas A. Edison, Inc., feature the name "Edison" as part of their brand name.

The name "Edison" refers to Thomas A. Edison, the great inventor in the electrical field and the pioneer in the talking machine and radio industry, the right to the use of which name was vested in Thomas A. Edison, Inc., by Thomas A. Edison and was extensively advertised and has long previously been used and 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 to respondents the right to the use of the name "Edison" in any manner or consented to such use.

(b) For many years last past the Victor Talking Machine Company, Camden, New Jersey, has been manufacturing and selling phonographs and phonograph records, which 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.

Neither the said Victor Talking Machine Company, Radio Corporation of America, The RCA Manufacturing Company, Inc., nor any of their subsidiaries or assigns have ever granted to respondents the right to use the name "Victor" in any manner or consented to such use.

(c) 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 to manufacture and sell 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.

"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 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.

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 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 "Edison," "Victor," "Brunswick," and the products bearing these names and symbols, manufactured and sold by the lawful owners thereof; the use by respondents of said names and symbols, and simulations thereof, has led and has the capacity and tendency to lead the public to believe that the products sold by respondents and so marked or identified are the products of said well known respective companies or interests hereinabove referred to and identified and results in the appropriation by the respondents of the good will of, and an unfair diversion of business from said respective competitor companies and interests, and an unfair diversion of business from other competitors who do not resort to such practices, to the injury of the owners of said marks and symbols and of said competitors, and to the prejudice and injury of the public.

PAR. 4. The use by respondents of the names, marks, brands, symbols, and devices as set out in paragraphs 2 and 3 is wholly unauthor-

ized 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 and like products, marked or branded with the said well known names 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, and symbols, and when said names, marks, brands, 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, and symbols upon like products as set out in paragraph 3 hereof. The name or brand being depended upon influences the sale of said products.

Members of the purchasing public have purchased radio sets 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 paragraph 1, of radio sets and like products, marked and branded with the names, and symbols set out and described hereinabove, 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, Crystalstone Radio Corporation, and Samuel Glick individually and trading as Pontiac 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

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on the 12th day of June 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 respondents, Crystalstone Radio Corporation, its officers, agents, and representatives, and respondent, Samuel Glick, individually, and trading under the name Pontiac Radio Company or under any other name, and their respective agents and representatives, in connection with the offering for sale and sale in interstate commerce and in the District of Columbia of radio sets and like products, do forthwith cease and desist from representing:

Directly or indirectly through the use in any manner of the trade names or marks "Edison," "Victor," or "Brunswick," or through the use in any manner of any colorable imitations and simulations thereof, such as, but without limitation, "Edison" with the representation of a bell, "Victor International," and "Brunswick," 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 and like products, devices, or appliances manufactured and sold by any of said respondents are manufactured, assembled, sold, sponsored, endorsed, approved, or licensed by Thomas A. Edison, Thomas A. Edison, Inc., Radio Corporation of America, Victor Talking Machine Company, Brunswick-Balke-Collender Company, Warner Brothers Pictures, Inc., or the successors or assigns of any of said persons, partnerships, or corporations, or that said products

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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, and sell said products.

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
HELEN ARDELLE, INC.

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

Docket 2775. Complaint, Apr. 20, 1936—Decision, June 30, 1937

- Where a corporation engaged in manufacture and sale of so-called "draw" or "deal" assortments of candy, sale and distribution of which type candy, by retailers by lot or chance, has capacity and tendency to and does decrease sale of candy sold without any sales plan or device involving lottery or game of chance, i. e., the "straight" goods, and sale of which type, providing, in connection with its sale to public, means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling, and is in violation of various municipal ordinances and regulations and state statutes and constitutions, and provides retail merchants with a means of violating the laws of the several states, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—
- Sold*, to wholesale and retail dealers, certain assortments of candy which were so packed and assembled as to involve, or were designed to involve, use of lottery scheme when sold and distributed to consumers thereof, and which included assortment composed of a number of boxes of assorted chocolate candies, together with a punchboard, for sale to consuming public under a plan, and in accordance with said board's explanatory legend, pursuant to which purchaser received, for five cents paid, and dependent upon number punched by chance or purchase of last punch on board, one of aforesaid boxes, value of which was in excess of aforesaid amount, or nothing other than privilege of making a punch; so assembled and packed that such assortments might be and were displayed and sold to consuming public by retail dealer purchasers thereof by lot or chance, and with knowledge and intent that such assortments could and would thus be resold to public by retail dealers without alteration, addition, or rearrangement as above set forth, in competition with many who do not make and sell "draw" or "deal" assortments, but sell their "straight" goods in interstate commerce in competition with the others;
- With* result that competitors who refused to, or do not, sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage by competing with it and with others employing methods similar to those described herein, trade was diverted to it and others using similar methods from those who do not use same, by reason of attraction to customers of so-called "draw" or "deal" assortments, there was diversion of trade to it from its said competitors, and a restraint upon and a detriment to the freedom of fair competition in trade concerned; to the prejudice and injury of the public and of competitors:
- Held*, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Complaint

25 F. T. C.

Before *Mr. Charles P. Vicini* and *Mr. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.
Flood, Lenihan & Ivers, of Seattle, Wash., 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 Helen Ardelle, 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 Washington, with its principal office and place of business located at 1401 East 41st Street, in the city of Seattle, State of Washington. 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 Seattle, Wash., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale 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, manufactured and distributed by the respondent, is composed of a number of boxes of assorted chocolate candies, together with a device commonly called a "punchboard." The said boxes of candy are distributed to the consuming public by means of said punchboard in the following manner: The sales by

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means of said punchboard are 5¢ each, and when a punch is made from said board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the prospective customer as to which numbers receive a box of candy. The purchaser of the last punch on the board receives a three-pound box of chocolate candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by punching the last number on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5¢. The numbers on said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy in said assortment are thus distributed to purchasers of punches from said board 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 a box of candy.

The use by respondent of said method in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy; and is contrary to an established public policy of the Government of the United States. The use by respondent of said method has the dangerous tendency unduly to hinder competition or create monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the branch of the candy trade involved in this proceeding competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar element of chance or lottery scheme.

Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said method and manner of packing said candy, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent, in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

PAR. 7. The aforementioned method, acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged. Said method, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

Findings

Federal Trade Commission on April 20, 1936, issued and served its complaint in this proceeding upon the respondent, Helen Ardelle, Inc., a corporation, charging it with the use of unfair methods of competition in commence 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 P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by Emmett G. Lenihan, attorney for the respondent, before Charles P. Vicini, and Henry M. White, examiners 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 hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of Henry C. Lank, counsel for the Commission, and Emmett G. Lenihan, counsel for the respondent; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom;

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Helen Ardelle, Inc., is a corporation organized under the laws of the State of Washington, with its principal office and place of business located at 1401 East 41st Street, in the city of Seattle, State of Washington. Respondent is now, and for several years last past has been engaged in the manufacture of candy in the city of Seattle and in the sale and distribution thereof to retail and wholesale dealers and jobbers located in the State of Washington and in the States of Oregon, Idaho, Montana, and Wyoming. It causes the said candy when sold to be shipped or transported from its principal place of business in the State of Washington to purchasers thereof in Washington and in other States of the United States, as mentioned above. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been engaged 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. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers, as above described, certain assortments of candy so

packed and assembled as to involve, or which are designed 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 boxes of assorted chocolate candies, together with a device commonly called a "punchboard." The boxes of candy contained in said assortment are distributed to the consuming public by means of said punchboard in the following manner: The sales by means of said punchboard are 5¢ each, and when a punch is made from said board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the prospective customer as to which numbers receive a box of candy. The purchaser of the last punch on the board receives a three-pound box of chocolate candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by punching the last number on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5¢. The numbers on said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy in said assortment are thus distributed to purchasers of punches from said board 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" 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, 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 sales plans as described above.

PAR. 5. All sales made by respondent, whether to wholesale dealers 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 are designed to

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 hereof, 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 many manufacturers of candy competing with respondent in the territory served by respondent who do not manufacture and sell "draw" or "deal" assortments of candy and who sell their "straight" goods in interstate commerce in competition with the "draw" or "deal" assortments. The sale or distribution of candy by retail dealers by lot or chance, has the capacity and tendency to and does decrease the sale of candy sold without any sales plan or device involving a lottery or game of chance.

Several witnesses testified, and the Commission finds, that customers coming into retail establishments and desiring candy similar to that distributed by respondent would take chances or make purchases by means of said push cards or punchboards, and that in such cases when unsuccessful in obtaining candy by means of said push card or punchboard some of such customers would then purchase candy as a "straight" purchase and without the use of the lottery device; that the gambling feature connected with the sale of respondent's assortments as described above, was attractive to customers; and that before making "straight" purchases it was not unusual for customers to endeavor to procure the candy desired by means of such lottery devices rather than to make a "straight" purchase.

PAR. 7. The sale and distribution of "draw" or "deal" assortments of candy, or of candy which has connected with its sale to the public the means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling and is in violation of various municipal ordinances and regulations and various State statutes and constitutions. The sale and distribution of candy by retailers by the methods described herein is the sale and distribution of candy by lot or chance and constitutes a lottery or gaming device, and the Commission finds that the sale and distribution of assortments of candy as described herein provides retail merchants with a means of violating the laws of the several States. Competitors who refuse to or who do not sell candy

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so packed and assembled that it can be resold to the public by lot or chance are put to a disadvantage in competing with respondent and with others employing similar methods to those described herein. Because the "draw" or "deal" assortments are attractive to customers purchasing from retail dealers, the Commission finds that trade is diverted to respondent and others using similar methods from competitors who do not use such methods. 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. Respondent sells its merchandise in the States of Washington, Idaho, Montana, Oregon, and in Alaska. In the State of Washington, the respondent sells to wholesale dealers and jobbers and to retail dealers. In the States other than the State of Washington, approximately 90% of respondent's sales are to jobbers, making only about 10% of its sales direct to retail dealers. In Alaska, the respondent sells to retail dealers exclusively. The total annual volume of respondent's sales is between \$100,000 and \$150,000. Between 40% and 50% of the total annual volume of its sales is made up of assortments with which a punchboard is furnished.

PAR. 9. 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 respondent, Helen Ardelle, Inc., 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 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 P.

Order

Vicini and Henry M. White, 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 of Henry C. Lank, counsel for the Commission, and Emmett G. Lenihan, 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, Helen Ardelle, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard," which punchboard is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "punchboard," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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 respondent, Helen Ardelle, Inc., a corporation, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
BROWN & HALEY

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

Docket 2782. Complaint, Apr. 24, 1936—Decision, June 30, 1937

Where a corporation engaged in manufacture and sale of so-called "draw" or "deal" assortments of candy, sale and distribution of which type candy, by retailers by lot or chance, has capacity and tendency to and does decrease sale of candy sold without any sales plan or device involving lottery or game of chance, i. e., the "straight" goods, and sale of which type, providing, in connection with its sale to public, means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling, and is in violation of various municipal ordinances and regulations and State statutes and constitutions, and provides retail merchants with a means of violating the laws of the several states, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition, or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—

Sold, to wholesale and retail dealers, certain assortments of candy which were so packed and assembled as to involve, or were designed to involve, use of a lottery scheme when sold and distributed to consumers thereof, and which included assortment composed of a number of boxes of assorted chocolate candies, together with a punchboard, for sale to consuming public under a plan, and in accordance with said board's explanatory legend, pursuant to which purchaser received, for five cents paid, and dependent upon number punched by chance or purchase of last punch on board, one of aforesaid boxes, value of which was in excess of aforesaid amount, or nothing other than privilege of making a punch; so assembled and packed that such assortments might be and were displayed and sold to consuming public by retail dealer purchasers thereof by lot or chance, and with knowledge and intent that such assortments could and would thus be resold to public by retail dealers without alteration, addition, or rearrangement as above set forth, in competition with many who do not make and sell "draw" or "deal" assortments, but sell their "straight" goods in interstate commerce in competition with the other;

With result that competitors who refused to, or do not, sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage in competing with it and with others employing methods similar to those described herein, trade was diverted to it and others using similar methods from those who do not use same, by reason of attraction to customers of so-called "draw" or "deal" assortments, and there was diversion of trade to it from its said competitors, and a restraint upon and a detriment to the freedom of fair competition in trade concerned; to the prejudice and injury of the public and of competitors;

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

Complaint

Before *Mr. Charles P. Vicini* and *Mr. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.
Flood, Lenihan & Ivers, of Seattle, Wash., 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 Brown & Haley, 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 Washington, with its principal office and place of business located at 110 East 26th Street, in the city of Tacoma, State of Washington. 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 Tacoma, Washington, to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale 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, manufactured and distributed by the respondent, is composed of a number of boxes of assorted chocolate candies, together with a device commonly called a "punchboard." The

said boxes of candy are distributed to the consuming public by means of said punchboard in the following manner: The sales by means of said punchboard are 5¢ each, and when a punch is made from said board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the prospective customer as to which numbers receive a box of candy. The purchaser of the last punch on the board receives a three-pound box of chocolate candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by punching the last number on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5¢. The numbers on said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy in said assortment are thus distributed to purchasers of punches from said board 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 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 pro-

ceeding 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 24, 1936, issued and on April 28, 1936, served its complaint in this proceeding upon the respondent, Brown & Haley, 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 P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by Emmett G. Lenihan, attorney for respondent, before Charles P. Vicini and Henry M. White, examiners 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 hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of Henry C. Lank, counsel for the Commission, and Emmett G. Lenihan, counsel for the respondent; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Brown & Haley, is a corporation organized under the laws of the State of Washington, with its principal office and place of business located at 110 East 26th Street, in the city of Tacoma, State of Washington. Respondent is now, and for several years last past has been, engaged in the manufacture of candy in the city of Tacoma and in the sale and distribution thereof to retail and wholesale dealers and jobbers located in the State of Washington and in the States of Oregon, Idaho, Montana, and California. It causes the said candy when sold to be shipped or transported from its principal place of business in the State of Washington to purchasers thereof in Washington and in other States of the United States, as mentioned above. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been engaged 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. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers, as above described, certain assortments of candy so packed and assembled as to involve, or which are designed 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 varying sized boxes of assorted chocolate candies, together with a device commonly called a "punchboard." The boxes of candy contained in said assortment are distributed to the consuming public by means of said punchboard in the following manner: The sales by means of said punchboard are 5¢ each, and when a punch is made from said board a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing customers and prospective customers as to which numbers receive a box of candy and the size thereof. The purchaser of the last punch on the board receives a specified box of candy. The purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy, or by punching the last number on the board, receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5¢. The numbers on said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy in said assortment are thus distributed to purchasers of punches from said board 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" 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, 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 sales plan as described above.

PAR. 5. All sales made by respondent, whether to wholesale dealers 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 are designed to 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 hereof, respondent has knowledge that said candy would 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 many manufacturers of candy competing with respondent in the territory served by respondent who do not manufacture and sell "draw" or "deal" assortments of candy and who sell their "straight" goods in interstate commerce in competition with the "draw" or "deal" assortments. The sale or distribution of candy by retail dealers by lot or chance has the capacity and tendency to and does decrease the sale of candy sold without any sales plan or device involving a lottery or game of chance.

Several witnesses testified, and the Commission finds, that customers coming into retail establishments and desiring candy similar to that distributed by respondent would take chances or make purchases by means of said push cards or punchboards, and that in such cases when unsuccessful in obtaining candy by means of said push-card or punchboard some of such customers would then purchase candy as a "straight" purchase and without the use of the lottery device; that the gambling feature connected with the sale of respondent's assortments, as described above, was attractive to customers; and that before making "straight" purchases it was not unusual for customers to endeavor to procure the candy desired by means of such lottery devices rather than to make a "straight" purchase.

PAR. 7. The sale and distribution of "draw" or "deal" assortments of candy, or of candy which has connected with its sale to the public the means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling and is in violation of various municipal ordinances and regulations and various State statutes and constitutions. The sale and distribution of candy by retailers by the method described herein is the sale and distribution of candy by lot or chance and constitutes a lottery

or gaming device, and the Commission finds that the sale and distribution of assortments of candy as described herein provides retail merchants with a means of violating the laws of the several States. Competitors who refuse to or who do not sell candy so packed and assembled that it can be resold to the public by lot or chance are put to a disadvantage in competing with respondent and with others employing similar methods to those described herein. Because the "draw" or "deal" assortments are attractive to customers purchasing from retail dealers, the Commission finds that trade is diverted to respondent and others using similar methods from competitors who do not use such methods. 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. An officer of the respondent corporation testified, and the Commission finds, that the total annual volume of respondent's sales is between \$350,000 and \$400,000. Approximately 60% of respondent's total annual volume of sales is made to purchasers outside of the State of Washington, and approximately 25% of the total annual volume of its sales consists of assortments with which a punchboard is furnished.

PAR. 9. 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 respondent, Brown & Haley, 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 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 P. Vicini and Henry M. White, examiners of the Commission theretofore duly desig-

nated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments of Henry C. Lank, counsel for the Commission, and Emmett G. Lenihan, 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, Brown & Haley, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard," which punchboard is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "punchboard," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public that the candy is being sold to the public by lot or chance or in accordance with the sales plan which constitutes a lottery, gaming device, or gift enterprise.

It is further ordered, That the respondent, Brown & Haley, a corporation, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
CALIFORNIA PACKING 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 2786. Complaint, Apr. 25, 1936—Decision, June 30, 1937*

Where (1) a corporation which (a) was engaged in packing and distributing, and selling and transporting by truck, railway, and steamship lines, a wide line of food products, consisting principally of dried fruits and canned fruits, vegetables, fish, pineapples, and coffee, (b) was one of the largest packers and distributors of dried fruits and vegetables in the world and was, and had been, for a number of years, an important factor in the Hawaiian pineapple industry and in the packing of sardines and tuna fish, (c) owned, controlled, and operated more than one hundred canning factories, fruit drying plants, and other factories in California, Wisconsin, Illinois, Florida, New York, and other States scattered across the country, and in the Territories of Alaska and Hawaii, in which were packed, for sale and shipment in wholesale and retail trade throughout the several States and in foreign countries, food products under such brands or trade names as "Del Monte," "Sunkist," and others; and (2) its subsidiary, (a) engaged exclusively in the packing and selling of salmon, with nine factories in Alaska and one on Puget Sound, and (b) owner of a terminal corporation engaged as a public wharfinger on the east side of San Francisco Bay in the operation and maintenance of such necessary facilities as wharves, sheds, warehouses, and switch tracks, in competition with a number of other similarly engaged terminals; and together engaged, in the course and conduct of their businesses, in the purchase of substantial quantities of raw materials and manufactured products, such as wood, paper, and fiber boxes, containers, and cartons, tin, steel, copper, paint, and numerous other articles, from the manufacturers and producers thereof located throughout the several States and in foreign countries, for utilization in the several manufacturing processes of their said products, and in substantial competition, in the course and conduct of their said businesses, with others in the various States engaged in the canning and packing of fruits, vegetables, fish, and other products, and in sale and distribution thereof to jobbers and wholesalers throughout the several States and in foreign countries, and also in purchasing substantial quantities of raw materials and other manufactured products, as hereinbefore set forth, from manufacturers and producers throughout the several States, and in selling products to many of such industrial concerns, and in utilizing instrumentalities of distribution and transportation similar to those made use of by said first named corporation, as above set forth, but without engaging in such practices as those below described; acting directly and through and in cooperation with six individuals, general officers and directors of said corporation and subsidiary, or, as case might be, purchasing agent for said corporation, vice president, director, and general manager of such subsidiary, and former traffic director and president of said terminal corporation, and present traffic manager of corporation first named—

- (a) Sought to induce, coerce, and compel, and induced, coerced, and compelled, a substantial number of large industrial concerns and shippers of substantial tonnages of freight, including companies from which they and their competitors purchased supplies of raw materials and manufactured products as aforesaid, and which companies would, but for the activities herein described, normally and usually route their products through various and respective terminals located on San Francisco Bay and rivers tributary thereto, to divert and shift said large industrial concerns' routing of shipments so as to utilize the facilities of their own aforesaid terminal to the exclusion of said others through (1) promises or assurances that they would purchase the products of such concerns or increase volume of purchases therefrom, in the event said concerns routed shipments of merchandise and products sold and shipped by them and others subject to their control, including competitors of said corporations, theretofore routed through competitive terminals, through aforesaid terminal of said corporation; and (2) threats of reducing or discontinuing purchase of raw materials or manufactured products from said concerns, in the event of their declining to route their shipments of merchandise and products, or those of other concerns under their control, through aforesaid terminal, and continuing to route such shipments through said competitive terminals;
- (b) Sought to induce, coerce, and compel all or a majority of the steamship companies operating as coast-wise, intercoastal and foreign cargo carriers in carrying freight to and from various ports on said Bay and tributary waters, and did induce, coerce, and compel a substantial number of such companies, and often at extra expense to them, to divert freight tonnage theretofore moving through such other terminals to their own aforesaid terminal, and notwithstanding fact service and facilities of said other terminals were equal to those of their own aforesaid terminal and, in many instances, more economical to such companies and the shippers of the products carried by them than those of the other, by (1) promises or assurances of substantial tonnages or a substantial increase therein of freight to be shipped over the lines of said companies from aforesaid terminal by said corporation and subsidiary, in the event of such companies' diverting the tonnage theretofore moving through said others to aforesaid terminal; and (2) threats of withdrawing or discontinuing shipment of freight or reduction of tonnage of freight shipped over lines of said companies from aforesaid terminal by said corporation and subsidiary, in the event of said companies' failing to divert tonnage theretofore moving through such others to aforesaid terminal; and
- (c) Sought to induce, coerce, and compel all or a majority of the above described steamship companies, and did induce, coerce, and compel a substantial number thereof, through the methods hereinabove set forth, to disclose the identity of consignees and receivers of shipments of freight cargo carried by said companies, and to allow representatives of said corporation and subsidiary to inspect confidential records and manifests of said steamship companies to enable such corporation and subsidiary to bring pressure and influence to bear upon said consignees and receivers to divert their shipments through aforesaid terminal of said corporation and subsidiary; and

Where aforesaid individuals, together constituting an executive committee—

- (d) Cooperated with and assisted said corporation and its subsidiary in the execution of a plan, formulated and inaugurated, and since directed, by one

of said individuals, of using the tonnage of freight shipped by said corporation and subsidiary over steamship lines and their buying power to influence routing of tonnage to their own aforesaid terminal, and in the execution of the herein described acts and practices by utilizing their official positions in said corporation and subsidiary to induce, coerce, and compel the officials of said steamship companies and said industrial concerns to give undue preference to the facilities of their own aforesaid terminal through means of the promises and threats hereinbefore described and set forth; and

Where aforesaid corporation and subsidiary, acting directly through and in cooperation with aforesaid individuals—

(e) Spied upon the business of their said competitors by securing, from their aforesaid terminal company, names and addresses of customers of said competitors to enable them, i. e., said corporation and its subsidiary, to bring pressure and influence to bear upon said customers to divert their shipments of products purchased from said competitors through their own aforesaid terminal, as herein set forth; and

(f) Induced, coerced, and compelled their said competitors to divert, change and shift their shipments of products sold by them in interstate and foreign commerce so as to utilize the facilities of the aforesaid terminal of said corporation and subsidiary, to the exclusion of said other terminals on the before referred to Bay, by bringing undue pressure to bear upon the industrial concerns to whom such competitors were selling their products, or from whom they were purchasing supplies of raw materials and manufactured goods as hereinabove set forth;

With result of reducing their own distribution expenses and enhancing and increasing their own revenues, to the unfair competitive disadvantage of aforesaid competitors, by compelling them and said other industrial concerns, against their interest, to route shipments of products sold by them through aforesaid terminal, and to require said competitors to pay more for such raw materials and manufactured products from such industrial concerns than they were required to pay, and to give to said corporation and subsidiary an unfair competitive advantage over said competitors who do not control large tonnage of freight and do not engage in such practices, and to unfairly divert business from one to another of such concerns, from whom said corporation and its subsidiary and their competitors purchased raw materials and manufactured products as above set forth, by requiring that the principal consideration for the purchase of such products be volume of tonnage routed by such concerns through aforesaid terminal as above set forth, instead of usual and normal competitive considerations such as quality, service, and price, and thus to deprive such concerns as do not control large tonnages of freight from fairly competing with the business of said corporation and subsidiary, and with tendency to hinder and suppress competition between said corporation and subsidiary and their said competitors, and to create a monopoly in the sale and distribution of food products, including California canned and dried fruits and vegetables and canned fish and coffee, in interstate, coast-wise and foreign trade in commerce, and to hinder and suppress competition between said industrial concerns from whom such corporation and subsidiary purchased their supplies of raw materials and manufactured products:

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. Allen C. Phelps for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., and *Pillsbury, Madison & Sutro*, of San Francisco, Calif., for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that California Packing Corporation and Alaska Packers Association, corporations, hereinafter referred to as corporate respondents, and L. E. Wood, A. M. Lester, W. H. Levy, A. K. Tichenor, H. E. Van Horn, and Irving F. Lyons, hereinafter referred to as individual 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. Said corporate respondent, California Packing Corporation, is a corporation organized under and by virtue of the laws of the State of New York, October 19, 1916, with its principal office located at 101 California Street, in the city of San Francisco, State of California. Said corporate respondent now has an authorized capitalization of 1,500,000 common stock no par value, of which there are now outstanding 965,073 shares, with a valuation of approximately \$40,000,000. The gross assets of said corporate respondent after reserve for depreciation amount to approximately \$56,000,000. Said corporate respondent, since its organization, acquired approximately 84% of the capital stock of the corporate respondent, Alaska Packers Association.

Said corporate respondent, California Packing Corporation, is engaged in the business of packing and distributing a wide line of food products consisting principally of dried fruits, canned fruits, canned vegetables, canned fish, canned Hawaiian pineapples, and coffee. Said corporate respondent is the largest packer and distributor of dried fruits and vegetables in the world, and is an important factor in the Hawaiian pineapple industry and in the packing of sardines and tuna fish since the year 1926. Said corporate respondent owns, controls, and operates more than 100 canning factories, fruit drying plants, and other factories located in the States of California, Oregon, Washington, Idaho, Utah, Wisconsin, Illinois, Minnesota, Florida, New York, and in the Territories of Alaska

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and Hawaii, in which food products under the brands or trade names, "Del Monte," "Sunkist," "Goldbar," "Glass Jar," "President," and "Luxury," are packed for sale and shipment to the wholesale and retail trade throughout the several States of the United States and in foreign countries, sales of said products being made through sales representatives located in leading trade centers of the several States of the United States and in all foreign countries. Said corporate respondent causes said products, when sold, to be transported from the several factories, located as aforesaid, to the purchasers thereof by means of various methods of transportation, namely, automobile truck, railway, and steamship lines, and there has been and now is a constant course of commerce in said respondent's products between and among the several States of the United States and with foreign countries, through the various ports, docks, wharves, and terminals located on San Francisco Bay and tributary waters.

PAR. 2. Said corporate respondent, Alaska Packers Association, is a corporation organized under the laws of the State of California, with its principal office located at 111 California Street in the city of San Francisco in said State, and is engaged exclusively in the packing of salmon and in the sale thereof, with nine canning factories located in the Territory of Alaska and one on Pudget Sound in the State of Washington. Said corporate respondent has an authorized capitalization of 75,000 shares of common stock, par value \$100 per share, of which 57,508 shares are outstanding and approximately 84% of which is owned by the said corporate respondent, California Packing Corporation, which operates the business of said Alaska Packers Association as a subsidiary corporation.

PAR. 3. Said corporate respondents, in the course and conduct of their respective businesses as described herein, purchase substantial quantities of raw materials and manufactured products, such as wood, paper, and fiber boxes, containers, and cartons, tin, steel, copper, paint, and other articles too numerous to mention, from the manufacturers and producers thereof located throughout the several States of the United States and in foreign countries, and utilize said products in the several manufacturing processes of their said products, and there is a constant current of said raw materials and other manufactured products purchased by said corporate respondents between and among the several States of the United States and with foreign countries, through the various ports, docks, wharves, and terminals located on San Francisco Bay and tributary waters.

PAR. 4. In the course of conduct of their said businesses, said corporate respondents are in substantial competition with other individuals, firms, and corporations located in the various States of the United

States engaged in the canning and packing of fruits, vegetables, fish, and other products, and in the sale and distribution thereof to jobbers and wholesalers of said products located throughout the several States of the United States and in foreign countries, which said competitors also purchase substantial quantities of raw materials and other manufactured products, as hereinbefore set forth, from manufacturers and producers thereof located throughout the several States of the United States and said competitors also sell products to many of said industrial concerns. Said competitors utilize instrumentalities of distribution and transportation similar to those utilized by the said corporate respondent as aforesaid, but do not engage in practices similar to those described herein.

PAR. 5. Encinal Terminals is a corporation organized under the laws of the State of California, with its principal office and place of business located in the city of Alameda in said State, with an authorized capitalization of 25,000 shares of stock of a par value of \$100 per share, of which 8,815 shares are outstanding, and all of which shares are owned and held by the said corporate respondent, Alaska Packers Association. Said Encinal Terminals is, and has been since the year 1925, engaged in the public wharfinger business in the city of Alameda on the east side of San Francisco Bay, where it operates and maintains facilities necessary in said business, including wharves, sheds, warehouses, and switch tracks for handling freight directed to or from railroad cars and steamships at the wharves, which it leases from said corporate respondent, Alaska Packers Association. The function of said Encinal Terminals in commerce is the same as other terminals located on San Francisco Bay, as hereinafter set forth in paragraph 6.

Said corporate respondents organized the said Encinal Terminals and now direct and control its affairs as a subsidiary of the said corporate respondent, California Packing Corporation, and have utilized since the year 1925, and now utilize the facilities and services of the said Encinal Terminals in the distribution and transportation of the products manufactured and sold by them as aforesaid.

PAR. 6. San Francisco Bay, upon which the cities of San Francisco, Oakland, and Alameda are located, is a land-locked harbor, forty-eight miles long, with 100 miles of shore line, and is fed by two navigable rivers, the Sacramento and the San Joaquin, flowing from the interior of the State of California. It has for many years been recognized as the principal harbor for steamship vessels on the Pacific Coast and ranks second only to New York harbor in the United States with respect to the number of steamship lines landing

their cargoes at docks and wharves located thereon, and in the value of the cargoes handled. Approximately 166 steamship lines, operating as coastwise, intercoastal, and foreign, serving in various trades every port of importance throughout the world, carry freight to and from the various ports on San Francisco Bay.

The port of San Francisco, under the immediate control of the Board of State Harbor Commissioners, is owned by the State of California and is operated on a non-profit basis. This port provides a fruit and produce terminal, a grain terminal, a banana terminal, and a ship-side refrigeration terminal. Originally all water-borne freight cargo entering or leaving the Bay of San Francisco passed over these wharves located in the city of San Francisco.

State Terminal Company, Ltd., was organized in June 1931, and since that time has been engaged in the public wharfing business at the Port of San Francisco at Third and Channel Streets. Said Terminal Company occupies buildings and facilities which it rents from the State of California and conducts a general merchandise terminal, and, in addition, handles canned and dried fruits, fishmeal, and lumber.

The Howard Terminal is located at First and Market Streets, Oakland, Calif., having been organized in 1900, and was originally conducted as a general merchandising terminal handling, principally, coal and grain, and offering storage facilities. In 1916 a pier was constructed to accommodate the docking of deep water vessels, and since that time it has been operated as a ship-side terminal. Said Howard Terminal has equipment for handling freight, including railroad tracks, docks for steamers, loading accommodations for motor trucks, and terminal buildings to accommodate the handling of freight cargo for shippers from carrier to vessel, and also extensive warehousing facilities.

The Parr Terminal Company, organized in 1918, was engaged in the public wharfing business in the city of Oakland, Calif., until October 1, 1934, when its operations were discontinued. The Parr, Richmond Corporation, a subsidiary of the said Parr Terminal Company, now conducts, and since 1927 has conducted, a wharfing business in the city of Richmond, Calif., operating four terminals for this purpose.

The port of Oakland, which is owned by the municipality of Oakland, Calif., began operation as a public wharfing in 1927. It is situated on the mainland side of San Francisco Bay and offers the usual facilities for the interchange of freight cargo between land and water carriers. It operates three large terminals for ocean-

going vessels and a fourth designed for inland water-way carriers. There are a large number of industrial plants located close to the port of Oakland which would normally utilize its facilities.

The port of Stockton, Calif., located on the San Joaquin River, about ninety miles from San Francisco, began its operations as a public wharfinger in February 1933, and has four public wharves and a grain terminal. Much of the cargo handled through this port's facilities is received from or consigned to interior towns in California. The said port of Stockton, because of its geographical location, has a competitive advantage in securing freight from certain of these towns due to the fact that railroad and truck rates to the port are \$1 per ton cheaper than they are to San Francisco and East Bay ports, including Oakland and Alameda.

The above-described terminals were, during the periods of time of their existence, or are now competitors of said Encinal Terminals, and their function is to act as connecting links between the transportation of products from railroad freight cars or motor trucks into the terminal and to ocean carriers outbound; they operate as the agent of shippers of products being transported and exported, unloading, accumulating and distributing said products to steamships outbound. In addition, said terminals act as the agents for inbound steamers, furnishing them a berth and assisting them in unloading their cargoes and in the assorting and distribution of the same on the docks ready for transportation to interior points in trucks and in railroad cars; said terminals also act as agents for the railroads carrying products to and from said terminals by loading and unloading freight cars, sealing cars, making out switch lists, damage reports, and other similar activities. The steamship companies utilizing said terminals are required to pay a service charge for all cargo received or discharged, and, in addition, the terminals have a charge for loading or unloading railroad cars and trucks, this being paid by the shipper, who is also required to pay a toll charge on a tonnage basis.

PAR. 7. Said individual respondent, L. E. Wood, is president of the said corporate respondent, California Packing Corporation, and vice president of the said corporate respondent, Alaska Packers Association. Said individual respondent, A. M. Lester, is vice president of said corporate respondent, California Packing Corporation, and a director of said corporate respondent, Alaska Packers Association. Said individual respondent, W. H. Levy, is purchasing agent for said corporate respondent, California Packing Corporation. Said individual respondent, A. K. Tichenor, is vice president, general manager and director of said corporate respondent, Alaska Packers

Association. Said individual respondent, H. E. Van Horn, was traffic director of said corporate respondent, California Packing Corporation, from 1918 to 1928, and is now president of said Encinal Terminals. Said individual respondent, Irving F. Lyons, is now traffic manager of the said corporate respondent, California Packing Corporation.

PAR. 8. Said corporate respondents, acting directly, through and in cooperation with the said individual respondents, for more than one year last past, and particularly since the year 1929, have sought to induce, coerce, and compel, and have induced, coerced, and compelled a substantial number of large industrial concerns, shippers of substantial tonnages of freight, including the various and several corporations from whom said corporate respondents and their said competitors, purchase supplies of raw materials and manufactured products, as aforesaid, and who would, but for the activities of said respondents described herein, normally and usually route their products through various and respective terminals located on San Francisco Bay and the rivers tributary thereto, as described in paragraph 6 herein, to divert, change, and shift their routing of shipments so as to utilize the facilities of the said Encinal Terminals to the exclusion of said other terminals by the following methods, to wit:

(a) By promises or assurances that the said corporate respondents would purchase the products of said industrial concerns or would increase their volume of purchases from said industrial concerns, if the said industrial concerns would route the shipments of merchandise and products sold and shipped by them and by other concerns subject to their control, including the competitors of said respondent corporations, through the said Encinal Terminals, which had theretofore been routed through said other terminals.

(b) By threats of reduction or discontinuance of the purchase of said raw materials or manufactured products from said industrial concerns if they declined to route their shipments of merchandise and products, or the merchandise and products of other concerns under their control, through the said Encinal Terminals, and continued to route said shipments through the said other terminals.

PAR. 9. Said corporate respondents, through and in cooperation with the said individual respondents, for more than one year last past, and particularly since the year 1929, have sought to induce, coerce and compel all or a majority of the steamship companies operating as coastwise, intercoastal, and foreign cargo carriers engaged in carrying freight to and from various ports on San Francisco Bay and tributary waters, and has induced, coerced, and compelled a substantial number of said steamship companies, often at extra expense to said

steamship companies to divert freight tonnage theretofore moving through said other terminals described in paragraph 6 herein, to said Encinal Terminals, although the service and facilities of the said other terminals are equal to those of the said Encinal Terminals and in many instances more economical to said steamship companies and the shippers of the products carried by them, than of the said Encinal Terminals, by the use of the following methods, to wit:

(a) By promises or assurances of substantial tonnages, or a substantial increase of tonnages, of freight to be shipped over the lines of said steamship companies from the said Encinal Terminals by said corporate respondents if the said steamship companies would divert the tonnage theretofore moving through said other terminals, to said Encinal Terminals.

(b) By threats of withdrawal or discontinuance of the shipment of freight or the reduction of tonnage of freight shipped over the lines of said steamship companies from said Encinal Terminals by the said corporate respondents if the said steamship companies would not divert tonnage theretofore moving through said other terminals to said Encinal Terminals.

PAR. 10. Said corporate respondents, through and in cooperation with the said individual respondents, for more than one year last past and particularly since the year 1929, have sought to induce, coerce and compel all or a majority of the steamship companies operating as coastwise, intercoastal and foreign cargo carriers engaged in carrying freight to and from various ports on San Francisco Bay and tributary waters, and have induced, coerced and compelled a substantial number of said steamship companies, by methods described in sub-paragraphs (a) and (b) of paragraph 9 herein, to disclose the identity of consignees and receivers of shipments of freight cargo carried by said steamship companies and to allow representatives of said corporate respondents to inspect confidential records, including manifests, of said steamship companies, to enable said respondents to bring pressure and influence to bear upon said consignees and receivers to divert their shipments through said Encinal Terminals, as set forth and described in paragraph 8 herein.

PAR. 11. Said individual respondent, H. E. Van Horn, while traffic manager of said corporate respondent, California Packing Corporation, formulated and inaugurated and has since directed the execution of a plan of using the tonnage of freight shipped by said corporate respondents over steamship lines and the buying power of said corporate respondents to influence the routing of tonnage to said Encinal Terminals, and together with other said individual respondents described in paragraph 7 herein, composed what is known as

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the "Encinal Executive Committee," and all of said individual respondents have cooperated with and assisted the said corporate respondents in the execution of the said plan and of the acts and practices described and set forth herein, by utilizing their official positions in said corporate respondents to induce, coerce, and compel the officials of said steamship companies and said industrial concerns to give undue preference to the facilities of the said Encinal Terminals by means of said promises and threats as described and set forth in sub-paragraphs (a) and (b) of paragraphs 8, 9, and 10 herein.

PAR. 12. Said corporate respondents, acting directly through and in cooperation with said individual respondents, have spied upon the business of said competitors of said corporate respondents, by securing from said Encinal Terminals the names and addresses of customers of said competitors, to enable said corporate respondents to bring pressure and influence to bear upon said customers, to divert their shipments of products purchased from said competitors, through said Encinal Terminals, as set forth herein.

PAR. 13. Said corporate respondents, acting directly and in cooperation with said individual respondents, induced, coerced, and compelled said competitors of said corporate respondents to divert, change, and shift their shipments of products sold by them in interstate and foreign commerce so as to utilize the facilities of the said Encinal Terminals to the exclusion of said other terminals located on San Francisco Bay, by bringing undue pressure to bear upon the said industrial concerns to whom said competitors were selling their products or from whom said competitors were purchasing supplies of raw materials and manufactured products as more particularly set forth in paragraph 8 herein.

PAR. 14. The effect of the said practices of the said corporate and individual respondents, as set forth herein, has been and now is, to reduce the distribution expenses and to enhance and increase the revenues of said corporate respondents to the unfair competitive disadvantage of said competitors by compelling said competitors and said other industrial concerns, against their interest, to route shipments of products sold by them as aforesaid, through said Encinal Terminals; and to require the said competitors to pay more for said raw materials and manufactured products from said industrial concerns than said corporate respondents are required to pay and to give to said respondent corporations an unfair competitive advantage over said competitors who do not control large tonnage of freight and who do not engage in said practices; and also to unfairly divert business from one to another of the said industrial concerns from whom said respondent corporations and their said competitors purchase raw materials and

manufactured products as aforesaid, by requiring that the principal consideration for the purchase of said products be the volume of tonnage routed by said industrial concerns through the said Encinal Terminals, as hereinbefore set forth, instead of the usual and normal competitive considerations such as quality, service, and price, and thus to deprive those said industrial concerns that do not control large tonnages of freight from fairly competing for the business of said respondent corporations.

PAR. 15. The foregoing alleged acts and practices of the said corporate and individual respondents have been and still are to tend to hinder and suppress competition between said corporate respondents and their said competitors, and to create a monopoly in said corporate respondents, in the sale and distribution of food products, including California canned and dried fruits, canned Hawaiian pineapple, California canned vegetables, and canned fish, and coffee, in interstate, coastwise and foreign trade and commerce; and to hinder and suppress competition between said industrial concerns from whom said corporate respondents purchase their supplies of raw materials and manufactured products.

PAR. 16. The foregoing alleged acts and practices of the said corporate and individual respondents have been and still are to the prejudice of the public and competitors of said respondent corporations, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, and entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on April 25, 1936, issued, and on April 29, 1936, served, its complaint in this proceeding upon respondents California Packing Corporation, Alaska Packers Association, L. E. Wood, A. M. Lester, W. H. Levy, A. K. Tichenor, H. E. Van Horn, and Irving F. Lyons, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance and service of said complaint, respondents filed their answer thereto, making general denial of the substantial allegations of the complaint. Subsequently all the respondents petitioned the Federal Trade Commission for permission to withdraw said answer and to file their substituted answer to the complaint, in which respondents ad-

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mitted, for the purposes of this proceeding only, all the material allegations of said complaint. Pursuant to permission granted by the Commission, said original answer was withdrawn by said respondents and said substituted answer was 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 might issue and be served upon the respondents requiring them to cease and desist from the unfair methods of competition alleged in the complaint. 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, California Packing Corporation, is a corporation organized under and by virtue of the laws of the State of New York, October 19, 1916, with its principal office located at 101 California Street, in the city of San Francisco, State of California. Said corporate respondent now has an authorized capitalization of 1,500,000 common stock no par value, of which there are now outstanding 965,073 shares, with a valuation of approximately \$40,000,000. The gross assets of said corporate respondent after reserve for depreciation amount to approximately \$56,000,000. Said corporate respondent, since its organization, acquired approximately 84% of the capital stock of the corporate respondent, Alaska Packers Association.

Said corporate respondent, California Packing Corporation, is engaged in the business of packing and distributing a wide line of food products consisting principally of dried fruits, canned fruits, canned vegetables, canned fish, canned pineapples, and coffee. Said corporate respondent is one of the largest packers and distributors of dried fruits and vegetables in the world, and is an important factor in the Hawaiian pineapple industry and in the packing of sardines and tuna fish since the year 1926. Said corporate respondent owns, controls, and operates more than 100 canning factories, fruit drying plants and other factories located in the States of California, Oregon, Washington, Idaho, Utah, Wisconsin, Illinois, Minnesota, Florida, New York and in the Territories of Alaska and Hawaii, in which food products under the brands or trade names, "Del Monte," "Sunkist," "Goldbar," "Glass Jar," "President," and "Luxury," are packed for sale and shipment to the wholesale and retail trade throughout the several States of the United States and in foreign countries, sales of said products being made through sales representatives located in leading

trade centers of the several States of the United States and in all foreign countries. Said corporate respondent causes said products, when sold, to be transported from the several factories, located as aforesaid, to the purchasers thereof by means of various methods of transportation, namely, automobile truck, railway, and steamship lines, and there has been and now is a constant course of commerce in said respondent's products between and among the several States of the United States and with foreign countries, through the various ports, docks, wharves, and terminals located on San Francisco Bay and tributary waters.

PAR. 2. Said corporate respondent, Alaska Packers Association, is a corporation organized under the laws of the State of California, with its principal office located at 111 California Street in the city of San Francisco in said State, and is engaged exclusively in the packing of salmon and in the sale thereof, with nine canning factories located in the Territory of Alaska and one on Puget Sound in the State of Washington. Said corporate respondent has an authorized capitalization of 75,000 shares of common stock, par value \$100 per share, of which 57,508 shares are outstanding and approximately 84% of which is owned by the said corporate respondent, California Packing Corporation, which operates the business of said Alaska Packers Association as a subsidiary corporation.

PAR. 3. Said corporate respondents, in the course and conduct of their respective businesses as described herein, purchase substantial quantities of raw materials and manufactured products, such as wood, paper, and fiber boxes, containers and cartons, tin, steel, copper, paint, and other articles too numerous to mention, from the manufacturers and producers thereof located throughout the several States of the United States and in foreign countries, and utilize said products in the several manufacturing processes of their said products, and there is a constant current of said raw materials and other manufactured products purchased by said corporate respondents between and among the several States of the United States and with foreign countries, through the various ports, docks, wharves, and terminals located on San Francisco Bay and tributary waters.

PAR. 4. In the course and conduct of their said businesses, said corporate respondents are in substantial competition with other individuals, firms, and corporations located in the various States of the United States engaged in the canning and packing of fruits, vegetables, fish, and other products, and in the sale and distribution thereof to jobbers and wholesalers of said products located throughout the several States of the United States and in foreign countries, which said competitors also purchase substantial quantities of raw

materials and other manufactured products, as hereinbefore set forth, from manufacturers and producers thereof located throughout the several States of the United States and said competitors also sell products to many of said industrial concerns. Said competitors utilize instrumentalities of distribution and transportation similar to those utilized by the said corporate respondent as aforesaid, but do not engage in practices similar to those described herein.

PAR. 5. Encinal Terminals is a corporation organized under the laws of the State of California, with its principal office and place of business located in the city of Alameda in said State, with an authorized capitalization of 25,000 shares of stock of a par value of \$100 per share, of which 8,815 shares are outstanding, and all of which shares are owned and held by the said corporate respondent, Alaska Packers Association. Said Encinal Terminals is, and has been since the year 1925, engaged in the public wharfinger business in the city of Alameda on the east side of San Francisco Bay, where it operates and maintains facilities necessary in said business, including wharves, sheds, warehouses, and switch tracks for handling freight directed to or from railroad cars and steamships at the wharves. It leases from said corporate respondent, Alaska Packers Association, the land on which said terminal facilities are located. The function of said Encinal Terminals in commerce is the same as other terminals located on San Francisco Bay, as hereinafter set forth in paragraph 6. Said corporate respondents organized the said Encinal Terminals and now direct and control its affairs as a subsidiary of the said corporate respondent, California Packing Corporation, and have utilized since the year 1925, and now utilize the facilities and services of the said Encinal Terminals in the distribution and transportation of the products manufactured and sold by them as aforesaid.

PAR. 6. San Francisco Bay, upon which the cities of San Francisco, Oakland, and Alameda are located, is a land-locked harbor, forty-eight miles long, with 100 miles of shore line, and is fed by two navigable rivers, the Sacramento and the San Joaquin, flowing from the interior of the State of California. It has for many years been recognized as the principal harbor for steamship vessels on the Pacific Coast and ranks second only to New York harbor in the United States with respect to the number of steamship lines landing their cargoes at docks and wharves located thereon, and in the value of the cargoes handled. Approximately 166 steamship lines, operating as coastwise, inter-coastal and foreign, serving in various trades every port of importance throughout the world, carry freight to and from the various ports on San Francisco Bay.

The port of San Francisco, under the immediate control of the Board of State Harbor Commissioners, is owned by the State of California and is operated on a non-profit basis. This port provides a fruit and produce terminal, a grain terminal, a banana terminal and a ship-side refrigeration terminal. Originally all water-borne freight cargo entering or leaving the Bay of San Francisco passed over these wharves located in the city of San Francisco.

State Terminal Company, Ltd., was organized in June 1931, and since that time has been engaged in the public wharfinger business at the Port of San Francisco at Third and Channel Streets. Said Terminal Company occupies buildings and facilities which it rents from the State of California and conducts a general merchandise terminal, and, in addition, handles canned and dried fruits, fishmeal, and lumber.

The Howard Terminal is located at First and Market Streets, Oakland, Calif., having been organized in 1900, and was originally conducted as a general merchandising terminal handling, principally, coal and grain, and offering storage facilities. In 1916 a pier was constructed to accommodate the docking of deep water vessels, and since that time it has been operated as a ship-side terminal. Said Howard Terminal has equipment for handling freight, including railroad tracks, docks for steamers, loading accommodations for motor trucks, and terminal buildings to accommodate the handling of freight cargo for shippers from carrier to vessel, and also extensive warehousing facilities.

The Parr Terminal Company, organized in 1918, was engaged in the public wharfinger business in the city of Oakland, Calif., until October 1, 1931, when its operations were discontinued. The Parr, Richmond Corporation, a subsidiary of the said Parr Terminal Company, now conducts, and since 1927 has conducted, a wharfinger business in the city of Richmond, Calif., operating four terminals for this purpose.

The port of Oakland, which is owned by the municipality of Oakland, Calif., began operation as a public wharfinger in 1927. It is situated on the mainland side of San Francisco Bay and offers the usual facilities for the interchange of freight cargo between land and water carriers. It operates three large terminals for ocean-going vessels and a fourth designed for inland water-way carriers. There are a large number of industrial plants located close to the port of Oakland which would normally utilize its facilities.

The port of Stockton, Calif., located on the San Joaquin River, about ninety miles from San Francisco, began its operations as a public wharfinger in February 1933, and has four public wharves and a grain terminal. Much of the cargo handled through this port's facilities is received from or consigned to interior towns in

California. The said port of Stockton, because of its geographical location, has a competitive advantage in securing freight from certain of these towns due to the fact that railroad and truck rates to the ports are \$1 per ton cheaper than they are to San Francisco and East Bay ports, including Oakland and Alameda.

The above-described terminals were, during the periods of time of their existence, or are now competitors of said Encinal Terminals, and their function is to act as connecting links between the transportation of products from railroad freight cars or motor trucks into the terminal and to ocean carriers outbound; they operate as the agent of shippers of products being transported and exported, unloading, accumulating, and distributing said products to steamships outbound. In addition, said terminals act as the agents for inbound steamers, furnishing them a berth and assisting them in unloading their cargoes and in the assorting and distribution of the same on the docks ready for transportation to interior points in trucks and in railroad cars; said terminals also act as agents for the railroads carrying products to and from said terminals by loading and unloading freight cars, sealing cars, making out switch lists, damage reports, and other similar activities. The steamship companies utilizing said terminals are required to pay a service charge for all cargo received or discharged, and, in addition, the terminals have a charge for loading or unloading railroad cars and trucks, this being paid by the shipper, who is also required to pay a toll charge on a tonnage basis.

PAR. 7. Said individual respondent, L. E. Wood, is president of the said corporate respondent, California Packing Corporation, and vice president of the said corporate respondent, Alaska Packers Association. Said individual respondent, A. M. Lester, is vice president of said corporate respondent, California Packing Corporation, and a director of said corporate respondent, Alaska Packers Association. Said individual respondent, W. H. Levy is purchasing agent for said corporate respondent, California Packing Corporation. Said individual respondent, A. K. Tichenor, is vice president, general manager and director of said corporate respondent, Alaska Packers Association. Said individual respondent, H. E. Van Horn was traffic director of said corporate respondent, California Packing Corporation, from 1918 to 1928, and is now president of said Encinal Terminals. Said individual respondent, Irving F. Lyons, is now traffic manager of the said corporate respondent, California Packing Corporation.

PAR. 8. Said corporate respondents, acting directly, through and in cooperation with the said individual respondents, for more than

one year last past, and particularly since the year 1929, have sought to induce, coerce and compel, and have induced, coerced and compelled a substantial number of large industrial concerns, shippers of substantial tonnages of freight, including the various and several corporations from which said corporate respondents and their said competitors, purchase supplies of raw materials and manufactured products, as aforesaid, and who would, but for the activities of said respondents described herein, normally and usually route their products through various and respective terminals located on San Francisco Bay and the rivers tributary thereto, as described in paragraph 6 herein, to divert, change and shift their routing of shipments so as to utilize the facilities of the said Encinal Terminals to the exclusion of said other terminals by the following methods, to wit:

(a) By promises or assurances that the said corporate respondents would purchase the products of said industrial concerns or would increase their volume of purchases from said industrial concerns, if the said industrial concerns would route the shipments of merchandise and products sold and shipped by them and by other concerns subject to their control, including the competitors of said respondent corporations, through the said Encinal Terminals, which had theretofore been routed through said other terminals.

(b) By threats of reduction or discontinuance of the purchase of said raw materials or manufactured products from said industrial concerns if they declined to route their shipments of merchandise and products, or the merchandise and products of other concerns under their control, through the said Encinal Terminals, and continued to route said shipments through the said other terminals.

PAR. 9. Said corporate respondents, through and in cooperation with the said individual respondents, for more than one year last past, and particularly since the year 1929, have sought to induce, coerce and compel all or a majority of the steamship companies operating as coastwise, intercoastal, and foreign cargo carriers engaged in carrying freight to and from various ports on San Francisco Bay and tributary waters, and have induced, coerced and compelled a substantial number of said steamship companies, often at extra expense to said steamship companies to divert freight tonnage theretofore moving through said other terminals described in paragraph 6 herein, to said Encinal Terminals, although the service and facilities of the said other terminals are equal to those of the said Encinal Terminals and in many instances more economical to said steamship companies and the shippers of the products carried by them, than those of the said Encinal Terminals, by the use of the following methods, to wit:

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(a) By promises or assurances of substantial tonnages, or a substantial increase of tonnage, of freight to be shipped over the lines of said steamship companies from the said Encinal Terminals by said corporate respondents if the said steamship companies would divert the tonnage theretofore moving through said other terminals, to said Encinal Terminals.

(b) By threats of withdrawal or discontinuance of the shipment of freight or the reduction of tonnage of freight shipped over the lines of said steamship companies from said Encinal Terminals by the said corporate respondents if the said steamship companies would not divert tonnage theretofore moving through said other terminals to said Encinal Terminals.

PAR. 10. Said corporate respondents, through and in cooperation with the said individual respondents, for more than one year last past and particularly since the year 1929, have sought to induce, coerce, and compel all or a majority of the steamship companies operating as coastwise, intercoastal and foreign cargo carriers engaged in carrying freight to and from various ports on San Francisco Bay and tributary waters, and have induced, coerced and compelled a substantial number of said steamship companies, by methods described in subparagraphs (a) and (b) of paragraph 9 herein, to disclose the identity of consignees and receivers of shipments of freight cargo carried by said steamship companies and to allow representatives of said corporate respondents to inspect confidential records, including manifests, of said steamship companies, to enable said respondents to bring pressure and influence to bear upon said consignees and receivers to divert their shipments through said Encinal Terminals, as set forth and described in paragraph 8 herein.

PAR. 11. Said individual respondent, H. E. Van Horn, while traffic manager of said corporate respondent, California Packing Corporation, formulated and inaugurated and has since directed the execution of a plan of using the tonnage of freight shipped by said corporate respondents over steamship lines and the buying power of said corporate respondents to influence the routing of tonnage to said Encinal Terminals, and who together with other said individual respondents described in paragraph 7 herein, composed what is known as the "Encinal Executive Committee," and all of said individual respondents have cooperated with and assisted the said corporate respondents in the execution of the said plan and of the acts and practices described and set forth herein, by utilizing their official positions in said corporate respondents to induce, coerce and compel the officials of said steamship companies and said indus-

trial concerns to give undue preference to the facilities of the said Encinal Terminals by means of said promises and threats as described and set forth in subparagraphs (a) and (b) of paragraphs 8, 9, and 10 herein.

PAR. 12. Said corporate respondents, acting directly through and in cooperation with said individual respondents, have spied upon the business of said competitors of said corporate respondents, by securing from said Encinal Terminals the names and addresses of customers of said competitors, to enable said corporate respondents to bring pressure and influence to bear upon said customers, to divert their shipments of products purchased from said competitors, through said Encinal Terminals, as set forth herein.

PAR. 13. Said corporate respondents, acting directly and in cooperation with said individual respondents, induced, coerced, and compelled said competitors of said corporate respondents to divert, change and shift their shipments of products sold by them in interstate and foreign commerce so as to utilize the facilities of the said Encinal Terminals to the exclusion of said other terminals located on San Francisco Bay, by bringing undue pressure to bear upon the said industrial concerns to whom said competitors were selling their products or from whom said competitors were purchasing supplies of raw materials and manufactured products as more particularly set forth in paragraph 8 herein.

PAR. 14. The effect of the said practices of the said corporate and individual respondents, as set forth herein, has been and now is, to reduce the distribution expenses and to enhance and increase the revenues of said corporate respondents to the unfair competitive disadvantage of said competitors by compelling said competitors and said other industrial concerns, against their interest, to route shipments of products sold by them as aforesaid, through said Encinal Terminals; and to require the said competitors to pay more for said raw materials and manufactured products from said industrial concerns than said corporate respondents are required to pay and to give to said respondent corporations an unfair competitive advantage over said competitors who do not control large tonnage of freight and who do not engage in said practices; and also to unfairly divert business from one to another of the said industrial concerns from whom said respondent corporations and their said competitors purchase raw materials and manufactured products as aforesaid, by requiring that the principal consideration for the purchase of said products be the volume of tonnage routed by said industrial concerns through the said Encinal Terminals, as hereinbe-

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fore set forth, instead of the usual and normal competitive considerations such as quality, service, and price, and thus to deprive those said industrial concerns that do not control large tonnages of freight from fairly competing for the business of said respondent corporations.

PAR. 15. The foregoing alleged acts and practices of the said corporate and individual respondents have been and still are to tend to hinder and suppress competition between said corporate respondents and their said competitors, and to create a monopoly in said corporate respondents, in the sale and distribution of food products, including California canned and dried fruits, canned pineapple, California canned vegetables, and canned fish, and coffee, in interstate, coastwise and foreign trade and commerce; and to hinder and suppress competition between said industrial concerns from whom said corporate respondents purchase their supplies of raw materials and manufactured products.

CONCLUSION

The aforesaid acts and practices of the respondents, California Packing Corporation, Alaska Packers Association, L. E. Wood, A. M. Lester, W. H. Levy, A. K. Tichenor, H. E. Van Horn and Irving F. Lyons, 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 June 30, 1937 by respondents admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and 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 California Packing Corporation and Alaska Packers Association and their respective officers, agents, representatives, servants, and employees, and L. E. Wood, A. M. Lester, W. H. Levy, A. K. Tichenor, H. E. Van Horn, and Irving

F. Lyons, in connection with the offering for sale, sale and distribution of food products in interstate commerce by said California Packing Corporation and Alaska Packers Association for use or resale within the United States or any territory thereof, or in the District of Columbia, cease and desist from:

1. Inducing, coercing, or compelling in any manner the routing of shipments of commodities purchased or sold by concerns which are in competition with the California Packing Corporation or Alaska Packers Association in the sale and distribution of food products, including dried fruits, canned fruits, canned vegetables, canned fish, canned pineapples, or coffee, to or through Encinal Terminals, Alameda, California, or any public terminal owned or controlled by said California Packing Corporation or Alaska Packers Association; provided, that nothing in this paragraph shall prevent voluntary cooperation in the normal course of business between the said competitors and said California Packing Corporation or Alaska Packers Association in lawfully making up pooled cars, in arranging enclosures, or other cooperative shipping arrangements.

2. Inducing, coercing, or compelling industrial concerns from which the California Packing Corporation or Alaska Packers Association purchase supplies of raw materials and manufactured products, to divert, change or shift to or through Encinal Terminals or any such subsidiary terminal, the routing made by such concerns of shipments of commodities sold by them to, or purchased from, industrial concerns other than the California Packing Corporation or Alaska Packers Association; provided, that nothing in this paragraph shall prevent the solicitation of tonnage consisting of shipments of commodities to the extent that they are to be used in the manufacture of finished products which said California Packing Corporation or Alaska Packers Association have previously contracted to purchase.

3. Inducing, coercing, or compelling companies operating or controlling steamship lines operating as coastwise, intercoastal, or foreign cargo carriers engaged in carrying freight to and from various points on San Francisco Bay and tributary waters to divert freight tonnage, the routing of which such steamship lines control and in which tonnage the California Packing Corporation and the Alaska Packers Association have no proprietary or contractual interest, to Encinal Terminals, or any such subsidiary terminal, or to utilize the facilities thereof for the handling of commodities in which the California Packing Corporation and the Alaska Packers Association have no such interest, provided, that nothing in this paragraph shall prevent the solicitation of such freight under the control of said

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steamship companies undertaken for the purpose of facilitating or expediting the movement of specific shipments of commodities being made to or by said California Packing Corporation or Alaska Packers Association.

4. Inducing, coercing, or compelling steamship companies operating as coastwise, intercoastal or foreign cargo carriers engaged in carrying freight to and from various ports in San Francisco Bay and tributary waters unlawfully to disclose the identity of consignees and receivers of shipments of freight cargo carried by said steamship companies, or unlawfully to allow representatives of said California Packing Corporation or Alaska Packers Association to inspect records including manifests, of such steamship companies, except insofar as such records concern or relate to freight shipped or received by the California Packing Corporation or the Alaska Packers Association or are open to public inspection.

5. Inspecting or examining any such confidential records of said steamship companies, except insofar as same concern or relate to freight shipped or received by the corporate respondents or are open to public inspection.

6. Pursuing a plan or policy of using directly or indirectly the tonnage of freight shipped or received by said California Packing Corporation or Alaska Packers Association or their buying power to induce, coerce or compel said steamship companies or said industrial concerns to route tonnage to or through Encinal Terminals or any such subsidiary terminal, or to use the facilities thereof, in violation of this order, through threats of withdrawing or diminishing, or promises of making or increasing, directly or indirectly, purchases or shipments by said California Packing Corporation or Alaska Packers Association.

Provided, Nothing in this order shall prohibit the independent solicitation of traffic for said Encinal Terminals, by H. E. Van Horn, as an officer or agent of said Encinal Terminals, or by any other agent of said Encinal Terminals, in the normal course of business of a public terminal, without reliance upon or reference to the affiliation of said Encinal Terminals with said California Packing Corporation or Alaska Packers Association or their bargaining power as purchasers or shippers.

It is further ordered, That the respondents and each of them 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
THE RIESER 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 2799. Complaint, May 8, 1936—Decision, June 30, 1937

Where a corporation engaged in manufacture and sale of tissues, in competition with those engaged in sale and distribution of handkerchiefs and of compounds, medicaments, or preparations of various kinds of treatment, relief, or cure of colds, hay fever, and sinus troubles, and including among said various competitors those who truthfully describe their said handkerchiefs or truthfully advertise, describe, and represent their said remedies, etc., on labels and in advertisements thereof—

Described its said products, on packages and cartons in which sold, as "MENTHO-KERCHIEF The Mentholated Tissue Handkerchief," and stated thereon "RELIEVES HEAD COLDS SINUS AND HAY FEVER * * * CLEAR NASAL PASSAGES," and on reverse side of package or carton, and under statement "WHY DOCTORS RECOMMEND MENTHO-KERCHIEF," "They are better than ordinary handkerchiefs, because they are disposable and sanitary . . . They are better than ordinary tissues, because they are mentholated," and "Nothing like Mentho-kerchief to relieve all types of Head Colds, Sinus Trouble, and Hay Fever, etc," facts being its said tissue products, thus designated, described, and represented, had not been and were not recommended by doctors as a cure or remedy for head colds and other ailments above set forth, and use thereof did not, and could not, have any beneficial effects as remedy or cure for hay fever or sinus trouble, or afford any appreciable relief to those suffering therefrom, and any benefits which a patient might derive through use of such tissues would be purely psychological and not physical, and said products were not, as signified to consuming public from unqualified words "handkerchief" or "kerchief," articles for use in connection with nose, face, or hands and made of silk, linen or cotton, and said products were not better than ordinary handkerchiefs, either because disposable or mentholated, or for any other cause;

With capacity and tendency to unfairly divert trade to it and thereby injure competitors above designated:

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

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

Mr. William L. Taggart for the Commission.

Mr. Fulton Brylawski, 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

Complaint

Federal Trade Commission having reason to believe that The Rieser Company, Inc., hereinafter designated 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 Rieser Company, 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 place of business at One Hundred Nineteen (119) West Fortieth (40th) Street, in the city and State of New York, engaged in the manufacture of tissues and in the sale and distribution of such products in commerce between the States of New York and Pennsylvania and the various other States of the United States. The factory in which it manufactures its said products is located at Shamokin, in the State of Pennsylvania. Respondent causes and has caused its products when sold to be transported either from its place of business in the State of New York or from its said factory in the State of Pennsylvania to purchasers in the various other States of the United States.

In the course and conduct of its business The Rieser Company, Inc., has been at all times hereinafter mentioned, and now is, in competition with individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce, of handkerchiefs, and of compounds, medicaments or preparations of various kinds offered for sale or sold for the treatment, relief, or cure of colds, hay fever, and sinus troubles.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent has caused its tissue products to be offered for sale or sold in packages or cartons on which there have appeared the following representations, to wit:

MENTHIO-KERCHIEF

The Mentholated Tissue Handkerchief

RELIEVES HEAD COLDS

SINUS AND HAY FEVER

* * *

CLEARs NASAL PASSAGES

The reverse side of the packages or cartons bears the following statements:

WHY DOCTORS RECOMMEND MENTHIO-KERCHIEF

They are better than ordinary handkerchiefs, because they are disposable and sanitary . . . They are better than ordinary tissues, because they are mentholated!

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25 F. T. C.

Nothing like Mentho-kerchief to relieve all types of Head Colds, Sinus Trouble and Hay Fever, etc.

In truth and in fact, the word "handkerchief" signifies and means to the consuming public an article for use in connection with the nose, face or hands manufactured from silk, linen, or cotton, and the tissue products of respondent is manufactured neither from silk, nor linen, nor cotton, and is not a handkerchief as the term is understood by the consuming public. They are not better than ordinary handkerchiefs either because they are disposable and sanitary or mentholated, or for any other cause.

The tissue products of respondent designated, described and represented as aforesaid have not been and are not recommended by doctors as a cure for head colds, sinus trouble, hay fever, or similar ailments, and the use of respondent's product has not had, does not have and cannot have any beneficial effect as a remedy for hay fever or sinus trouble, nor does it have or afford any appreciable or noticeable relief to those suffering from sinus trouble or hay fever. Such relief as might be obtained by sufferers from head colds would be limited to a conceivable, or possibly momentary, clearing of the nasal passages, yielding a relief so slight, temporary, and transient as to be negligible.

PAR. 3. There have been and are individuals, partnerships, and corporations offering for sale and selling in interstate commerce handkerchiefs truthfully described.

There are also and have been for many years last past individuals, partnerships, and corporations engaged in the sale in interstate commerce of compounds, remedies, medicaments, or medical preparations of various kinds for the cure of or as a remedy for, or for the treatment or relief of colds, hay fever and sinus troubles, truthfully advertised, described, and represented, both on labels appearing on their cartons or other containers of their product, and in advertisements thereof.

PAR. 4. The sale by respondent of its said product by means of the false and misleading representations described in paragraph 2 hereof has had and has the capacity and tendency to mislead and deceive the purchasing public into the belief that the said product has been recommended by doctors as a cure or remedy for, and that it may successfully serve for, the treatment and relief of sinus trouble, hay fever, and head colds and into the purchase of respondent's products in reliance on such erroneous belief.

The aforesaid practices of respondent have had and have the capacity and tendency to divert trade to respondent from, and

thereby to injure, competitors described or designated in paragraph 3 hereof, offering for sale and selling in interstate commerce handkerchiefs of various kinds, compounds, remedies, medicaments or medical preparations for the treatment, relief, or cure of sinus trouble, hay fever, or colds.

PAR. 5. The above and foregoing practices of respondent, described in paragraph 2 hereof, have been and are all to the prejudice of the public and of respondent's competitors, and have constituted and constitute unfair methods of competition within the meaning of Section 5 of the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 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 8, 1936, issued and served its complaint in this proceeding upon respondent, namely, The Rieser Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by W. L. Taggart, 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 Fulton Brylawski, 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 Rieser Company, 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 place of business at

119 West Fortieth Street in the city and State of New York. It is engaged in the manufacture of tissues and in the sale and distribution of such products in commerce between the States of New York and Pennsylvania and the various other States of the United States. The factory in which it manufactures its said products is located at Shamokin, in the State of Pennsylvania. Respondent causes and has caused its products, when sold, to be transported from its place of business in the State of New York, or from its said factory in the State of Pennsylvania, to purchasers in the various other States of the United States.

PAR. 2. In the course and conduct of its business, the Rieser Company, Inc., has been at all times hereinafter mentioned, and now is, in competition with individuals, partnerships, and corporations engaged in the sale and distribution in interstate commerce, of handkerchiefs and of compounds, medicaments, or preparations of various kinds offered for sale or sold for the treatment, relief, or cure of colds, hay fever, and sinus troubles.

PAR. 3. Respondent causes its tissue products to be offered for sale or sold in packages or cartons on which there have appeared the following representations, to wit:

MENTHO-KERCHIEF

The Mentholated Tissue Handkerchief

RELIEVES HEAD COLDS

SINUS AND HAY FEVER

* * *

CLEARs NASAL PASSAGES

The reverse side of the packages or cartons bears the following statements:

WHY DOCTORS RECOMMEND MENTHO-KERCHIEF

They are better than ordinary handkerchiefs, because they are disposable and sanitary * * * They are better than ordinary tissues, because they are mentholated.

Nothing like Mentho-kerchief to relieve all types of Head Colds, Sinus Trouble and Hay Fever, etc.

PAR. 4. The tissue products of respondent, designated, described, and represented, as aforesaid, have not been and are not recommended by doctors as a cure or remedy for head colds, sinus trouble, hay fever, or similar ailments. The use of respondent's product has not had, does not have, and cannot have any beneficial effect as a remedy or cure for hay fever or sinus trouble. Said products do not afford any appreciable relief to those suffering from sinus trouble or hay fever.

PAR. 5. There are individuals, partnerships and corporations offering for sale and selling in interstate commerce handkerchiefs truthfully described in competition with respondent's tissue products:

There are also, and have been for many years last past, individuals, partnerships, and corporations engaged in competition with respondent who have been offering for sale and selling in interstate commerce compounds, remedies, medicaments, or medical preparations of various kinds designed for the cure of, or as a remedy for or for the treatment or relief of colds, hay fever, and sinus troubles which are truthfully advertised, described, and represented, both on labels appearing on their cartons or other containers of their products and in advertisements thereof.

PAR. 6. It is the consensus of medical opinion that menthol externally applied will not relieve head colds, sinus trouble, or hay fever, but that a patient suffering from a head cold may by the inhalation of menthol vapors of considerable strength get a soothing sensation through the respiratory tract. The consensus of medical opinion is that common colds are caused by an unfilterable virus; that one of the effects of the cold is congestion of the nasal passages, that menthol when mixed with oil is frequently inserted into the nostrils for the purpose of easing this congestion. The effect of the menthol is to create a cooling and soothing sensation within the nostrils, and unless the congestion is too severe the patient has less difficulty in breathing. This is not, however, a treatment for the common cold in the strict sense, but is simply a temporary palliative in that the effect of the menthol is slightly astringent. Menthol has no effect on sinus trouble except in so far as it may give a cooling sensation to the nostrils and has no curative value in the treatment of hay fever. The claim of the respondent that the mentholated tissue in question will relieve colds, hay fever, and sinus trouble is a gross exaggeration and the tissues of respondent would be absolutely worthless in the treatment of common colds, hay fever, and sinus trouble. Any benefits which a patient might derive through the use of said tissues would be purely psychological and not physical.

PAR. 7. The claim that said tissues relieve colds, hay fever and sinus trouble is erroneous. The amount of menthol vapor that can be inhaled from the tissues in question is barely perceptible to a person not suffering from any of the ailments mentioned, that is to say, common colds, hay fever, and sinus trouble and would be entirely imperceptible to one suffering from common cold or sinus trouble.

Order

25 F. T. C.

PAR. 8. The use of the words handkerchief or kerchief unaccompanied by such qualifying and descriptive words as "paper" or "tissue paper" signifies and means to the consuming public an article for use in connection with the nose, face, or hands, manufactured from silk, linen, or cotton and does not include the type of product manufactured by respondent. The tissue products of respondent are not manufactured from silk, linen, or cotton and are not a handkerchief as the term is now understood by the consuming public. When the words "tissue paper" or "paper" accompanying the words handkerchief or kerchief the public is placed on notice as to the nature of the product described. Respondent's tissue product is not better than ordinary handkerchiefs either because they are disposable or mentholated or for any other cause.

PAR. 9. The aforesaid practices of respondent have had, and now have, the capacity and tendency to unfairly divert trade to respondent from, and thereby to injure, competitors designated in paragraph 2 hereof, selling in commerce among and between the various States of the United States handkerchiefs of various kinds, and compounds, remedies, medicaments, or medical preparations for the treatment, relief or cure of sinus trouble, hay fever or colds.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer of the respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Taggart, counsel for the Commission, and by Fulton Brylawski, 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."

Order

It is ordered, That the respondent, The Rieser Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its tissue products in interstate commerce or in the District of Columbia, do forthwith cease and desist:

(1) From representing that its tissue products are better than or superior to ordinary handkerchiefs because they are sanitary and disposable or because they are mentholated; that use of its tissue products will clear the nasal passages; that its tissue products have been recommended by doctors as a cure or remedy for sinus trouble, hay fever, and head colds or that said products are beneficial in the treatment of such ailments and conditions.

(2) From using the words "handkerchief" or "kerchief" as descriptive of its tissue products unless there also appears in close proximity thereto and in equal prominence therewith the words "tissue paper" or "paper" written or printed in letters of clear and easily readable type.

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
MISS MORRIS CANDIES, INC.

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

Docket 3132. Complaint, May 15, 1937—Decision, June 30, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve, or which were designed to or might involve, use of a lottery scheme when sold and distributed to ultimate consumers thereof, and which included such assortments as a number of packages of candy of varying size, together with a punchboard, for sale to the consuming public under a plan, and in accordance with said board's explanatory legend, by which those punching by chance certain numbers received specified package of candy, and person making last punch in each of sections into which board was divided received specified package, and others received nothing for their five cents other than privilege of making a punch—

Sold, to wholesalers and jobbers, such assortments for display and resale to purchasing public by retail dealers therein in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting a lottery 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, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said product in preference to that offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof as aforesaid, and thereby induced to purchase said candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent method, and with tendency and capacity, because of said game of chance, to divert to it trade and custom from its aforesaid competitors, exclude from candy trade all competitors who are unwilling to and do not use same or equivalent method because unlawful, lessen competition in such trade, tend to create a monopoly thereof in it and such other distributors as do use same or equivalent method, deprive purchasing public of benefit of free competition therein, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or an equivalent method;

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

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 Miss Morris Candies, 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. The respondent, Miss Morris Candies, Inc., is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 517-19 Third Street North, in the city of Minneapolis, State of Minnesota. 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 and jobbers located at points in the State of Minnesota and in the States of Wisconsin and Iowa. Respondent causes and has caused its said products when sold to be transported from its principal place of business in the city of Minneapolis, State of Minnesota, to purchasers thereof in the States of Minnesota, Wisconsin, and Iowa at their respective points of location. 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 above named. 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 various assortments of candy so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof. Such assortments are composed of a number of packages of candy of varying sizes, together with a device commonly called a "punchboard." The said packages of candy are sold and distributed to the consuming public by means of said punchboard in the following manner:

The said boards have a number of holes within which are secreted slips of paper bearing a printed number, and the area of the boards in which the said holes are placed is divided into sections. Sales are 5¢ each, and each purchaser is entitled to one punch from said board. When a punch is made, the slip of paper bearing a printed number and secreted in said hole is disclosed. The numbers begin with one and continue to the number of holes there are on the board, but the numbers are not arranged in numerical sequence. The board bears statements informing purchasers and prospective purchasers that certain numbers receive a specified package of candy, and that the last punch in each section receives a specified package of candy. Persons who do not qualify by punching one of the specified numbers from the board, or by punching the last punch from one of the sections, receive nothing for their money other than the privilege of punching a number from said board. The slips bearing the printed numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular punch separated from the board. The fact as to whether a purchaser receives one of the packages of candy, or nothing other than the privilege of punching a number from said board, for the payment of 5¢, is thus determined wholly by lot or chance.

Respondent manufactures, sells, and distributes several assortments of candy involving the use of a punchboard in the sale and distribution thereof to the consuming public, but all of the said assortments involve the same principle as set forth above, and vary only in detail.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers expose said assortments for sale and sell the same 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 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 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 candy trade 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 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. The aforementioned method, acts, and practices of 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 May 15, 1937, issued and on May 17, 1937, served its complaint in this proceeding upon the respondent, Miss Morris Candies, 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, the Commission, by order entered herein, granted respondent's request 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 argument of counsel having been waived; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Miss Morris Candies, Inc., is a corporation organized and doing business under the laws of the State of Minnesota, with its principal office and place of business located at 517-19 Third Street North, in the city of Minneapolis, State of Minnesota. 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 and jobbers located at points in the State of Minnesota and in the States of Wisconsin and Iowa. Respondent causes and has caused its said products when sold to be transported from its principal places of business in the city of Minneapolis, State of Minnesota, to purchasers thereof in the States of Minnesota, Wisconsin, and Iowa at their respective points of location. 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 above named. 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 various assortments of candy so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof. Such assortments are composed of a number of packages of candy of varying sizes, together with a device commonly called a "punchboard." The said packages of candy are sold and distributed to the consuming public by means of said punchboard in the following manner:

The said boards have a number of holes within which are secreted slips of paper bearing a printed number, and the area of the boards in which the said holes are placed is divided into sections. Sales are 5c each, and each purchaser is entitled to one punch from said board. When a punch is made, the slip of paper bearing a printed number and secreted in said hole is disclosed. The numbers begin with one and continue to the number of holes there are on the board but the numbers are not arranged in numerical sequence. The board bears statements informing purchasers and prospective purchasers that certain numbers receive a specified package of candy, and that the last punch in each section receives a specified package of candy. Persons who do not qualify by punching one of the specified numbers from the board, or by punching the last punch from one of the sections, receive nothing for their money other than the privilege of punching a number from said board. The slips bearing the printed numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular punch separated from the board. The fact as to whether a purchaser receives one of the packages of candy, or nothing other than the privilege of punching a number from said board, for the payment of 5c, is thus determined wholly by lot or chance.

Respondent manufactures, sells, and distributes several assortments of candy involving the use of a punchboard in the sale and distribution thereof to the consuming public, but all of the said assortments involve the same principle as set forth above, and vary only in detail.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers expose said assortments for sale and sell the same 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 found 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 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 candy trade 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 are unwilling to offer for sale or sell candy so packed and assembled as above described, 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 an equivalent method. 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 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.

CONCLUSION

The aforesaid acts and practices of the respondent, Miss Morris Candies, Inc., a corporation, 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 proceedings having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, dated June 18, 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, Miss Morris Candies, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.
2. Supplying to or placing in the hands of wholesale dealers and jobbers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy 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 or selling said candy to the public at retail.

Order

25 F. T. C.

4. Furnishing to wholesalers and jobbers a device commonly called a "punchboard," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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, Miss Morris Candies, Inc., a corporation, 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 the order to cease and desist hereinabove set forth.

Modified Order

IN THE MATTER OF
MID WEST MILLS, INC.

MODIFYING CEASE AND DESIST ORDER

Docket 2526. Order, July 2, 1937

Order modifying, pursuant to decision of United States Circuit Court of Appeals in *Federal Trade Commission v. Mid West Mills, Inc.*, 90 F. (2d) 723, Commission's prior order in *Midwest Mills, Inc.*, Docket 2526, 22 F. T. C. 566, 573, prohibiting, as there set forth, use of respondent's corporate or trade name "Mid West Mills, Inc.," so as to permit such use, if qualified, as below set forth, by words "Jobbers and Converters, Not Mill Owners or Mill Operators."

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

Mr. George Foulkes for the Commission.

Kamfner, Halligan & Marks, of Chicago, Ill., for respondent.

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 respondent, testimony and evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, 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," and having entered its order directing the respondent, its officers, agents, representatives, servants, and employees, to cease and desist from the unfair methods of competition set forth in its said findings as to the facts; and the Commission, having thereafter filed, in the United States Circuit Court of Appeals for the Seventh Circuit, an application for the enforcement of its said order to cease and desist; and thereafter, in said proceeding in said Court, such proceedings having been had that, on the 15th day of June 1937, said Court stated in its opinion that if respondent did not voluntarily strike the word "Mills" from its name, it should clearly inform its prospective customers of the true facts, and having denied the Commission's said application for enforcement, but without prejudice to an order being entered by the Commission directing the addition of appropriate words which will clearly convey to the public the fact that respondent neither owns nor operates a mill—

Modified Order

25 F. T. C.

It is ordered, That the respondent, Mid West Mills, Inc., a corporation, its officers, agents, representatives, servants, and employees, in connection with the offering for sale and sale of upholstering fabrics, wooden frames, padding, felt, springs, and all other such material, relative to the construction of furniture, in interstate commerce;

1. Cease and desist from the use of the corporate name Mid West Mills, Inc., or any other name of the same or familiar import, unless and until there be used, in type of the same size and equally conspicuous, in immediate connection and conjunction with said name, wherever used, whether on stationery, garment labels, tickets, invoices, or other written or printed matter, the words "Jobbers and Converters, Not Mill Owners or Mill Operators"—or

2. If respondent desires not to use the qualifying and modifying terms set forth in paragraph 1 hereinabove, that it cease and desist altogether from the use of the word "Mills" either standing alone, or in connection or conjunction with any other word or words, in its corporate name, and on stationery, garment labels, tickets, invoices, or other written or printed matter.

It is further ordered, That the respondent above named, within 30 days after the service upon it of this order shall file with the Commission a report in writing setting forth in detail the manner in which this order has been complied with.

Syllabus

IN THE MATTER OF
 VISCOSE 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 2161. Complaint, Feb. 1, 1934—Decision, July 3, 1937

Where ten corporations engaged in the manufacture of substantially all the viscose rayon yarn made in the United States, and in the sale and distribution thereof to rayon cloth knitters for manufacture into cloth, and subsequent sale, distribution, and use for making of articles of wear therefrom, and constituting sole source of supply of such rayon yarn for knitters, users of approximately forty-five percent of all such yarn used by all classes or kinds of purchasers, and also sole source of supply for other users of such yarn, and, prior to the acts below set forth, in competition as to price with one another in the sale thereof between and among States, Territories, and District of Columbia—

For the purpose of eliminating price competition among themselves, entered into an agreement, combination, understanding, and conspiracy among themselves to fix and maintain uniform prices to be exacted by them from their purchasers of rayon yarn, and thus to fix the price of said product entering into interstate commerce, and did, during a period, thus fix and maintain such uniform prices;

With effect of actually hindering and preventing price competition in the sale, among the various States, the Territories, and the District of Columbia, of such yarn, increasing prices therefor paid by users thereof, prices of cloth made therefrom, and prices of rayon articles of wear, and with dangerous tendency so to hinder and prevent such price competition:

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

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

Mr. Edward L. Smith and *Mr. Harry A. Babcock* for the Commission.

Mr. John G. Jackson and *Mr. Stephen P. Nash*, of Jackson, Fuller, Nash & Brophy, and *Mr. John W. Davis*, of Davis, Polk, Wardwell, Gardiner & Reed, of New York City, for Viscose Co.

Mr. J. Harry Covington, *Mr. Dean G. Acheson* and *Mr. H. Thomas Austern*, of Covington, Burling Rublee, Acheson & Shorb, of Washington, D. C., and *Mr. William S. Gregg*, of Wilmington, Del., for DuPont Rayon Co., Inc.

Mr. F. Sims McGrath and *Mr. Arthur L. Fisk*, of Cadwalader, Wickersham & Taft, of New York City, for Tubize Chatillon Corp. and American Enka Corp.

Mr. Leslie Nichols of Tolles, Hogsett & Ginn, of Cleveland, Ohio, for Industrial Rayon Corp.

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Mr. Eustace Seligman and Mr. Inzer B. Wyatt, of Sullivan & Cromwell, of New York City, and Mr. William S. Culbertson of Culbertson & LeRoy, of Washington, D. C. for North American Rayon Corp.

Mr. Earle J. Machold and Mr. Chauncey P. Williams, Jr. of LeBoeuf, Winston, Machold & Lamb, of New York City, for Skenandoa Rayon Corp.

Mr. Louis M. Denit and Mr. Thomas Searing Jackson of Brandenburg & Brandenburg, of Washington, D. C., for Delaware Rayon Co. Klein & Diehm, of Cleveland, Ohio, for Acme Rayon Corp.

Mr. John C. Parsons, of Robinson, Robinson & Cole, of Hartford, Conn., for The Belamose Corp.

Mr. G. W. Haight, of Cravath, DeGersdorff, Swaine & Wood, of Washington, D. C., for Price, Waterhouse and Co.

COMPLAINT

Pursuant to the provisions of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that the Viscose Company, DuPont Rayon Company, Inc., Tubize Chatillon Corporation, Industrial Rayon Corporation, American Glanzstoff Corporation, American Enka Corporation, Skenandoa Rayon Corporation, Delaware Rayon Company, Acme Rayon Corporation, The Belamose Corporation and George Oliver May, William B. Campbell, Joseph Edmund Sterrett, Robert O. Berger, John H. Bowman, Charles P. Carruthers, David L. Grey, John C. Scobie, Frank C. Belser, John Medlock, William D. Bonthron, Ismay G. Pattinson, Thomas Jackson, Donald Arthur, Geoffrey G. Rowbotham, Francis B. Byerly, Percival F. Brundage, W. W. Law, J. P. Dawson, A. L. Brockway, E. Christensen and R. F. Starkey, copartners, trading as Price, Waterhouse and Company 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, the Viscose 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 at New York City, and with branch offices in Providence, R. I., Charlotte, N. C., Chicago, Ill., and Philadelphia, Pa., and with factories located in Pennsylvania, Virginia, and West Virginia.

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Respondent, DuPont Rayon Company, 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 at New York City, N. Y., and with manufacturing plants located at Buffalo, N. Y., Old Hickory, Tenn., and Ampthill, Va.

Respondent, Tubize Chatillon Corporation, 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 New York City, and with manufacturing plants located at Hopewell, Va., and Rome, Ga.

Respondent, Industrial Rayon Corporation, 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 New York City, and with a manufacturing plant located in Cleveland, Ohio.

Respondent, American Glanzstoff Corporation, 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 New York City, N. Y., where its manufacturing plant is also located.

Respondent, American Enka Corporation, 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 New York City, N. Y., and with a manufacturing plant located at Enka, N. C.

Respondent, Skenandoa Rayon 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, place of business and manufacturing plant located in Utica, in said State of New York.

Respondent, Delaware Rayon Company, 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 and manufacturing plant located at New Castle, in the said State of Delaware.

Respondent, Acme Rayon Corporation, 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 and manufacturing plant located in the city of Cleveland, in said State of Ohio.

Respondent, The Belamose Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the

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State of Connecticut, with its principal office and place of business and manufacturing plant located at Rocky Hill, in the State of Connecticut.

PAR. 2. Respondents, George Oliver May, William B. Campbell, Joseph Edmund Sterrett, Robert O. Berger, John H. Bowman, Charles P. Carruthers, David L. Grey, John C. Scobie, Frank C. Belser, John Medlock, William D. Bonthron, Ismay G. Pattinson, Thomas Jackson, Donald Arthur, Geoffrey G. Rowbotham, Francis B. Byerly, Percival F. Brundage, W. W. Law, J. P. Dawson, A. L. Brockway, E. Christensen, and R. F. Starkey, are and have been since January 1931, a copartnership doing business as Price, Waterhouse and Company, with their office and principal place of business in the city of New York, State of New York, and with branch offices located in various other cities of the United States. As such copartnership they are, and since their organization (which was prior to 1931) have been, engaged in the practice of public accounting and of auditing the books and accounts of various individuals, partnerships, and corporations in various cities of the United States.

PAR. 3. The respondents named in paragraph 1 hereof are now, and since their organizations, have been engaged in the manufacture at their respective manufacturing plants, of Viscose rayon yarn and in the sale thereof throughout the various States of the United States, the Territories thereof, and the District of Columbia. In the course and conduct of their businesses all of the said respondents named in paragraph 1 hereof, for more than five years last past, have caused, and still cause, such Viscose rayon yarn when sold by them, to be transported in interstate commerce from their respective places of business to, into and through various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers in such other States to whom such Viscose rayon yarn is and has been sold. Such viscose rayon yarn is knitted by the purchasers thereof located in various States of the United States into rayon cloth, which is sold by such purchasers to manufacturers of garments and of other articles of wear, located in various cities in the United States, and such purchasers cause such rayon cloth, when sold by them, to be transported in interstate commerce from their respective places of business to, into, and through 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 to whom such rayon cloth is sold. Manufacturers of such rayon garments and of other rayon articles of wear made from cloth sold to them, by purchasers of viscose rayon yarn made by the respondents named in

paragraph 1 hereof, cause such rayon garments and other rayon articles of wear when sold, to be transported, in interstate commerce, from their respective places of business into and through States of the United States other than the States in which such manufacturers of rayon garments and of such other rayon articles of wear have their factories and places of business, to their purchasers in such other States to whom such rayon garments and other rayon articles of wear are and have been sold. And the sale by respondents of viscose rayon yarn in interstate commerce, is thus followed by interstate commerce in rayon cloth knitted from such yarn and subsequent thereto by interstate commerce in rayon garments and other articles of wear made from such cloth.

PAR. 4. The amount of viscose rayon yarn manufactured and sold by the respondents named in paragraph 1 hereof constitutes, and at all times since October 1931, has constituted, substantially all of the viscose rayon yarn manufactured in the United States. The amount of viscose rayon yarn used by rayon cloth knitters constitutes approximately 45% of all the viscose rayon yarn sold in the United States and is greater than the amount of viscose rayon yarn used by any other class or kind of purchasers of such viscose rayon yarn. As a consequence the price paid by knitters of viscose rayon yarn influences and controls the price of viscose rayon yarn purchased by users other than knitters. Knitters of viscose rayon yarn and other users of viscose rayon yarn have no source of supply and, since October 1931, have had no source of supply for viscose rayon yarn excepting from the said respondents. The said respondents were, prior to October 1931, in competition as to price with one another in the sale of viscose rayon yarn between and among the various States of the United States, the Territories thereof and the District of Columbia and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since October 1931, and would now be, in such competition with one another. Knitters and other users of viscose rayon yarn were, prior to October 1931, respectively in price competition with one another in the sale of rayon cloth and other articles made from viscose rayon yarn, between and among the various States of the United States, the Territories and the District of Columbia and but for the combination, agreement, understanding, and conspiracy hereinafter described, said knitters and other users would have been at all times since October 1931, and would still be, respectively in competition as to price with one another.

PAR. 5. In October 1931, or thereabouts, the respondents named in paragraph 1 hereof, for the purpose of eliminating price competition among themselves, entered into, 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 uniform prices to be exacted by them from their purchasers of viscose rayon yarn and thus to fix the price of viscose rayon yarn entering into interstate commerce. Pursuant to and for the purpose of carrying out the 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 prices for viscose rayon yarn sold by them and by each of them;

(b) Agreed to curtail and limit, and pursuant to such agreement, have curtailed and limited and still curtail and limit the amount of viscose rayon yarn produced and sold by them and thus by agreement they have limited and still limit the supply of viscose rayon yarn, of rayon cloth and of rayon garments and other articles of rayon wear entering into interstate commerce;

(c) In order to detect and find any variation by any of them from the prices of viscose rayon yarn so fixed by them, and in order to detect and find any violation by any of them of their said agreement to curtail and limit the sale and production by any of them of viscose rayon yarn, hired the services of the said respondents named in paragraph 2 hereof, who assisted and furthered and who still assist and further the said agreement, combination, understanding, and conspiracy by compiling and determining from the books and from the manufacturing plants of the respondents named in paragraph 1 hereof, among other things, the viscose rayon yarn production capacity of each of the said respondents named in paragraph 1 hereof, the unsold stock of viscose rayon yarn in the possession of each of the said respondents named in paragraph 1 hereof at certain intervals of time, the percentage of capacity at which each of the said respondents named in paragraph 1 hereof operated and operates over certain periods of time, the prices charged and received by each of the said respondents named in paragraph 1 hereof for viscose rayon yarn sold by them, the names and addresses of the purchasers of viscose rayon yarn manufactured and sold by each of the said respondents named in paragraph 1 hereof.

(d) Because the price of knitted rayon cloth influences the price of viscose rayon yarn and because a decrease in the price of knitted rayon cloth has a tendency to lower the price of viscose rayon yarn,

the said respondents named in paragraph 1 hereof have fixed and maintained and still fix and maintain uniform prices at which knitters of cloth manufactured from viscose rayon yarn purchased from the said respondents, should sell such cloth and thus have fixed the price of knitted rayon cloth entering into interstate commerce.

(e) Sought and secured agreements from knitters of rayon cloth manufactured from viscose rayon yarn purchased from the respondents named in paragraph 1 hereof, by which agreements said knitters obligated themselves not to sell such rayon cloth at prices less than those fixed by the said respondents named in paragraph 1 hereof.

(f) Have refused, and still refuse to continue to sell viscose rayon yarn to knitters of rayon cloth made from viscose rayon yarn purchased from respondents named in paragraph 1 hereof, who would not agree with them not to sell such cloth at prices less than those fixed by the said respondents named in paragraph 1 hereof.

(g) Have refused, and still refuse to continue to sell viscose rayon yarn to all knitters who sold or who would sell rayon cloth knitted from viscose rayon yarn purchased from the said respondents at prices for such rayon cloth less than those so fixed by the said respondents.

(h) Respondent, Industrial Rayon Corporation, a corporation of strong financial resources and of large production capacity of viscose rayon yarn, entered into the manufacture and sale of knitted rayon cloth, so that all of the said respondents named in paragraph 1 hereof, through the said respondent, Industrial Rayon Corporation, might punish price cutters of knitted rayon cloth by underselling them to take away their customers and thus to force such knitters of rayon cloth, if they would remain in business, to sell knitted rayon cloth at the prices so fixed by the said respondents named in paragraph 1 hereof.

PAR. 6. The respondents named in paragraph 2 hereof, in performing for the respondents named in paragraph 1 hereof the services described in sub-paragraph (c) of paragraph 5 hereof, had full knowledge of the agreement, combination, understanding, and conspiracy described in paragraph 5 hereof; by such services they assisted respondents named in paragraph 1 hereof to carry into effect the said agreement, understanding, combination, and conspiracy; thus became parties to the said conspiracy; and for these reasons are made parties respondents herein.

PAR. 7. The alleged acts and practices of the respondents are all to the prejudice of the public and to the prejudice of competitors of the respondents named in paragraph 1 hereof, have a dangerous

venuecy to and have actually hindered and prevented price competition in the sale between and among the various States of the United States, the territories thereof and the District of Columbia, of viscose rayon yarn and of knitted rayon cloth; have increased the prices of viscose rayon yarn paid by knitters and other users of viscose rayon yarn; have increased the prices of knitted rayon cloth paid by manufacturers of rayon garments and of other rayon articles of wear; have increased the prices paid by the purchasing public for rayon garments and for other rayon articles of wear; have created, in the respondents named in paragraph 1 hereof, a monopoly in the sale in interstate commerce of viscose rayon yarn; have unreasonably restrained interstate commerce in viscose rayon yarn, in knitted rayon cloth, and in rayon garments and other rayon articles of wear, 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 February 1, 1934, issued and served its complaint in this proceeding upon respondents Viscose Company, DuPont Rayon Company, Inc., Tubize Chatillon Corporation, Industrial Rayon Corporation, American Glanzstoff Corporation (which since the issuance of the complaint herein changed its corporate name to North American Rayon Corporation and which will hereinafter be referred to as North American Rayon Corporation), American Enka Corporation, Skenandoa Rayon Corporation, Delaware Rayon Company, Acme Rayon Corporation, The Belamose Corporation, and the individuals named in the caption hereof, copartners trading as Price, Waterhouse and 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, testimony and other evidence in support of the allegations of said complaint were introduced by Edward L. Smith, Esq., and Harry A. Babcock, Esq., attorneys for the Commission, before John W. Addison, Esq., an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Messrs. Jackson, Fuller, Nash and Brophy (John

Findings

G. Jackson, Esq., and Stephen P. Nash, Esq., of counsel), and Messrs. Davis, Polk, Wardwell, Gardiner and Reed (John W. Davis, Esq., of counsel), attorneys for respondent Viscose Company; by Messrs. Covington, Burling, Rublee, Acheson and Shorb (J. Harry Covington, Esq., Dean G. Acheson, Esq., and H. Thomas Austern, Esq., of counsel), attorneys for respondent DuPont Rayon Company, Inc.; by Messrs. Cadwalader, Wickersham and Taft (F. Sims McGrath, Esq., and Arthur L. Fisk, Esq., of counsel), attorneys for respondents Tubize Chatillon Corporation and American Enka Corporation; by Messrs. Tolles, Hogsett and Ginn (Leslie Nichols, Esq., of counsel), attorneys for respondent Industrial Rayon Corporation; by Messrs. Sullivan and Cromwell (Eustace Seligman, Esq., and Inzer B. Wyatt, Esq., of counsel) and Messrs. Culbertson and LeRoy (William S. Culbertson, Esq., of counsel), attorneys for respondent North American Rayon Corporation; by Messrs. LeBocuf, Winston, Machold and Lamb (Earle J. Machold, Esq., and Chauncey P. Williams, Jr., Esq., of counsel), attorneys for respondent Skenandoa Rayon Corporation; by Messrs. Brandenburg and Brandenburg (Louis M. Denit, Esq., and Thomas Searing Jackson, Esq., of counsel), attorneys for respondent Delaware Rayon Company; by Messrs. Klein and Diehm, attorneys for respondent Acme Rayon Corporation; by Messrs. Robinson, Robinson and Cole (John C. Parsons, Esq., of counsel), attorneys for respondent The Belamose Corporation; and by Messrs. Cravath, DeGersdorff, Swaine and Wood (G. W. Haight, Esq., of counsel), attorneys for respondents Price, Waterhouse and 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, briefs in support of the complaint and in opposition thereto filed by respondents Tubize Chatillon Corporation, American Enka Corporation, and Delaware Rayon Company (the other respondents not having filed briefs), and the oral arguments by Edward L. Smith, attorney for the Commission, by F. Sims McGrath of counsel for respondent Tubize Chatillon Corporation and American Enka Corporation, and by Thomas Searing Jackson, Esq., of counsel for respondent Delaware Rayon Company (no oral argument being made in behalf of the other respondents); and the Commission having duly considered the said complaint, answers, testimony and evidence, briefs and oral arguments, 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, Viscose Company, The Belamose Corporation, and Acme Rayon Corporation are corporations organized, existing, and doing business under and by virtue of the laws of the States of Pennsylvania, Connecticut, and Ohio, respectively. Respondents, DuPont Rayon Company, Inc., Tubize Chatillon Corporation, American Enka Corporation, Industrial Rayon Corporation, North American Rayon Corporation, Skenandoa Rayon Corporation, and Delaware Rayon Company are Delaware corporations.

PAR. 2. The respondents named in paragraph 1 hereof are now, and since their organizations, have been engaged in the manufacture at their respective manufacturing plants, of viscose rayon yarn and in the sale thereof throughout the various States of the United States, the Territories thereof, and the District of Columbia. In the course and conduct of their businesses, all of the said respondents named in paragraph 1 hereof, for more than five years last past, have caused, and still cause, such viscose rayon yarn when sold by them, to be transported in interstate commerce from their respective places of business to, into and through various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers in such other States to whom such viscose rayon yarn is and has been sold. Such viscose rayon yarn is manufactured by the purchasers thereof, located in various States of the United States, into rayon cloth, which is sold by such purchasers to manufacturers of rayon articles of wear, located in various cities in the United States, and such purchasers cause such rayon cloth, when sold by them, to be transported in interstate commerce from their respective places of business to, into and through 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 to whom such rayon cloth is sold. Manufacturers of such rayon articles of wear made from cloth sold to them by purchasers of viscose rayon yarn made by the respondents named in paragraph 1 hereof, cause such rayon articles of wear when sold, to be transported, in interstate commerce, from their respective places of business into and through States of the United States other than the States in which such manufacturers of rayon articles of wear have their factories and places of business, to their purchasers in such other States, to whom such rayon articles of wear are and have been sold. And the sale by said respondents of viscose rayon yarn in interstate commerce, is thus followed by interstate commerce in rayon cloth

Conclusion

manufactured from such yarn and subsequent thereto by interstate commerce in rayon articles of wear made from such cloth.

PAR. 3. The amount of viscose rayon yarn manufactured and sold by the respondents named in paragraph 1 hereof constitutes and at all times since October 1931 has constituted substantially all of the viscose rayon yarn manufactured in the United States. The amount of viscose rayon yarn used by rayon cloth knitters constituted during the period from October 21, 1931, to May 23, 1932, approximately 45 percent of all the viscose rayon yarn used by all classes or kinds of purchasers of such viscose rayon yarn. As a consequence, the price paid by knitters of viscose rayon yarn influenced and controlled, during said period, the price of viscose rayon yarn purchased by users other than knitters. Knitters of viscose rayon yarn and other users of viscose rayon yarn have no source of supply and between October 21, 1931, and May 23, 1932, had no source of supply for viscose rayon yarn excepting from the said respondents. The said respondents were prior to October, 1931, in competition as to price with one another in the sale of viscose rayon yarn between and among the various States of the United States, the Territories thereof and the District of Columbia, and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times between October 21, 1931, and May 23, 1932, in such competition with one another.

PAR. 4. On October 21, 1931, or thereabouts, the respondents named in paragraph 1 hereof, for the purpose of eliminating price competition among themselves, entered into and until May 23, 1932, carried out an agreement, combination, understanding and conspiracy among themselves to fix and maintain, and by which, during said period, they fixed and maintained uniform prices to be exacted by them from their purchasers of viscose rayon yarn, and thus to fix the price of viscose rayon yarn entering into interstate commerce.

PAR. 5. During said period the said acts and practices of the respondents named in paragraph 1 hereof had a dangerous tendency to and actually hindered and prevented price competition in the sale between and among the various States of the United States, the Territories thereof and the District of Columbia, of viscose rayon yarn, increased the prices of viscose rayon yarn paid by the users thereof, the prices of cloth made from such yarn and the prices of rayon articles of wear.

CONCLUSION

The aforesaid acts and practices of said respondent rayon producers were to the prejudice of the public and of respondents' com-

petitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence taken before John W. Addison, 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 by respondents Tubize Chatillon Corporation, American Enka Corporation and Delaware Rayon Company (the other respondents not having filed briefs), and oral arguments by Edward L. Smith, Esq., counsel for the Commission, by F. Sims. McGrath, Esq., counsel for respondents Tubize Chatillon Corporation and American Enka Corporation, and by Thomas Scaring Jackson, Esq., counsel for respondent Delaware Rayon Company (no oral argument having been made in behalf of the other respondents), and the Commission having made its findings as to the facts and its conclusion that respondents Viscose Company, DuPont Rayon Company, Inc., Tubize Chatillon Corporation, Industrial Rayon Corporation, North American Rayon Corporation, American Enka Corporation, Skenandoa Rayon Corporation, Delaware Rayon Company, Acme Rayon Corporation, and The Belamose Corporation 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, Viscose Company, DuPont Rayon Company, Inc., Tubize Chatillon Corporation, American Enka Corporation, Industrial Rayon Corporation, North American Rayon Corporation, Skenandoa Rayon Corporation, Delaware Rayon Company, Acme Rayon Corporation, and The Belamose Corporation, and their agents, representatives, servants, and employees in connection with the sale or offering for sale of Viscose rayon yarn in interstate commerce or in the District of Columbia, do cease and desist from entering into and carrying out any agreement, combination, understanding, or conspiracy among themselves or with any other corporation, person, firm, or partnership, to fix and maintain uniform prices to be exacted by them from purchasers of Viscose rayon yarn.

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Order

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.

It is further ordered, That the complaint in this proceeding as to George Oliver May, William B. Campbell, Joseph Edmund Sterrett, Robert O. Berger, John H. Bowman, Charles P. Carruthers, David L. Grey, John C. Scobie, Frank C. Belser, John Medlock, William D. Bonthron, Ismay G. Pattinson, Thomas Jackson, Donald Arthur, Geoffrey G. Rowbotham, Francis B. Byerly, Percival F. Brundage, W. W. Law, J. P. Dawson, A. L. Brookway, E. Christensen and R. F. Starkey, copartners, trading as Price, Waterhouse and Company, be, and the same is hereby, dismissed.

IN THE MATTER OF
CANTERBURY CANDY MAKERS, INC.

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

Docket 2800. Complaint, May 11, 1936—Decision, July 6, 1937

Where a corporation engaged in manufacture and sale of so-called "draw" or "deal" assortments of candy, sale and distribution of which type candy, by retailers by lot or chance, has capacity and tendency to and does decrease sale of candy sold without any sales plan or device involving lottery or game of chance, i. e., the "straight" goods, and sale of which type, providing, in connection with its sale to public, means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling, and is in violation of various municipal ordinances and regulations and State statutes and constitutions, and provides retail merchants with a means of violating the laws of the several States, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition, or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—

Sold, to wholesale and retail dealers, certain assortments of candy which were so packed and assembled as to involve, or were designed to involve, use of a lottery scheme when sold and distributed to consumers thereof, and one of which included, together with a punchboard, a number of boxes of assorted chocolates of varying size and of a value in excess of five cents, for sale and distribution to consuming public under a plan, and in accordance with said board's explanatory legend, under which persons punching by chance certain numbers received specified box of candy, and purchaser of last punch on board received specified box, and others received nothing other than privilege of making a punch for the five cents paid; so assembled and packed that such assortments might be and were displayed and sold to consuming public by retail dealer purchasers thereof by lot or chance, and with knowledge and intent that such assortments could and would thus be resold to public by retail dealers without alteration, addition, or rearrangement as above set forth, in competition with many who do not make and sell "draw" or "deal" assortments, but sell their "straight" goods in interstate commerce in competition with the others;

With result that competitors who refuse to, or do not, sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage in competing with it and with others employing methods similar to those described herein, trade was diverted to it and others using similar methods from those who do not use same, by reason of attraction to customers of so-called "draw" or "deal" assortments, there was diversion of trade to it from its said competitors, and a restraint upon and a detriment to the freedom of fair competition in trade concerned; to the prejudice and injury of the public and of competitors:

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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Complaint

Before *Mr. Charles P. Vicini* and *Mr. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.
Flood, Lenihan & Ivers, of Seattle, Wash., 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 Canterbury Candy Makers, 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 Washington, with its principal office and place of business located at 93 Marion Street, in the city of Seattle, State of Washington. 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 and has caused its products, when so sold, to be transported from its principal place of business in the city of Seattle, Wash., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale 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, manufactured and distributed by the respondent, is composed of a number of boxes of assorted chocolate candies, together with a device commonly called a "punchboard." The said boxes of candy are distributed to the consuming public by

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means of said punchboard in the following manner: The sales by means of said punchboard are 5¢ each, and when a punch is made from said board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the prospective customer as to which numbers receive a box of candy. The purchaser of the last punch on the board receives a five-pound box of chocolate candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or by punching the last number on the board receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5¢. The numbers on said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy in said assortment are thus distributed to purchasers of punches from said board 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, and with the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure 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 silimar 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 May 11, 1936, issued and on May 16, 1936, served its complaint in this proceeding upon the respondent, Canterbury Candy Makers, Inc., a corporation charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by Emmett G. Lenihan, attorney for respondent, before Charles P. Vicini and Henry M. White, Examiners 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 hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of Henry C. Lank, counsel for the Commission, and Emmett G. Lenihan, counsel for the respondent; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Canterbury Candy Makers, Inc., is a corporation organized under the laws of the State of Washington, with its principal office and place of business located at 93 Marion Street, in the city of Seattle, State of Washington. Respondent is now, and for several years last past has been, engaged in the manufacture of candy in the city of Seattle and in the sale and distribution thereof to retail and wholesale dealers and jobbers located in the State of Washington and in the States of Oregon, Idaho, Montana, California, Wyoming, and the Territory of Alaska. It causes the said candy when sold to be shipped or transported from its principal place of business in the State of Washington to purchasers thereof in Washington and in other States of the United States and the Territory of Alaska, as mentioned above. In so carrying on said business, respondent is and has been engaged in inter-

state commerce and is and has been engaged 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 the Territory of Alaska.

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, as above described, certain assortments of candy so packed and assembled as to involve, or which are designed 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 varying sized boxes of assorted chocolate candies, together with a device commonly called a "punchboard." The boxes of candy contained in said assortment are distributed to the consuming public by means of said punchboard in the following manner: The sales by means of said punchboard are 5¢ each, and when a punch is made from said board a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing customers and prospective customers as to which numbers receive a box of candy and the size thereof. The purchaser of the last punch on the board receives a specified box of candy. The purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy, or by punching the last number on the board, receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5¢. The numbers on said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance, and the fact as to whether a purchaser receives one of the boxes of candy or nothing other than the privilege of punching a number from said board for his money is 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

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public are generally referred to in the candy trade or industry as "straight" goods. These terms will be used hereafter in these findings to distinguish these separate types of assortments.

PAR. 4. The wholesale dealers or jobbers 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 sales plan as described above.

PAR. 5. All sales made by respondent, whether to wholesale dealers 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 are designed to 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 hereof, 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 many manufacturers of candy competing with respondent in the territory served by respondent who do not manufacture and sell "draw" or "deal" assortments of candy and who sell their "straight" goods in interstate commerce in competition with the "draw" or "deal" assortments. The sale or distribution of candy by retail dealers by lot or chance has the capacity and tendency to and does decrease the sale of candy sold without any sales plan or device involving a lottery or game of chance.

Several witnesses testified, and the Commission finds, that customers coming into retail establishments and desiring candy similar to that distributed by respondent would take chances or make purchases by means of said push cards or punchboards, and that in such cases when unsuccessful in obtaining candy by means of said push card or punchboard some of such customers would then purchase candy as a "straight" purchase and without the use of the lottery device; that the gambling feature connected with the sale of respondent's assortments, as described above, was attractive to customers; and that before making "straight" purchases it was not unusual for customers to endeavor to procure the candy desired by

means of such lottery devices rather than to make a "straight" purchase.

PAR. 7. The sale and distribution of "draw" or "deal" assortments of candy, or of candy which has connected with its sale to the public the means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling and is in violation of various municipal ordinances and regulations and various State statutes and constitutions. The sale and distribution of candy by retailers by the method described herein is the sale and distribution of candy by lot or chance and constitutes a lottery or gaming device, and the Commission finds that the sale and distribution of assortments of candy as described herein provides retail merchants with a means of violating the laws of the several States. Competitors who refuse to or who do not sell candy so packed and assembled that it can be resold to the public by lot or chance or put to a disadvantage in competing with respondent and with others employing similar methods to those described herein. Because the "draw" or "deal" assortments are attractive to customers purchasing from retail dealers, the Commission finds that trade is diverted to respondent and others using similar methods from competitors who do not use such methods. 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. An officer of the respondent corporation testified, and the Commission finds, that the total annual volume of respondent's sales is approximately \$100,000; that approximately 40% of respondent's total annual volume of sales is made to purchasers outside of the State of Washington; and that approximately 40% of respondent's total annual volume of sales consists of assortments of candy with which a punchboard is furnished.

PAR. 9. 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 respondent, Canterbury Candy Makers, Inc., 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 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 P. Vicini and Henry M. White, 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 of Henry C. Lank, counsel for the Commission, and Emmett G. Lenihan, 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 Canterbury Candy Makers, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard," which punchboard is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "punchboard," either with assortments of candy

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or separately, bearing a legend or legends or statements informing the purchasing public 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, Canterbury Candy Makers, Inc., a corporation, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
**JOHN HARTFORD AND HARVEY E. WAGLEY, TRADING
AS FEDERAL CIVIL SERVICE TRAINING BUREAU**

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

Docket 2795. Complaint, May 2, 1936—Decision, July 7, 1937

Where two individuals engaged in sale and distribution of correspondence courses for Civil Service positions under the United States Government—

- (a) Made use of trade name including words "Federal Civil Service Training Bureau" in conduct of their said business, and thereby represented and implied that such business, thus designated, was a part of, or was connected with, or an agency of, the Government of the United States, or of the United States Civil Service Commission, notwithstanding fact neither of said individuals, nor business or school in question, nor anyone connected therewith, had any connection whatsoever with either said Government or Commission, or in any way represented either of them;
- (b) Represented and set forth, in advertisements of their said courses of study and instruction, that said school would prepare the prospective student for coming Civil Service examinations, and that, due to deaths, natural growth of service, etc., many examinations were being announced, and that in one year the Government pay-roll had increased some sixty-odd thousand, as therein set forth, and that many examinations were being announced and would "be held convenient to you," and thereby represented and implied that examinations in the various Civil Service classifications for which they gave training were being held at frequent intervals and that appointments to Government positions were constantly being made from eligibles thus obtained, facts being that few, if any, examinations were being held during much of time concerned, and few, if any, appointments made in some of classifications for which they proposed to and did give training, and that increase in appointments referred to was not, in the main, in the Classified Civil Service, but in appointments made regardless of Civil Service requirements; and
- (c) Made use of a contract form containing so-called "Refund Agreement," careful reading of which belied its import and implication that a Government appointment was assured within a year or money paid would be refunded, and which was rendered inoperative, in the main, due to the fact that examinations, taking of which were a prerequisite, were not being held during a part of the time, at least, when it was in use, and consequently could not be taken by the students in the subjects which they had studied so as to entitle them to refund during such time and under agreement in question;

With tendency and capacity to confuse, mislead and deceive members of the public into believing that said school was a branch or bureau of, or connected with, the Government of the United States, and that civil service examinations were being held at frequent intervals in classifications for which they offered training, Government positions in such classifications were available and appointments therein were being and

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would be made, and that vacancies existed in the Government service and were to be filled, and that students who enrolled for courses in question and did not secure Government positions would receive their money back upon conditions reasonably possible of fulfillment, and to induce members of public to answer their said advertisements, sign their contracts, pay money to them, and purchase said courses of study and instruction as above described, by reason of erroneous beliefs thus engendered, and to divert trade to them from competitors engaged in sale of correspondence courses in similar and in other lines of study, including therein competitors who do not make the same or similar misleading misrepresentations, but truthfully and accurately state the private character of their undertakings, without implying Government connection, and the facts in regard to civil service examinations and availability of Government positions in civil service, and who do not make use of refund agreements which mislead in their terms or failure to disclose pertinent facts upon which agreements depend, from whom said acts and practices tended to and did in fact unfairly divert business to themselves; 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. John W. Addison*, trial examiner.

Mr. Harry D. Michael for the Commission.

Mr. Noble W. Lee, of Chicago, Ill., for Harvey E. Wagley.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that John Hartford and Harvey E. Wagley, doing business under the name and style of Federal Civil Service Training Bureau, 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. That said respondents, John Hartford and Harvey E. Wagley, doing business under the name and style of Federal Civil Service Training Bureau, are now and have been engaged for more than six months last past in the sale and distribution of courses of study and instruction designed and intended for preparing students thereof for examination for various civil service positions under the United States Government, which said courses of study and instruction are pursued by correspondence. Said respondents, in conducting their said business, have their offices and principal

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place of business in the city of Chicago, in the State of Illinois. Respondents, in the course and conduct of their said business, cause their said courses of study and instruction, consisting of pamphlets, study and question sheets, and other printed or mimeographed matter, to be transported from their said place of business in Illinois to, into, and through States of the United States other than Illinois to various and numerous persons to whom said course of study and instruction are or have been sold.

The relationship existing between said respondents in connection with said business is that the said John Hartford is the owner thereof while the said Harvey E. Wagley is a creditor and in active operation and charge of the same for the purpose of securing and liquidating such indebtedness.

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 of courses of study and instruction designed and intended for the purpose of preparing students thereof for examination for various civil service positions under the United States Government, and also engaged in the sale and distribution of other courses of study and instruction in other lines, all of which are pursued by correspondence. Such other individuals, firms, and corporations have caused and do now cause their said courses of study and instruction, when sold by them, to be transported from various States of the United States to, into and through States other than the State of origin of the shipment thereof. Said respondents have been, during the aforesaid time, in competition in interstate commerce in the sale of their said courses of study and instruction with such other individuals, firms, and corporations.

PAR. 3. That the name, Federal Civil Service Training Bureau, used by respondents in conducting their said business, implies and has the tendency and capacity to create the belief among persons solicited to pursue respondents' courses of study that said Federal Civil Service Training Bureau is a part of, or is connected with, or is an agency of, the Government of the United States or of the United States Civil Service Commission. That the word "Federal" is a term frequently used in referring to the United States Government or its agencies or to institutions under its direction or supervision. That the term "Civil Service" is used to designate a class of employees of the United States Government or to apply to the work in which they are engaged. That the word "Bureau" is a term frequently and generally used in officially or otherwise de-

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scribing various governmental agencies. That, in fact, neither respondents nor their school nor anyone connected therewith have any connection whatsoever with the United States Government or with the United States Civil Service Commission or in any way represent either of them.

PAR. 4. That respondents, in advertising their said course of study and instruction, make use of advertising matter in which the following statements appear:

FEDERAL CIVIL SERVICE TRAINING BUREAU

Will Prepare You for Coming Civil Service Examinations.

Due to deaths and retirements, the natural growth of the service, promotions, etc., many examinations are being announced. In one year, 1933 to 1934, the payroll of Federal Executive Employees increased from 563,488 to 623,599.

EXAMINATIONS BEING HELD—Many examinations are now being announced; they will be held convenient to you.

Said statements, so made by respondents, carry the implications to the general public that examinations in the various civil service classifications for which respondents give training are being held at frequent intervals and that appointments to government positions are constantly being made from eligibles thus obtained; when, in fact, during much of the time respondents have been giving their said training, few, if any, examinations were being held and few, if any, appointments were being made in many of the classifications for which respondents proposed to give and did give training. Said statements are further misleading from the fact that the appointments referred to therein were not, in the main, in the civil service, but appointments made regardless of civil service requirements.

PAR. 5. That respondents, in the sale of their said course of study and instruction, make use of a contract form containing a so-called "Refund Agreement," reading as follows:

It is understood that I am to complete the entire training, sending in all work for correction; try the first examination covered by this training; then, if I fail to pass the examination, or pass and am not offered an appointment within one year from date that my name is placed on the government eligible list, I am, upon written application, to receive a refund of the entire amount paid for this training, or I will be trained for every examination for the above stated position, without further payment, until my name is placed on the Government eligible list.

The import and implication of the above quoted agreement is that a government appointment is assured within one year or the money paid will be refunded; when, in fact, such agreement, by careful

reading thereof, means nothing of the kind. Said agreement is further meaningless, and was so during the period of its use by respondents, on account of the fact that it was rendered inoperative, in the main, because examinations for which respondents gave training were not being held and it was consequently impossible for their students to be placed on an eligible list and thereby become entitled to a refund under such agreement.

PAR. 6. That the representations of respondents, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondents' school is representative of or connected with the Government of the United States; that civil service examinations are being held at frequent intervals in the classifications for which respondents offer training; that Government positions in such classifications are available and that appointments therein are being made and will be made; that vacancies exist in the government service that are to be filled; and that students who enroll for respondents' courses will receive their money back upon conditions reasonably possible of fulfillment; when, in truth and in fact, such are not the facts. Said representations of respondents have had and do have the tendency and capacity to induce members of the public to answer respondents' advertisements, to sign their said contracts, to pay money to respondents, and to purchase said courses of study and instruction, as herein described, because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondents from competitors engaged in the sale of correspondence courses in interstate commerce in similar lines to those offered by respondents, as well as those so engaged in such sale in other lines of study. There are among the competitors of respondents those who do not make the same or similar misleading representations as made by respondents, as herein set out, but who truthfully and accurately state the private character of their undertakings without implying Government connection and who truthfully state the facts in regard to civil service examinations and availability of government positions in the civil service and who agree to make refunds on clear conditions that are possible of fulfillment. As a result of respondents' practices, as herein set forth, injury has been and is now being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 7. The above acts and things done by respondents are all to the injury and prejudice of the public and the competitors of respondents in interstate commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal

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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 2, 1936, issued its complaint in this proceeding, charging the respondents, John Hartford and Harvey E. Wagley, doing business under the name and style of Federal Civil Service Training Bureau, with the use of unfair methods of competition in commerce in violation of the provisions of said act. Said respondent John Hartford was not found and was not served with the complaint herein. Said respondent Harvey E. Wagley was duly served with complaint and filed answer. After the issuance of said complaint and the filing of answer thereto by respondent Harvey E. Wagley, testimony and other evidence in support of the allegations of said complaint were introduced by Harry D. Michael, attorney for the Commission, before John W. Addison, an examiner of the Commission, theretofore duly designated by it, respondent Harvey E. Wagley 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 of the respondent Harvey E. Wagley, testimony and other evidence, and brief in support of the complaint, counsel for respondent Harvey E. Wagley having waived the filing of briefs and having elected to submit the case on the record; and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. The said respondents, John Hartford and Harvey E. Wagley, were engaged in business under the name and style of Federal Civil Service Training Bureau for the period of time and under the circumstances hereinafter stated and were engaged in the sale and distribution in commerce between and among the various States of the United States of courses of study and instruction designed and intended for preparing students thereof for examinations

for various civil service positions under the United States Government, which said courses of study and instructions were pursued by correspondence. Said respondents, in the conduct of said business, had their offices and principal place of business at No. 508 South Dearborn Street, in the city of Chicago, State of Illinois. Respondents, in the course and conduct of their said business, caused their said courses of study and instruction, consisting of pamphlets, study, and question sheets and other printed or mimeographed material, when sold by them, to be transported in commerce from their said place of business in the State of Illinois to, into and through States of the United States other than Illinois to various and numerous persons in such other States to whom said courses of study and instruction were sold.

PAR. 2. During the time respondents conducted said business, as herein set out, 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 courses of study and instruction designed and intended for the purpose of preparing students thereof for examinations for various civil service positions under the United States Government, and also engaged, as aforesaid, in the sale and distribution of other courses of study and instruction in other lines, all of which are and were pursued by correspondence. Such other individuals, firms, and corporations have caused and do now cause their said courses of study and instruction, when sold by them, to be transported from 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. Said respondents were, during the time of the conduct of their said business, in substantial competition, in the sale of their said courses of study and instruction in commerce between and among the various States of the United States, with such other individuals, firms, and corporations.

PAR. 3. Said business conducted under the name of Federal Civil Service Training Bureau was originally established by the said respondent John Hartford. Said respondent Hartford made arrangements with the said respondent Wagley whereby the said Wagley did a considerable volume of the printing and mimeographing work used in the conduct of the business of said correspondence school conducted under the trade name aforesaid. Said respondent Hartford subleased offices from said respondent Wagley for the conduct of said business. The business was started early in the year 1935. On November 23, 1935, respondent Hartford entered into an agreement

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with respondent Wagley, by the terms of which said business and the property appertaining thereto were set over to respondent Wagley in trust for the purpose of securing an indebtedness amounting to \$5,077.77. By the terms of this agreement respondent Wagley was authorized to collect and receive money owing to said respondent Hartford in the conduct of said correspondence school under the said name Federal Civil Service Training Bureau. He was further authorized under said agreement to apply the proceeds so received and collected to the payment of said indebtedness.

Pursuant to said agreement, respondent Wagley took charge of the office of said Federal Civil Service Training Bureau and had general charge of the financial affairs thereof, at least in the absence of respondent Hartford. During much of the time when said agreement was in effect, respondent Hartford was in the field selling courses of instruction. Also, during the time when said agreement was in effect, office work was conducted by Mr. Charles Raymond, an employee of respondent Wagley, who devoted part time work to the affairs of said correspondence school as an employee of the school. During the period of time when said business was so conducted, the name Federal Civil Service Training Bureau was used in the conduct thereof, and the printed matter and contract forms as herein set out and which had previously been used by the respondent Hartford were continued in use. Courses of instruction were sold to students during said period, and such courses were serviced and money collected thereon. A small sum was applied to respondent Wagley's indebtedness during the period when said agreement was in effect.

On or about January 21, 1936, respondent Hartford turned the entire business over to respondent Wagley, and the latter thereupon assumed control. No new business was solicited by respondent Wagley from such time until in March 1936, when the name of the business was changed to Commercial Training Institute. Solicitation of business was then resumed and the name of the business was later changed to Public Training Service. These were merely trade names, the business being owned and operated by respondent Wagley individually.

The relationship of said respondent Wagley with said respondent Hartford, as above specified, and the acts and things done by the said respondent Wagley in pursuance thereof, and as a result thereof, made the said respondent Wagley responsible for the acts and things done and the practices used in the conduct of said business as herein set out and made him a principal therein.

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PAR. 4. The name, Federal Civil Service Training Bureau, used by respondents in the conduct of said business, implied and had the tendency and capacity to create the belief among persons solicited to pursue the courses of study sold under such name that said Federal Civil Service Training Bureau was a part of, or was connected with, or was an agency of, the Government of the United States or of the United States Civil Service Commission. The word "Federal" is a term frequently used in referring to the United States Government or its agencies or to institutions under its direction or supervision. The term "Civil Service" is used to designate a class of employees of the United States Government or to apply to the work in which they are engaged. The word "Bureau" is a term frequently and generally used in officially or otherwise describing various Governmental agencies. Neither respondents, nor either of them, nor said school, nor anyone connected therewith, had any connection whatsoever with the United States Government or with the United States Civil Service Commission, or in any way represented either of them.

PAR. 5. Respondents, in advertising said courses of study and instruction, made use of advertising matter in which the following statements appeared:

FEDERAL CIVIL SERVICE TRAINING BUREAU

Will Prepare You for Coming Civil Service Examinations.

Due to deaths and retirements, the natural growth of the service, promotions, etc., many examinations are being announced. In one year, 1933 to 1934, the payroll of Federal Executive Employees increased from 503,488 to 623,500.

EXAMINATIONS BEING HELD — Many examinations are now being announced; they will be held convenient to you.

Said statements directly and by implication served as representations to the general public that examinations in the various civil service classifications for which respondents gave training were being held at frequent intervals and that appointments to Government positions were constantly being made from eligibles thus obtained. In fact, during much of the time respondents were giving their said training few, if any, examinations were being held and few, if any, appointments were being made in some of the classified civil service, but were appointments made regardless of training. Said statements were also misleading in that the increase in appointments referred to therein were not, in the main, in the classified civil service, but were appointments made regardless of civil service requirements.

PAR. 6. Respondents, in the sale of said courses of study and instruction, made use of a contract form containing a so-called "Refund Agreement" reading as follows:

It is understood that I am to complete the entire training, sending in all work for correction; try the first examination covered by this training; then if I fail to pass the examination, or pass and am not offered an appointment within one year from date that my name is placed on the Government eligible list, I am, upon written application, to receive a refund of the entire amount paid for this training, or I will be trained for every examination for the above stated position, without further payment, until my name is placed on the Government eligible list.

The import and implication of the above quoted agreement was that a Government appointment was assured within one year or the money paid would be refunded; when, in fact, such agreement, by careful reading thereof, meant otherwise. Said agreement was also valueless on account of the fact that it was rendered inoperative, in the main, because examinations for which respondents gave training were not being held, at least during a part of the time it was in use, and it was consequently impossible for their students to take the examination in the subjects which they had studied and thereby become entitled to a refund under such agreement during such time.

PAR. 7. The representations of respondents, as aforesaid, had the tendency and capacity to confuse, mislead, and deceive members of the public into the beliefs that respondents' school was a branch or bureau of or connected with the Government of the United States; that Civil Service examinations were being held at frequent intervals in the classifications for which respondents offered training; that Government positions in such classifications were available and that appointments therein were being made and would be made; that vacancies existed in the Government service that were to be filled; and that students who enrolled for such courses and did not secure Government positions would receive their money back upon conditions reasonably possible of fulfillment. Said representations of respondents had the tendency and capacity to induce members of the public to answer respondents' advertisements, to sign their said contracts, to pay money to respondents, and to purchase said courses of study and instruction as herein described, because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondents from competitors engaged in the sale of correspondence courses in similar lines to those offered by respondents, as well as those so engaged in such sale in other lines of study in interstate commerce. There were and are among the competitors of respondents those who do not make the same or similar

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misleading representations as made by respondents, as herein set out, but who truthfully and accurately state the private character of their undertakings without implying Government connection and who truthfully state the facts in regard to civil service examinations and availability of Government positions in the civil service, and who do not make use of refund agreements that are misleading in their terms or that are misleading because of failure to disclose pertinent facts upon which such agreements depend. Respondents' said acts and practices tended to and did in fact unfairly divert business to respondents from their said 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 respondent Harvey E. Wagley, doing business under the name and style of Federal Civil Service Training Bureau, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent Harvey E. Wagley (respondent John Hartford not having been served with the complaint herein), 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 the complaint, and brief in support of complaint, respondent Harvey E. Wagley having failed to introduce evidence in his behalf, and having elected to submit the case upon the record without brief or oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondent Harvey E. Wagley 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 said case be closed as to the respondent John Hartford, on account of failure of service of the complaint upon him, 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.

Order

It is further ordered, That the respondent Harvey E. Wagley, doing business under the name and style of Federal Civil Service Training Bureau, or under any other name or in any other manner, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of courses of study and instruction, or of books, study material, pamphlets, or printed or mimeographed matter, designed or intended for preparing students thereof for examinations for civil service positions under the United States Government, in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the words "Federal" or "Bureau" or the term "Civil Service" or any other words or terms of similar import, meaning and effect, that respondent's business is a part of, is connected with, or is a branch, bureau or agency of, the Government of the United States or the United States Civil Service Commission;

2. Representing that the number and character of appointments to positions in the United States Classified Civil Service or the character of examinations held therefor are other than the facts, existing at the time such representations are made, may warrant;

3. Representing that the total number of appointments to Government positions not in the Classified Civil Service are indicative of the opportunities for appointment to the Classified Civil Service;

4. Representing that the total number of appointments to the Classified Civil Service are indicative of the opportunities for appointment therein of those who may complete the training offered by the respondents' courses, unless such number be limited to those appointments made in the classifications for which said courses are adapted;

5. Representing, through the use of inoperative, misleading or deceptive refund agreement that a Government position is assured to those purchasing respondents' courses of instruction and that if said position is not obtained the money paid for said courses will be refunded.

It is further ordered, That said respondent Harvey E. Wagley 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
TOLPIN STUDIOS, INC.

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

Docket 2950. Complaint, Oct. 16, 1936—Decision, July 7, 1937

Where a vitreous, translucent, and glazed ware designated, described, and known as china, was and had been, for some 150 years, made at Limoges, France, and had long been exported therefrom into the various countries of Europe and America, and particularly into the United States, and had acquired a favorable reputation in the latter country as a china of utility and beauty, and had come to possess a goodwill which developed an increasingly popular demand for the products of said city, and china made at said city and imported into the United States had long been widely and generally known as Limoges china, and word "Limoges" applied to and used in describing or designating china or chinaware had long since come to signify and mean, and still signified and meant, china made at Limoges in France; and thereafter, a corporation engaged in processing and decorating foreign and domestic made, undecorated china or chinaware products, and in offering, selling and distributing certain of its decorated china or chinaware products to wholesale and retail dealers, including department stores and auctioneers, and purchasers thereof in various States—

Branded, imprinted, and otherwise caused to appear, words and description "Limoges" and "French Decoration" on its said products, notwithstanding fact products thus described and referred to were not, as thus represented, made in, and did not originate in Limoges, France, but were obtained by it from other countries, and said products were not decorated in France or with French designs and decorations peculiar to country of France and French artistry;

With result of placing in the hands of dealers selling its products means by which to mislead and deceive consuming public into purchase of its china or chinaware products, and with tendency and capacity to mislead and deceive, and with effect of misleading and deceiving, members of public and of retail trade into false and erroneous belief that representations thus made by said branding and imprinting were true, and that products thus represented as "Limoges" originated and were made in said city, and that products represented by words "French Decoration" were decorated in France and with French designs and decorations, as above set forth, and of thereby causing members of public and of retail trade to buy and deal in its products in lieu and in place of competing products of competitors, and of thus diverting trade to it from its competitors who do not misbrand, or falsely and misleadingly label, mark, or otherwise misrepresent their products:

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. Jay L. Jackson 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 Tolpin Studios, Inc., a corporation, hereinafter designated 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 charge in that respect as follows:

PARAGRAPH 1. Respondent, Tolpin Studios, Inc., is now, and since 1927 has been, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois. Its office and principal place of business are located at 2129 West Van Buren Street in the city of Chicago in said State. It has been since its said organization, and now is, engaged in purchasing and decorating imported china and chinaware, and in its sale to wholesale and retail dealers, including department stores and auctioneers, in commerce between and among the State of Illinois and the various other States of the United States and the District of Columbia. It transports from its said place of business or causes to be transported therefrom, such china and chinaware when sold, to purchasers in the various States of the United States other than the said State of Illinois and in the District of Columbia.

In the course and conduct of its said business, respondent has been and is in substantial competition in interstate commerce with individuals, partnerships, and corporations engaged in offering for sale and selling china, chinaware, earthenware, glassware, and other pottery in like commerce.

PAR. 2. There is now, and for more than one hundred and fifty years approximately there has been manufactured at Limoges, in France, a vitreous, translucent, and glazed ware which is now, and has been during said period of time, designated, described, and known as china by reason of its original or initial manufacture in China before its introduction into Europe. In the early part of the Nineteenth Century, china, as it gradually came to be called, began to be exported from Limoges in France, into the various countries of Europe and America and particularly into the United States of America and into and through the several States thereof. Such china immediately thereupon acquired a favorable reputation in the United States, as china of utility and beauty resulting in the estab-

lishment of a goodwill which developed from time to time an increasing popular demand for the products of Limoges. In 1927 when respondent was incorporated, this china manufactured at Limoges in France and imported into the United States had long been widely and generally known as Limoges china. The word "Limoges" applied to, or used in describing or designating china or chinaware, had for many years theretofore come to signify and mean, and ever since has signified and meant, and now signifies and means, china manufactured at Limoges, France.

PAR. 3. In the course and conduct of its business, it has been and is the practice of respondent to buy china and chinaware which is imported by it directly, or is purchased from the importers thereof. Said china and chinaware are produced in Japan, China, Czechoslovakia, and other countries, plain and undecorated, and are known and described by the trade as "blanks." Thereupon the respondent decorates such imported products and imprints, stamps, paints, or otherwise impresses on some of it, or causes it to bear pictorial representations of French scenes and designs or other decorations illustrative or suggestive of Limoges china or chinaware, or characteristic of France and causes the same to bear the following or similar legends:

Limoges
French
Decoration
Hand-painted

Respondent has also offered for sale and sold other china and chinaware decorated by it with scenes painted thereon suggestive and characteristic of countries in which it was neither produced nor decorated.

In truth and in fact, the china and chinaware decorated by respondent and bearing the legend

Limoges
French
Decoration
Hand-painted

have not been and are not produced in Limoges, France or in any other part of France, have not been and are not Limoges china or chinaware, have not been and are not decorated or painted in France, but in the United States of America. The so-called "blanks" so decorated by respondent have been cheaper or less expensive for decorating purposes than Limoges china or chinaware. Respondent has been enabled by such practices, that is to say, by selling as and for Limoges china or chinaware so-called "blanks" produced in other

countries than France and decorated by it in the United States, to derive a more substantial profit than could have been acquired or derived by it if the china or chinaware offered for sale and sold by it had been Limoges china or chinaware decorated or hand-painted at Limoges, France.

It has also been one of the practices of respondent to remove, erase or eliminate from so-called "blanks" or to cover with a design of some kind, the word or words stamped or appearing on such blanks or undecorated china or chinaware, indicating, as required by law, the country in which such china or chinaware originated or was produced. By this practice respondent has been enabled to evade, preclude, and nullify the purpose of the law by concealment or suppression of the origin of such china or chinaware or of the place of its manufacture or production, and more easily to convey the impression that it is Limoges china or chinaware and has been painted and decorated at Limoges or elsewhere in France, or that it has been produced and decorated in the country or countries, suggested or indicated by scenes painted thereon typical or characteristic of such country or countries.

PAR. 4. In competition with respondent there are now and for several years last past have been individuals, partnerships, and corporations offering for sale and selling Limoges china or chinaware, decorated and undecorated, in the United States and still other individuals, partnerships, and corporations offering for sale and selling china or chinaware, decorated and undecorated, produced in the United States and in other countries of Europe and Asia than France, who have truthfully represented, stamped, branded, and described it.

PAR. 5. The aforesaid practices of respondent described in paragraph 3 hereof, have had and have, and each of them has had and has, the capacity and the tendency to mislead and deceive, have misled and deceived, and do mislead and deceive the purchasing or consuming public into the belief that the china or chinaware offered for sale and sold by respondent described and designated as in paragraph 3 hereof, has been produced at Limoges, France, and has been decorated, processed and painted in Limoges, France, and that other china and chinaware offered for sale and sold by it was produced in the country suggested by scenes painted thereon typical or characteristic of such country, and in the purchase of such china or chinaware in reliance upon such erroneous belief or beliefs.

The aforesaid practices of respondent have had, and have the capacity and tendency to, and do, unfairly divert trade to respondent from its competitors mentioned in paragraph 4 hereof, and, as a

result, of such practices of respondent injury has been and is being done to such competitors in commerce among and between the various States of the United States.

PAR. 6. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on October 16, 1936, issued, and on October 19, 1936, served, its complaint in this proceeding upon respondent, Tolpin Studios, 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, except the allegations of the last sub-paragraph of paragraph 3 of said 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 having been waived, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPHS 1. Respondent, Tolpin Studios, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2129 West Van Buren Street, in the city of Chicago of said State.

PAR. 2. Said respondent engages, and prior and subsequent to the 16th day of October 1936, has been engaged, in the business of

processing and decorating foreign and domestic made undecorated china or chinaware products, and in selling, offering for sale, and distributing the same in commerce among and between the 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 Illinois to various States of the United States other than the State of Illinois, and to and in the District of Columbia, in the course and conduct of which said respondent has been, and is, in competition with other corporations, firms, partnerships, and individuals engaged in the sale, offering for sale, and distribution of decorated china or chinaware products in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. There is now, and for more than one hundred and fifty years approximately there has been, manufactured at Limoges, in France, a vitreous, translucent, and glazed ware which is now, and has been during said period of time, designated, described, and known as china by reason of its original or initial manufacture in China before its introduction into Europe. In the early part of the Nineteenth Century, china, as it gradually came to be called, began to be exported from Limoges in France, into the various countries of Europe and America and particularly into the United States of America and into and through the several States thereof. Such china immediately thereupon acquired a favorable reputation in the United States as china of utility and beauty resulting in the establishment of a goodwill which developed from time to time an increasing popular demand for the products of Limoges. In 1927, when respondent was incorporated, this china manufactured at Limoges in France and imported into the United States had long been widely and generally known as Limoges china. The word "Limoges" applied to, or used in describing or designating china or chinaware, had for many years theretofore come to signify and mean, and ever since has signified and meant, and now signifies and means, china manufactured at Limoges, France.

PAR. 4. In the course and conduct of respondent's business, as above described, respondent offered for sale, sold, and distributed certain of its decorated china or chinaware products to wholesale and retail dealers, including department stores and auctioneers, and purchasers thereof in various States of the United States, on which products respondent branded, imprinted, and otherwise caused to appear, the words and description "Limoges" and "French Decoration," thereby representing that the products bearing the word "Limoges" originated and were made in the city of Limoges

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and the country of France, and that the products bearing the words and description "French Decoration" were decorated with French designs and decorations peculiar to the country of France and to French artistry and that the same were decorated in France; whereas, contrary to the representations so made, respondent's products so described and referred to were not made and did not originate in Limoges, France, but were obtained by respondent from countries other than the country of France, and the same were not decorated in France or with French designs and decorations peculiar to the country of France and French artistry.

PAR. 5. The branding, imprinting, and representations of respondent, as described and referred to in the foregoing paragraphs, have placed and place, and each of them has placed and places, in the hands of dealers selling the products of respondent the means by which to mislead and deceive the consuming public into the purchase of respondent's china or chinaware products, and the same have had and have, and each of them has had and has, the tendency and capacity to mislead and deceive, and did and do mislead and deceive, members of the public and of the retail trade into the false and erroneous belief that the representations made by said branding or imprinting are true and that the products so represented as "Limoges" originated and were made in Limoges, France, and that the products so represented by the words "French Decoration" were decorated in France and with French designs and decorations peculiar to the country of France and French artistry, all thereby causing members of the public and of the retail trade to buy and deal in products of respondent in lieu and in place of competing products of competitors of respondent, in consequence of which trade has been and is diverted to respondent from its competitors who do not misbrand or falsely and misleadingly label, mark, or otherwise represent their products.

CONCLUSION

The aforesaid acts and practices of the respondent, Tolpin Studios, 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 May 21, 1937, by respondent admitting all the material allegations of the complaint to be true, except the allegations of the last sub-paragraph of paragraph 3 of said 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 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, Tolpin Studios, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of china or chinaware products in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Branding, labeling, marking, or otherwise causing the word "Limoges" to appear on china or chinaware products of respondent, or in any way representing said products, or causing said products to be represented, as Limoges china or chinaware when such products have not had their origin and have not been manufactured in the city of Limoges, in the country of France;

2. Branding, labeling, marking, or otherwise causing the words "French Decoration" to appear on china or chinaware products of respondent, or in any way representing said products, or causing said products to be represented, as products decorated in France or with French designs and decorations peculiar to the country of France and to French artistry when such products were not decorated in France and the designs and decorations appearing thereon were not and are not French designs and decorations peculiar to the country of France and to French artistry.

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

THE TIMES SALES 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 2801. Complaint, May 14, 1936.¹—Decision, July 9, 1937

Where a corporation and three individuals engaged, as the case might be, as executive officers thereof in carrying on or continuing the business of said corporation or in conducting the business successor thereto, engaged in selling, by direct solicitation of purchasers in various States and in the District of Columbia, through their agents thereunto authorized, a certain encyclopedia, supplement or revision service, certificate evidencing membership in the "Bureau of Research," and certain magazines, in combination, for specified sums and under specified terms, through the medium of printed contract forms, altered at times by certain agents through writing thereon different and other terms than those covered by printed form and different and other magazines than those provided for and authorized—

Represented and insisted to purchasers and signers of such altered contracts that the printed terms of the contracts put them on notice of selling agents' limitation of authority in such respect, and through letters, collection agents, and attorneys, disavowed and denied the authority of the selling agents to make such alterations, and represented and insisted that such contracts were legally enforceable against signers, according to printed terms thereof, as if unaltered in writing and regardless of written alterations in printed terms appearing on face thereof, and sued and threatened purchasers and signers with suit for legal enforcement of same and for collection of the unpaid portion of the consideration, and thereby, through force, duress, and undue influence, and under false pretenses that said contracts were legally enforceable against signers without reference to written alterations in printed terms thereof, converted acts and conduct of said selling agents to the benefit and profit of their business, and achieved sale and distribution of said "combination sale" encyclopedia deal, inclusive of books, services, and magazines; Facts being printed terms of notices set forth in contracts were not sufficient to put purchasers and prospective purchasers and signers on notice that selling agents were without authority to make alterations or changes in writing on face of contracts over printed terms thereof with respect to time or terms under which consideration was to be paid or payable, or to the effect that said agents' authority to substitute magazines was limited to certain periodicals only, but it was consistent with such printed terms and provisions that such alterations or changes should take precedence over the other, and said contracts, as thus altered, were not in fact subject to legal enforcement, except in accordance with said alterations and changes;

¹ Complaint published as amended as of July 9, 1937.

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With result that acts and practices of said selling agents in representing that they had authority to alter printed terms as above set forth, and in making such alternations, had tendency and capacity to mislead and deceive purchasers and prospective purchasers of encyclopedias, with and without revision and research services, and of magazine subscriptions, into false and erroneous belief that said representations were true, and into purchase of said encyclopedias, etc., and into signing of contracts therefor in reliance upon such erroneous belief and upon terms of said contracts as thus written in by said agents, and with further result that said various acts, threats, force, duress, undue influence, and false pretenses in performing, enforcing, and endeavoring to enforce such altered contracts, signed as above set forth, deceived purchasers and signers into false and erroneous belief that they were bound thereto according to printed terms thereof, and thus into performance of said contracts in accordance with such terms, and of inducing purchasers and signers into such performance, in accordance with such printed terms, and into completed purchase of said encyclopedia, services and magazines offered and sold by them, and with tendency and capacity to divert trade to them from their competitors who do not make false and misleading statements and representations in connection with the sale of their products, and do not promote and achieve such sales by means of false and misleading representations or by threats, force, duress, undue influence, or false pretenses:

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

Mr. Jay L. Jackson for the Commission.

Mr. Edward Davis, 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 The Times Sales Company, Inc., a corporation; The Times Sales Company; Edward B. Seegar, doing business and trading as The Times Sales Company; William Heim and George G. Heim, 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, The Times Sales Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at 152½ Chestnut Street, in the city of Philadelphia, in the State of Pennsylvania. All or approximately all of the controlling

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and voting capital shares of stock of said corporate respondent are owned, held or controlled by one or more of the other respondents named herein. Since the 8th day of May 1934, the assets, business, and affairs of said corporate respondent have been, and now are, held by and under the control, direction, and management of one or more of the other named respondents herein.

Respondent, The Times Sales Company, is a proprietorship organized and existing under and by virtue of the laws of the State of Pennsylvania, registered under the "Fictitious Name Act" of said State, under the name of the respondent, Edward B. Seegar, with its principal place of business located at 1524 Chestnut Street, in the city of Philadelphia of said State.

Respondent, Edward B. Seegar, is an individual trading under the name and style of The Times Sales Company, with his principal office and place of business located at 1524 Chestnut Street, in the city of Philadelphia, in the State of Pennsylvania. On or about the 8th day of May 1934, the said Edward B. Seegar became the successor in interest to the assets, business, and affairs theretofore owned and operated by The Times Sales Company, Inc., corporate respondent named herein.

Respondents, William Heim and George G. Heim, are individuals and officers of The Times Sales Company, Inc., corporate respondent named herein, and members and officers of The Times Sales Company, copartnership respondent named herein, with their principal place of business located at 1524 Chestnut Street, in the city of Philadelphia, State of Pennsylvania, and at all times material to this complaint said respondents have been and are now engaged in and with the business of said corporate and copartnerships respondents named herein, and with the advertising, promotion, and management thereof.

The aforesaid respondents have been, and each of them has been, for more than two years last past, and now are, engaged in the business of selling, offering for sale, and distributing in commerce among and between the various States of the United States, and in the District of Columbia, an encyclopedia consisting of eight volumes, called and described as "The Times Encyclopedia" and sometimes as "The Times Encyclopedia and Gazetteer," in combination with a 10 years supplemental loose leaf extension or revision service issued periodically for said encyclopedia, and a membership in a bureau of research, together with magazine subscriptions and periodicals. Respondents have described and do describe such transactions as being a "combination sale" and as an "encyclopedia deal." In the course and conduct of the said business, respondents have

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caused, and each of them has caused, and now cause, said books, encyclopedia, services, magazines, and periodicals, composing said deal, 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 shipments, and to and in the District of Columbia.

PAR. 2. In the course and conduct of the business of respondents, as aforesaid, respondents, at all times material to this complaint, have been and are now in competition with other corporations, firms, partnerships, and individuals engaged in the same and similar business and in like commerce.

PAR. 3. It has been and now is the practice of respondents and of each of them to offer for sale, sell, and distribute the said combination sale and encyclopedia deal, including encyclopedia of eight volumes, 10 years revision service, 10 years research bureau membership, and magazine subscriptions, by use of the mails, interstate carriers, and other channels of commerce in and among the various States of the United States and in the District of Columbia; by means of sales agents, canvassers, and employees; by means of contracts, credit instruments, collection agents, employees, and attorneys, and by means of circulars, letters, pamphlets, literature, and by oral, printed, written, and pictorial displays, statements, and representations in the course and conduct of which respondents have made and now make false and misleading statements, representations, and promises, and otherwise have used and now use unfair methods in the solicitation of and sale to purchasers and prospective purchasers of respondents' said combination sale and encyclopedia deal, all to the injury of the public and to the injury of competitors of respondents.

PAR. 4. In the course and conduct of the business of respondents, as aforesaid, respondents and their agents and employees have used and use printed forms of contracts, to which the signatures of purchasers and subscribers have been and now are solicited and secured by agents, canvassers, and employees of respondents thereunto duly authorized. One form of such contract used by respondents during the year 1935 and theretofore, or as late as the month of December, 1934, purported on its face to be a "Special Advertising Contract" offered by The Times Sales Company, Inc., of Philadelphia, Pa., respondent herein, and among other things stated and represented that respondents' encyclopedia referred to therein was and is "Kept Constantly Up-To-Date." A later form of contract, used by respondents during and since the year 1934, purports on its face to be the contract offered by The Times Sales Company, Inc., of Philadelphia, Pa., and carries on

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its face a pictorial display of the eight volumes constituting the encyclopedia and of the binder for the loose leaf revision service. Common to the printed terms of the contracts just described, and to the form of contract used by respondents during the years 1935 and 1936 to date, are the following terms and provisions, to wit:

Gentlemen: You may enter my order for the publications and services as listed hereunder to be sent parcel post or express charges collect.

COMBINATION SALE		Vols.	Price
THE TIMES ENCYCLOPEDIA-ARTCRAFT BINDING_____		8 Vols	-----
10 YEARS REVISION SERVICE_____		-----Total Cost \$15.00	
10 YEARS BUREAU OF RESEARCH MEMBERSHIP			
1 Yr. HARPER'S	2 Yrs. ASIA	3 Yrs LIFE	

Which I promise to pay to your order as follows: \$5.00 with order, balance as follows: \$6.50 upon delivery of Encyclopedia, Plus Parcel Post or Express Charges and \$3.50 in 30 days. On receipt of final payment I am to receive Magazine Subscriptions and Coupon Bond for Loose Leaf Service and Membership Certificate, for Bureau of Research. *I am retaining a copy of this agreement, and have no verbal or written understanding with your representative other than the terms herein stated.* This contract is not subject to change or cancellation. The Times Sales Co. guarantees their Publications to be equal in every respect to samples shown; hence no solicitor is authorized to take orders subject to approval. No subscriptions accepted from newsdealers or libraries.

In the course and conduct of the business of respondents, as aforesaid, it has been and is the practice of respondents' sales agents and employees to solicit, induce and secure the names and signatures of purchasers and subscribers to the aforesaid contracts and to close sales for respondents' said combination sale and encyclopedia deal, including books, services, research bureau membership, and magazine subscriptions, by stating, representing, and implying that the printed terms of said contracts were and are open to alterations and changes, in the matters of time and terms of payment, and with reference to the magazines named in the printed terms thereof, that other magazines not so named and printed but desired by purchasers and subscribers might be substituted for those named in the printed contract form, whereupon said agents did and do make in writing upon the face of said contracts certain alterations and changes in the printed terms thereof by altering and changing either the time of payment or the terms of payment, or both time and terms of payment, and by substituting for one or more of the magazines named in print on the contract form the names of and subscriptions to magazines not so named in print, all in accordance with the particular agreements and understanding as made and had with said

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purchasers and subscribers signing their names and signatures to said contracts.

PAR. 5. Upon receipt of said contracts above described, signed by persons solicited by respondents' sales agents, in which the printed terms have been and are altered and changed in writing on the face thereof, as aforesaid, it has been and is the practice of respondents, and of each of them, verbally to disavow and deny the authority of said agents in making any of the alterations and changes in the printed terms of respondents' contract form, as described in paragraph 4 above, but nevertheless to enforce, or seek to enforce, and otherwise to treat the said contracts as binding and enforceable against signers thereto according to the printed terms thereof and as being unaffected and uninduced by the alterations and changes made in writing on the face thereof, or by false, misleading, and unauthorized statements, representations, and promises made by respondents' sales agents, in the course and conduct of which, while refusing to honor said contracts according to the alterations and changes in the printed terms made in writing on the face thereof, both as to time and terms of payment and with reference to the substitution of magazine subscriptions, respondents have held and hold to, and have enforced and enforce, the printed terms of said contracts against signers thereto, and through and by means of letters, collection agents, and attorneys, did and do threaten suit for the legal enforcement of said contracts, and otherwise by force, duress, undue influence, and under the false pretense that said contracts are legally enforceable against signers thereto according to the printed terms thereof as against the aforesaid alterations and changes made in writing on the face thereof, have held and hold to the benefits of said contracts the same as if said contracts had been and were induced, secured, and closed in reliance upon the printed terms and offer therein; thereby converting the acts and conduct of respondents' sales agents to respondents' benefit and achieving the sale and distribution of respondents' combination sale and encyclopedia, inclusive of the books, services, membership, and magazines named in the print appearing on the face of said contracts.

PAR. 6. In the course and conduct of the business of respondents, as aforesaid, respondents and their agents and employees did and do falsely and misleadingly state, represent, and promise that the said combination sale and encyclopedia deal includes a 10 years revision service in the form of loose leaf supplements issued and distributed quarterly each year, by means of which the encyclopedia of eight volumes is kept "up-to-date" and "abreast of the times"; whereas in

truth and in fact it has not been and is not the practice of respondents to perform said promise or to cause said revision service to be rendered to purchasers of said combination sale and encyclopedia deal, and whereas in truth and in fact the said revision service did not and does not keep the said encyclopedia up-to-date or abreast of the times.

PAR. 7. Respondents' said false and misleading statements, representations, acts, and course of conduct, as set forth in paragraph 6 above, and respondents' threats, force, duress, undue influence, and false pretenses in the enforcement of contracts, as set forth in paragraphs 4 and 5 above, have had and have, and each of them has had and has, the tendency and capacity to mislead and to deceive purchasers and prospective purchasers of encyclopedias, with and without revision services, reference books, and magazine and periodical subscriptions, into the false and erroneous belief that respondents' statements and representations in connection with the sale of respondents' encyclopedias, revision and research services, and magazine subscriptions were and are true, and into the purchase of said encyclopedias, services, and subscriptions in reliance upon such erroneous belief.

The aforesaid acts and practices have had and have, and each of them has had and has, the tendency and capacity to divert trade to respondents from their competitors who do not falsely and misleadingly represent their products and who do not promote and achieve the sale of their said products by means of false and misleading statements and representations or by means of threats, force, duress, undue influence, or false pretenses.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stat. 719), the Federal Trade Commission on the 14th day of May, 1936, issued, and on the 15th day of May 1936, served, its complaint in this proceeding upon respondents The Times Sales Company, Inc., a corporation; The Times Sales Company; Edward B. Seegar, doing business as The Times Sales Company, and William Heim and George G. Heim, charging them with the use of unfair methods of competition in commerce in violation of the provi-

sions of said act. On the 11th day of November 1936, respondents filed their substituted and amended answer in this proceeding. Thereafter, a stipulation as to the facts, dated May 20, 1937, was entered into, whereby it was stipulated and agreed that the statement of facts contained therein, executed by and on behalf of respondents through their counsel, Edward Davis, Esq., and by W. T. Kelley, Chief Counsel for 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 support of the charges stated in the complaint, or in opposition thereto, and that the Commission might proceed upon such 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, the said complaint, in accordance with the said stipulation as to the facts, was amended to accord with the facts as shown by respondents' said substituted and amended answer and said stipulation as to the facts. Thereafter, this proceeding regularly came on for hearing before the Commission on said complaint, as amended, and on said substituted and amended answer and stipulation, the 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The Times Sales Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania, and since the date of its incorporation, October 3, 1929, was actively and continuously engaged in business until the 17th day of April 1934, with its principal place of business located at 1524 Chestnut Street, in the city of Philadelphia, State of Pennsylvania. On the said 17th day of April 1934, said corporate respondent was marked "out of existence," on the records of the Department of Revenue of the State of Pennsylvania, in accordance with the laws of the State of Pennsylvania, and since said date has been and remained inactive with respect to engaging in the business of selling and distributing its products in commerce among and between the several States of the United States. Said respondent has never been legally dissolved and is subject to revival for active business upon the payment of certain corporation taxes in accordance with the laws of the State of Pennsylvania. The last duly elected

and acting executive officers of said corporate respondent are respondents William Heim and George G. Heim, who were also the duly elected and acting executive officers of said corporation, engaged in the control, direction, and management of the business and affairs thereof, from the date of its said incorporation to and including the 17th day of April 1934. During the period between April 17, 1934, and May 10, 1934, the assets, business, and affairs of said corporate respondent were under the control, direction, and management of respondent William Heim. On or about the 9th day of May 1934, the business and affairs of said corporate respondent were acquired by respondent Edward B. Seegar, trading under the name of The Times Sales Company, respondent named herein, and the said business and affairs of said corporation are now held and controlled by the said respondent Edward B. Seegar.

Respondent The Times Sales Company is a proprietorship organized and existing under and by virtue of the laws of the State of Pennsylvania and as such is owned and controlled by respondent Edward B. Seegar, and registered under the name of respondent Edward B. Seegar, on the 10th day of May 1934, under the "Fictitious Name Act" of the State of Pennsylvania. Its principal place of business is located at 1524 Chestnut Street, in the city of Philadelphia, State of Pennsylvania.

Respondent Edward B. Seegar is an individual doing business and trading under the name and style of "The Times Sales Company", respondent named herein, and has his principal office and place of business located at 1524 Chestnut Street, in the city of Philadelphia, State of Pennsylvania.

Respondent William Heim is an individual and the last duly elected, acting, and managing executive officer of the corporate respondent. The Times Sales Company, Inc., and since the organization of respondent The Times Sales Company has been, and now is the manager of said company, and as such has been, and now is, engaged in and with the business and affairs of said respondent companies and in the business promotion and management thereof.

PAR. 2. Respondents, The Times Sales Company, Edward B. Seegar, trading as The Times Sales Company, and William Heim, for more than two years next preceding the issuance of the Commission's complaint in the instant proceeding have been, and now are, engaged in and with the business of selling, offering for sale, and distributing in commerce among and between the various States of the United States, and in the District of Columbia, an encyclopedia consisting of eight books or volumes, called and described as "The Times Encyclopedia," and sometimes as "The Times En-

yclopedia and Gazetteer," together and in combination with a ten years supplement or revision service issued periodically for said encyclopedia, a membership in a so-called "Bureau of Research," and subscriptions to various magazines and periodicals of interstate circulation. During the years 1932, 1933, and 1934, but not after April 17, 1934, corporate respondent The Times Sales Company, Inc., was engaged in the same and like line of commerce as aforesaid, although certain contract forms bearing the name of said The Times Sales Company, Inc., were used subsequent to April 17, 1934. Subsequent to said date, and more particularly from May 8, 1934, the business of selling and distributing the said encyclopedia, supplement or revision service, membership in the Bureau of Research, and magazines and periodicals, was conducted by respondents The Times Sales Company, Edward B. Seegar, trading as The Times Sales Company, and William Heim.

Respondents have described and do describe the aforesaid sales transactions as being a "combination sale" and as an "encyclopedia deal."

In the course and conduct of the business aforesaid, respondents have caused and each of them has caused, and respondents The Times Sales Company, Edward B. Seegar, trading as The Times Sales Company, and William Heim, now cause the said books, encyclopedia, supplement or revision service, and a certificate evidencing membership in the Bureau of Research, entitling the member to research services, and magazines and periodicals, composing the so-called "combination sale" and "encyclopedia deal," 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 shipments, and to and in the District of Columbia.

PAR. 3. During the course and conduct of the business of respondents, as aforesaid, respondents, including corporate respondent The Times Sales Company, Inc., when active, have been and are in competition with other corporations, firms, partnerships, and individuals engaged in the business of selling, offering for sale, and distributing in commerce among and between the various States of the United States and in the District of Columbia, so-called reference books and encyclopedias, both with and without supplemental or revision service, and subscriptions to magazines and periodicals.

PAR. 4. In the course and conduct of the business of respondents, all as aforesaid, it has been and is their practice to offer for sale and sell said combination sale or encyclopedia deal, inclusive of "The Times Encyclopedia," supplement or revision and research services, together with subscriptions to magazines or periodicals, by means

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of direct solicitation of purchasers thereof, located in various States of the United States and in the District of Columbia, by agents thereunto authorized by said respondents, which agents receive and take orders therefor in the form of written contracts and forward the same to respondents' principal place of business in the city of Philadelphia, State of Pennsylvania. Upon receipt of such orders, it has been and is the practice of respondents to fill the same by causing the said encyclopedia, supplement or revision service, research services, and magazines, or subscriptions thereto, to be sent through the United States mails. Subscriptions to magazines are cleared through the agencies of their publishers. It has also been and is the practice of respondents to supply the said agents with a list of names of those magazines for which said respondents were and are authorized by publishers to take orders, including, among others, *Harpers*, *Asia*, *Modern Mechanics*, *Forbes*, and *Redbook*. Respondent The Times Sales Company and respondent Edward B. Seegar, trading under the name The Times Sales Company, now employ three agents or salesmen, but said respondents have variously employed between ten and fifteen of such agents or salesmen during the times hereinabove mentioned. Said agents or salesmen are paid no salaries, work on a commission basis, and are free to solicit orders and to sell in territories of their own choice.

PAR. 5. The contract forms supplied by respondents to the aforesaid agents and salesmen, and used by them and by the said agents and salesmen in soliciting and taking orders, bear on their face certain printed terms and provisions, together with certain representations with respect to the said combination sale or encyclopedia deal, together with spaces for the signatures of, and for certain collateral information concerning, purchasers and subscribers. One form of such contract, which was used by respondents and the aforesaid agents and salesmen during the years 1934 and 1935, bears on its face, among other things, a pictorial display and representation of the eight volumes constituting the encyclopedia and of a binder for the supplement or revision service and purports to be the offer and contract of respondent The Times Sales Company, Incorporated. Another form of such contract used by respondents and the aforesaid agents and salesmen during the years 1934 and 1935 purports to be the offer and contract of respondent The Times Sales Company and represents on its face to be a "Special Advertising Contract," and among other things further represents that "The Times Encyclopedia" and "Loose Leaf Extension Service," therein referred to, are "Kept Constantly Up-to-Date." A further form of contract which was used by respondent The Times Sales Company, Inc., and its

agents and salesmen during the year 1933 and until April 17, 1934, and by respondent The Times Sales Company, and by its owner, respondent Edward B. Seegar, and its manager, respondent William Heim, and their agents and salesmen, subsequent to May 10, 1934, until the year 1935, purports on its face to be the offer and contract of The Times Sales Company, Inc., and further represents that the same is a "Special Advertising Contract," and that "The Times Encyclopedia" and the "Loose Leaf Extension Service," therein referred to, are "Kept Constantly Up-to-Date."

Common to the printed terms of the contract forms above referred to and described, and to the form of contract used by respondents The Times Sales Company, Edward B. Seegar trading as The Times Sales Company, and William Heim, and their agents and salesmen, during the year 1936, are the following terms and provisions, to wit:

Gentlemen: You may enter my order for the publications and services as listed hereunder to be sent parcel post or express charges collect.

COMBINATION SALE		Vols.	Price
THE TIMES ENCYCLOPEDIA—ARTCRAFT BINDING	8 Vols.		-----
10 YEARS REVISION SERVICE			-----
			Total Cost \$15.00
10 YEARS BUREAU OF RESEARCH MEMBERSHIP			
1 Yr. HARPERS	2 Yrs. ASIA		3 Yrs. LIFE

Which I promise to pay to your order as follows: \$5.00 with order, balance as follows: \$6.50 upon delivery of Encyclopedia, Plus Parcel Post or Express Charges and \$3.50 in 30 days. On receipt of final payment I am to receive Magazine Subscriptions and Coupon Bond for Loose Leaf Service and Membership Certificate, for Bureau of Research. *I am retaining a copy of this agreement, and have no verbal or written understanding with your representative other than the terms herein stated.* This contract is not subject to change or cancellation. The Times Sales Co. guarantees their Publications to be equal in every respect to samples shown; hence no solicitor is authorized to take orders subject to approval. No subscriptions accepted from newsdealers or libraries.

PAR. 6. Respondents did not and do not affirmatively authorize the aforesaid selling agents to represent the terms and provisions of the offer made by respondents other than as set forth in the printed terms of the contracts used by said agents, or to make oral or written changes or alterations in the printed terms thereof, except with reference to the substitution of certain magazines, the names of which are supplied by respondents and known to said selling agents. Nevertheless, certain of said agents, in selling and soliciting purchasers and prospective purchasers of respondents' combination sale or ency-

yclopedia deal, and in soliciting, inducing, and securing signatures of purchasers to said contracts, did and do in fact represent that they have authority to alter and change the printed terms thereof with respect to the time, terms, and conditions therein providing for the payment of the consideration of \$15.00, and with respect to magazines named in the printed terms thereof, to substitute therefor other magazines of the purchaser's choice not so named in print. Thereupon the said agents did and do make in writing upon the face of said contracts certain alterations and changes in the printed terms thereof, altering and changing the time of payment, or terms of payment, or both the time and terms of payment, and by substituting for one or more of the magazines, named in print therein, the names of, and subscriptions to, magazines not so named in print, but all in accordance with the particular agreements and understandings had and made with the purchasers or subscribers signing their names to said contracts.

In the foregoing connection, for example, the printed terms of the contract forms, hereinabove described, provide for \$5.00 payment with the order, \$6.50 upon delivery of encyclopedia, plus parcel post or express charges, and \$3.50 in thirty days. Nevertheless, certain of said agents did and do agree with purchasers to accept a down payment of less than \$5.00, and upon receipt of such amount, acknowledge the same in writing upon the face of the contracts signed by the purchasers and thereon further indicate in writing the balance of moneys due under such contracts. A further form of alteration, demonstrative of the conduct of said agents, is that by which said agents, in accordance with agreements had and made with purchasers and signers thereto, acknowledge in writing upon the face of said contracts the receipt of the down payment of \$5.00, and further to provide in writing that the balance of \$10.00 is payable in two subsequent payments and that the purchaser is to be billed for such balance or balances in lieu of C. O. D. With respect to the substitution of the names of magazines other than those named in the printed forms of said contracts, certain of said selling agents did and do write in the names of magazines for which they or respondents have no authority to sell or take subscriptions, such as *Atlantic Monthly* as a substitute for *Life*, or for *Asia*, *Christian Century* for *Asia*, and *Readers Digest* for *Life*. By the above means and methods purchasers and signers to said contracts are induced to purchase and sign their names to said contracts.

PAR. 7. Upon receipt of the contracts, altered and changed by the said agents in writing upon the face thereof, as aforesaid, it has been and is the practice of respondents to proceed to the performance of

such contracts in accordance with the printed terms thereof, the same as if no such alterations were made or so appeared and as being unaffected and uninduced by the representations and terms written in by the said agents on the face of the contract, by sending the encyclopedia C. O. D. for balances due, when the purchaser and person signing said contract, according to the written alterations thereon, is to be billed for the balance or balances in lieu of C. O. D., and by clearing subscriptions to the magazines named in print on said contracts, and otherwise insisting upon said purchasers accepting the magazines so named, instead of the magazines actually subscribed for by said purchasers and the names of which have been and are written in on the face of said contracts in substitution of one or more of the magazines named in print therein, more particularly when the magazines substituted are ones for which respondents have no authority to sell or take subscriptions, or otherwise cannot be supplied by respondents.

In dealing with purchasers and signers to contracts altered in writing as above described, it has been and is the further practice of respondents, through and by means of letters, collection agents, and attorneys, to disavow and deny the authority of the selling agents to make the alterations above described, to represent and insist that the printed terms of the contracts put such purchasers and signers on notice of the selling agent's limitation of authority in this respect, and to represent and insist that the said contracts are legally enforceable against signers thereto according to the printed terms thereof, the same as if unaltered in writing and regardless the written alterations in the printed terms appearing on the face thereof. In connection therewith respondents sue and threaten purchasers and signers to said contracts with suit for the legal enforcement of the same and for collection of the unpaid portion of the consideration \$15.00 and hold to the down payments made by purchasers in such contracts. By these means of force, duress, and undue influence, and under the false pretense that said contracts are legally enforceable against signers thereto, without reference to the written alterations in the printed terms thereof, respondents have converted and convert the acts and conduct of the said selling agents to the benefit and profit of the business conducted by respondents, and did and do achieve the sale and distribution of the said combination sale or encyclopedia deal, inclusive of the books, services, and magazines.

PAR. 8. The printed terms and notices set forth in the contracts hereinabove described are not sufficient to put purchasers and prospective purchasers and signers thereto on notice that the said selling agents are without authority to make alterations or changes in writ-

ing on the face of the contracts over the printed terms thereof with respect to the time or terms under which payment of the consideration is paid or payable, or that the authority of said agents with respect to the substitution of magazines is limited to certain magazines only.

It is consistent with the printed terms and provisions of the contracts hereinabove described that alterations or changes made on the face thereof in writing, with respect to the time or terms of payment and substitution of magazines, shall take precedence over the printed terms thereof relating to time and terms of payment and substitution of magazines, and said contracts, as so altered, are not in fact subject to legal enforcement except in accordance with the said alterations and changes.

PAR. 9. The combination sale of encyclopedia deal hereinabove described does in fact include a 10-year revision service, in the form of supplements or booklets which are issued and distributed quarterly each year, by which certain items or portions of the encyclopedia are amended and supplemented from time to time. In connection with this service, purchasers are supplied with so-called "tear slips," which provide spaces for the name and address of purchaser and person entitled to such service. As a condition precedent to mailing and receipt of each issue of the supplement or revision service, purchasers are required to fill in the blanks and send the same to the office of respondents. The purpose of this practice is to provide respondents with the correct names and addresses of the persons entitled to such supplements prior to mailing thereof, this for the reason that the purchase price of the combination sale or encyclopedia deal does not allow or include the cost of periodical circularization of customers to ascertain correct address, and for the reason that constant changes of address among purchasers otherwise results in the loss of supplements in the course of delivery.

PAR. 10. The aforesaid acts and practices of respondents' selling agents in representing that they have authority to alter the printed terms of contracts with respect to time and terms of payment and substitution of magazines, and pursuant to such representations, in making such alterations in writing upon the face of said contracts, all as set forth in paragraph 6 above, have had and have, and each of them has had and has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers of encyclopedias, with and without revision and research services, and of magazine subscriptions, into the false and erroneous belief that said representations are true, and into the purchase of encyclopedias, services, and magazine

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subscriptions of respondents, and into the signing of contracts therefor in reliance upon such erroneous belief and in reliance upon the terms of said contracts as written in and on the face thereof by said agents. The aforesaid acts, representations, threats, force, duress, undue influence, and false pretenses, of respondents in performing, enforcing, and endeavoring to enforce contracts signed by persons relying upon written alterations appearing on the face thereof over the printed terms thereof, all as set forth in paragraphs 7 and 8 above, have the tendency and capacity to, and did and do in fact, deceive purchasers and signers to said contracts into the false and erroneous belief that they were bound thereunto according to the printed terms thereof, and thus, into the performance of said contracts in accordance with said printed terms; and the said practices otherwise have the tendency and capacity to, and did and do, induce purchasers and signers to such contracts into the performance thereof in accordance with said printed terms and into the completed purchase of the encyclopedias, services, and magazines offered for sale and sold by respondents.

PAR. 11. The aforesaid acts and practices of respondents and of the said selling agents have had and have, and each of them has had and has, the tendency and capacity to divert trade to the business of respondents from their competitors who do not make false and misleading statements and representations in connection with the sale of their products and who do not promote and achieve the sale thereof by means of false and misleading representations or by means of threats, force, duress, undue influence, or false pretenses.

CONCLUSION

The aforesaid acts and practices of respondents, and of their agents, under the conditions and circumstances set forth in the foregoing findings, 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, as amended, and the substitute and amended answer filed herein by respondents on November 11, 1936, and upon the agreed stipulation as to the facts, dated

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May 20, 1936, entered into between respondents herein, The Times Sales Company, Inc., a corporation; The Times Sales Company; Edward B. Seegar, trading as The Times Sales Company, and William Heim, 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 said respondents findings as to the facts (including inferences which it may draw from said stipulated facts) and its conclusion based thereon, 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 hereby ordered, That the respondents, The Times Sales Company, Inc., a corporation; The Times Sales Company; Edward B. Seegar, individually, and trading as The Times Sales Company; and William Heim; their respective officers, agents, representatives, and employees, in connection with the sale of encyclopedias, revision and research services, magazines or other similar commodities in interstate commerce or in the District of Columbia, cease and desist from:

Representing in any manner that contracts for the purchase of the products or commodities sold by them, the terms and provisions of which have been altered, changed, or modified by their respective agents, employees, or representatives pursuant to agreement or understanding with the purchasers of such commodities, are subject to performance and are legally enforceable against said purchasers in accordance with the printed terms and provisions of said contracts irrespective of the alterations, changes, or modifications so 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
 IMPERIAL 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 2833. Complaint, June 4, 1936—Decision, July 9, 1937

Where a corporation engaged in manufacture and sale of so-called "draw" or "deal" assortments of candy, sale and distribution of which type candy by retailers by lot or chance has capacity and tendency to and does decrease sale of candy sold without any sales plan or device involving lottery or game of chance, i. e., "straight" goods, and sale of which type, providing, in connection with its sale to public, means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling and is in violation of various municipal ordinances and regulations and State statutes and constitutions, and provides retail merchants with means of violating the laws of the several States, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition, or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—

Sold, to wholesale and retail dealers, certain assortments of candy which were so packed and assembled as to involve, or were designed to involve, use of a lottery scheme when sold and distributed to consumers thereof, and one of which included, together with a punchboard, a number of boxes of assorted chocolate candies of a value of more than five cents each, for sale to consuming public under a plan, and in accordance with said board's explanatory legend, pursuant to which purchasers received, for five cents paid, and dependent upon number punched by chance or purchase of last punch on board, one of aforesaid boxes of candy, or nothing other than privilege of making a punch; so assembled and packed that such assortments might be and were used by retail dealers for distribution thereof to purchasing public by lot or chance, without alteration or rearrangement, and with knowledge and intent that such assortments would and could thus be resold to public by lot or chance by such retail dealers, in competition with many who do not make and sell "draw" or "deal" assortments, but sell their "straight" goods in interstate commerce in competition with the other;

With result that competitors who refused to and do not sell candy so packed and assembled that it can be resold to public by lot or chance were put to a disadvantage in competing with it and with others employing similar methods to those described, trade was diverted to it and others using similar methods by reason of customers' attraction to such "draw" or "deal" assortments from those who do not use such methods, 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; to the prejudice and injury of the public and competitors:

Complaint

25 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. Charles P. Vicini* and *Mr. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.

Roberts & Skeel and *Flood, Lenihan & Ivers*, of Seattle, Wash., 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 Candy Co., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Imperial Candy Co., is a corporation organized and operating under the laws of the State of Washington, with its principal office and place of business located at 800 Western Avenue, Seattle, Wash. 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 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 Seattle, Wash., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale 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 consumer thereof.

(a) One of said assortments, manufactured and distributed by the respondent, is composed of a number of large items of candy and a number of boxes of candy of varying sizes, together with a device commonly called a "punchboard." The said boxes of candy are distributed to the consuming public by means of said punchboard in the following manner: The sales by means of said punchboard are 5¢ each, and when a punch is made from said punchboard a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the prospective customer as to which numbers receive a large item of candy and which numbers receive a box of candy and the size thereof. The purchaser of the last six punches in each section pays for only one punch, the last five punches being free, and the purchaser of the last punch on the board wins a large item of candy irrespective of the number on the punch. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or one of the large items of candy by punching the last number on the board receives nothing for his money other than the privilege of punching a number from the board. The large items of candy and the boxes of candy are worth more than 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5¢. The numbers on said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy and large items of candy in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance.

The respondent manufactures and distributes several assortments involving the same lot or chance feature, but varying only in detail. Some of the boards have one thousand numbers, others have fifteen hundred numbers, some of the boards are divided into two sections, and some are divided into six sections.

(b) Another of said assortments manufactured and distributed by the respondent is composed of a box of candy, together with a device commonly called a "push card." The said box of candy is distributed to the consuming public by means of said push card in the following manner: Said push card contains fifteen discs numbered from one to fifteen, but not arranged in numerical sequence, and with the numbers concealed. The purchaser of a punch from said push card pays the amount in cents represented by the number which the displaced disc exposes; the push card bears a legend

stating that the lucky number under seal wins the box of candy. A purchaser who does not qualify by obtaining the lucky number receives nothing for his money other than the privilege of punching a number from said push card. The box of candy is worth more than the highest priced punch on said push card, fifteen cents, and a purchaser who obtains the number calling for the box of candy receives the same wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers, 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 product in accordance with the sales plans hereinabove set forth, and said sales plans have 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 items 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 June 4, 1936, issued and on June 9, 1936, served its complaint in this proceeding upon the respondent, Imperial Candy 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 P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by Emmett G. Lenihan, attorney for the respondent, before Charles P. Vicini and Henry M. White, exami-

ners 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, this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of Henry C. Lank, counsel for the Commission, and Emmett G. Lenihan, counsel for the respondent; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Imperial Candy Company, is a corporation organized under the laws of the State of Washington, with its principal office and place of business located in the city of Seattle, State of Washington. Respondent is now, and for several years last past has been, engaged in the manufacture of candy in the city of Seattle and in the sale and distribution thereof to retail and wholesale dealers and jobbers located in the State of Washington and in the States of Oregon, Montana, Idaho, California, Arizona, New Mexico, Utah, Wyoming, and in the Territories of Alaska and the Hawaiian Islands. It causes the said candy when sold to be shipped or transported from its principal place of business in the State of Washington to purchasers thereof in Washington and in the other States and Territories of the United States, as mentioned above. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been engaged 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 and Territories of the United States, as mentioned above.

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, as above described, certain assortments of candy so packed and assembled as to involve, or which are designed 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 boxes of assorted chocolate candies, together with a device commonly called a "punchboard." The boxes of candy contained in said assortment

Findings

are distributed to the consuming public by means of said punchboard in the following manner: The sales by means of said punchboard are 5¢ each, and when a punch is made from said board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing the prospective customer as to which numbers receive a box of candy. The purchaser of the last punch on the board receives a specified box of candy. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy, or by punching the last number on the board, receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy are worth more than 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy receives the same for the price of 5¢. The numbers on said board are effectively concealed from the purchasers or prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy in said assortment are thus distributed to purchasers of punches from said board wholly by lot or chance, and the fact as to whether a purchaser receives one of the boxes of candy or nothing other than the privilege of punching a number from said board for his money is 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" 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, 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 sales plan as described above.

PAR. 5. All sales made by respondent, whether to wholesale dealers 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 are designed to 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 the assortments of candy described in paragraph 2 hereof, 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 many manufacturers of candy competing with respondent in the territory served by respondent who do not manufacture and sell "draw" or "deal" assortments of candy and who sell their "straight" goods in interstate commerce in competition with the "draw" or "deal" assortments. The sale or distribution of candy by retail dealers by lot or chance has the capacity and tendency to and does decrease the sale of candy sold without any sales plan or device involving a lottery or game of chance.

Several witnesses testified, and the Commission finds, that customers coming into retail establishments and desiring candy similar to that distributed by respondent would take chances or make purchases by means of said push cards or punchboards, and that in such cases when unsuccessful in obtaining candy by means of said push card or punchboard some of such customers would then purchase candy as a "straight" purchase and without the use of the lottery device; that the gambling feature connected with the sale of respondent's assortment, as described above, was attractive to customers; and that before making "straight" purchases it was not unusual for customers to endeavor to procure the candy desired by means of such lottery devices rather than to make a "straight" purchase.

PAR. 7. The sale and distribution of "draw" or "deal" assortments of candy, or of candy which has connected with its sale to the public the means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling and is in violation of various municipal ordinances and regulations and various State statutes and constitutions. The sale and distribution of candy by retailers by the methods described herein is the sale and distribution of candy by lot or chance and constitutes a lottery or gaming device, and the Commission finds that the sale and distribution of assortments of candy as described herein provides retail merchants with a means of violating the laws of the several states. Competitors who refuse to or who do not sell candy so packed

and assembled that it can be resold to the public by lot or chance are put to a disadvantage in competing with respondent and with others employing similar methods to those described herein. Because the "draw" or "deal" assortments are attractive to customers purchasing from retail dealers, the Commission finds that trade is diverted to respondent and others using similar methods from competitors who do not use such methods. 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. An officer of the respondent corporation testified, and the Commission finds, that respondent's total annual volume of sales is approximately \$750,000, of which approximately 60 percent represents sales to customers outside of the State of Washington. Between 10 percent and 15 percent of respondent's total sales consists of assortments of candy with which a punchboard is furnished.

PAR. 9. 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 respondent, Imperial 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 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 P. Vicini and Henry M. White, 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 of Henry C. Lank, counsel for the Commission, and Emmett

G. Lenihan, 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 other purposes."

It is ordered, That the respondent, Imperial Candy Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard," which punchboard is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "punchboard," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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 respondent, Imperial Candy Company, a corporation, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

ROBERT C. HOFFMAN, TRADING AS YORK BAR BELL
COMPANY, STRENGTH AND HEALTH PUBLISHING
COMPANY, AND YORK ATHLETIC SUPPLY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 2542. Complaint, Mar. 17, 1936¹—Decision, July 10, 1937*

Where an individual engaged, under several trade names, in manufacture, sale, and distribution of athletic goods, publication of a periodical devoted to development of health and strength, and sale of a course of physical training through the mail to customers throughout the United States, in substantial competition with other individuals, etc., engaged in sale and distribution in interstate commerce of athletic appliances and courses in physical training or culture, including among his said competitors those who sell such courses and apparatus and do not misrepresent their products and publish misleading and deceptive advertisements or in any manner unfairly disparage their competitors; in soliciting sale of and selling his said commodities as above described—

- (a) Set forth in advertisements two "Before and After" pictures of himself, together with statement that he had increased his weight from 210 to 250 pounds by use of York bar-bell exercises, and created thereby impression that decided development of his physique was due entirely to use of a system of training and use of bar-bells, facts being the "before" picture was taken just after a serious illness caused by an automobile accident and which had reduced his weight by about 40 pounds, and substantial part of gain in weight and development was due to his recovery therefrom, and "after" picture had been so retouched as to cause muscles to appear in stronger relief and give impression of greater strength than was apparent in the other;
- (b) Set forth in his "Strength and Health" periodical, picture of man of unusual muscular development, together with words "What would you give to have a body like this? * * * The wonderful strength athletes turned out by the famous York System of Physical Training are the amazement of the body building world today. They came as ordinary fellows but finished stars," with result that impression was created that phenomenal development disclosed was result of his said training course, notwithstanding fact picture was that of a foreign athlete who had never practiced said individual's system and flourished many years before individual in question entered upon business of physical training;
- (c) Set forth, in catalogs widely circulated among customers and prospective customers, and among depictions of athletes using aforesaid York bar-bells, "Before and After" pictures of one Joe Miller, depicting said individual as a boy and young man, and accompanied with words "The story of this pupil is an everyday occurrence among York bar-bell stu-

¹ Amended.

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25 F. T. C.

- dents. It can be yours if you have the determination to get started," with result that reader and prospective customer was led to believe that said person's decided and unusual development was due exclusively to said individual's course of training, undisclosed facts being that first picture of said person was taken of him as an undeveloped boy of fourteen years, second was made after his reaching physical maturity, and he had trained for a number of years with other teachers, had taken other physical training courses, and was an athlete of some reputation when he commenced using course and apparatus of aforesaid individual;
- (d) Included in depiction of himself with his "War Medals," picture of the American Distinguished Service Cross, facts being that, while recommended therefore and recipient in fact of numerous decorations for bravery, and notwithstanding vallant service as a soldier in the United States Army during the World War, said particular decoration was not awarded, due to War Department's ruling that particular feat of gallantry concerned was not of such a nature as to entitle him thereto;
- (e) Published, in his said "Strength and Health," together with pictures of athletes, statements by one Roger Eells and others testifying to beneficial results achieved through training with his equipment, with result that reader was led to believe that depictions were those of persons about whom story was written, undisclosed facts being they were those of professional athletes in his employ with no connection with story about individuals named as aforesaid;
- (f) Set forth, in a catalog, a depiction of building owned by him with sign bearing trade name used in his said business across entire length thereof, facts being no such sign was on building when picture was taken and inscription in question was superimposed thereon when catalog was prepared for publication, with result that impression was created that entire building was occupied by said company or business, name of which thus appeared on sign, facts being building in question housed not only offices of said business, but also that of said individual's aforesaid periodical, and that of an oil burner enterprise owned by him, and small sign near entrance, containing names of all three companies, failed to appear in picture; and
- (g) Published false, defamatory, and unfairly disparaging articles in his said "Strength and Health," in a manner and form designed and well-calculated to injure and bring into disrepute generally competitors selling courses in physical training and purporting to be descriptive of method of training taught by those who, in developing physical strength of their pupils, depend entirely upon exercises involving resistance of one part of the body against another, both through articles written by himself under a pen name and articles by some of his employees, for the purpose of disparaging and maligning such competitors, including one who had been competitively awarded title of, and come to be widely known as "The World's Most Perfectly Developed Man," and who had developed and sold system of training employing no apparatus and called by him "Dynamic Tension," but in said articles referred to as "dynamic hooey," and otherwise discredited as something evolved and sold as a matter of expedience and result of chance, etc., and through making false and misleading claim that no physical strength and development could be obtained without use of barbells, dumbbells or other apparatus, implied and repre-

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sented that systems of training taught by those competitors who do not advocate use thereof or other apparatus is of little or no value whatever; to the substantial injury of said competitor through diversion of trade from him to said individual, and in the cancellation by many pupils of their courses and demands that monies paid by them for tuition be refunded.

With effect of misleading and deceiving a substantial portion of purchasing public and consuming public into the erroneous belief that all said various results, as above set forth and indicated through use of "Before and After" pictures, etc., and through publication of false, defamatory, and unfairly disparaging articles about competitors, were true, and into purchase of his said products, training system and publication on account of such belief, and of unfairly diverting trade to him from competitors engaged in sale in interstate commerce of physical training courses and physical culture apparatus, and who truthfully represent their courses and merchandise; to the substantial injury of the purchasing public and competition in commerce:

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

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

Mr. William L. Pencke for the Commission.

Mr. Herbert S. Ward, of Washington, D. C., 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 Robert C. Hoffman, trading as York Bar Bell Company, Strength and Health Publishing Co., and as York Athletic Supply 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Robert C. Hoffman, is an individual trading under the respective names and styles of York Bar Bell Company, Strength and Health Publishing Co., and as York Athletic Supply Company, with his principal office and place of business located at York, in the State of Pennsylvania. He is now and for more than one year last past has been engaged in the manufacture of athletic goods and in the sale and distribution of same between and among various States of the United States and in the District of Columbia; in the publication of a periodical devoted to development of health and strength entitled, "Strength and Health," which

is circulated widely in interstate commerce; and in the sale of a series of lessons in physical culture, all of which are advertised in said periodical and elsewhere, and which lessons are distributed through the mails in interstate commerce. He causes said products, when sold, to be shipped from his place of business in the State of Pennsylvania to purchasers thereof located in a State or States of the United States other than the State of Pennsylvania, and in the District of Columbia. In the course and conduct of his business, the said respondent was, and is, at all times herein referred to, in competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution, in interstate commerce, of similar commodities.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his said commodities in interstate commerce, used the following methods and practices:

(a) Caused two portraits of himself to appear in advertisements and advertising matter, one of which was a photograph taken just after a serious illness which had reduced his weight by about forty pounds, and the other of a photograph taken some twenty weeks later, together with a statement that he had increased his weight from 210 to 250 pounds by the use of York bar-bell exercises; when in truth and in fact, a substantial part of the gain in weight was due to his recovery from illness;

(b) Caused the picture of the back of a man of unusual muscular development to appear in the periodical, "Strength and Health," accompanied by the words:

What would you give to have a body like this? * * * The wonderful strength athletes turned out by the famous York System of Physical Training are the amazement of the body building world today. They came as ordinary fellows but finished stars.

when in truth and in fact, the man whose back appears in the picture referred to is a European athlete whose picture has appeared in other publications, and whose muscular system was not developed by the York bar-bell system;

(c) In a catalogue widely circulated among customers and prospective customers, caused two portraits of one Joe Miller to appear among other portraits of athletes who use York bar-bells, one of such pictures representing Miller as a boy and the other as a young man, and accompanied by the words:

The story of this pupil is an everyday occurrence among York bar-bell students. It can be yours if you have the determination to get started.

when in truth and in fact, said Miller did not reach his development as a student of the York bar-bell system, but before taking it up had already made a championship record;

(d) In the same publication caused pictures of "Bob Hoffman's War Medals" to appear, conspicuous among which was a pictorial representation of the American Distinguished Service Cross; when in truth and in fact, the decoration referred to was never awarded to said Hoffman;

(e) In another advertisement, reference is made to the muscular development made by one Roger Eells, of Lisbon, Ohio, who, it was stated, "built himself from a sick man weighing 121 pounds to 162 pounds of powerful, shapely, muscular manhood. After he had failed with other systems he succeeded with York methods"; when in truth and in fact, neither of the two pictorial representations which accompanied such reading matter was a portrait of said Eells, although the language used and the combination of the portraits with the reading matter had the capacity and tendency to confuse, mislead, and deceive readers into the belief that said portraits were of said Eells;

(f) In the catalogue referred to, caused a pictorial representation of the building where his business is carried on to appear, having the words "York Bar Bell Co." in large and conspicuous letters across the top thereof; when in truth and in fact, said Hoffman does not occupy said building exclusively, but shares the same with another company, and the words "York Bar Bell Co." do not appear on the front as represented.

PAR. 3. In the course and conduct of his business as described in paragraph 1 hereof, the respondent, in a manner and form designed and well calculated to injure and to bring into disrepute generally competitors selling courses in physical training in commerce, among and between the various States of the United States, has been widely publishing, through the medium of the magazine "Strength and Health," which is published by the respondent and which is circulated by him throughout the various States of the United States and the District of Columbia, false, defamatory, and misleading statements purporting to be descriptive of the method of training taught by those of his competitors who sell courses for physical training and who in developing the physical strength of their pupils depend entirely upon exercises involving the resistance of one part of the body against another part. The respondent publishes from time to time in said magazine "Strength and Health" articles written by himself and by some of his employees which said articles are written for the purpose of disparaging and maligning said competitors. By

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making the false and misleading claim that no physical strength and development can be attained without the use of bar bells, dumbbells or other apparatus, respondent thereby implies and represents that the systems of training taught by those competitors who do not advocate the use of such dumbbells, bar bells, and other apparatus is of little or no value whatever; when in truth and in fact those systems of training which depend entirely upon certain resistance exercises and tensions of muscles without the use of any apparatus do develop physical strength as effectively as the system taught by respondent which requires the use of appliances manufactured and sold by him.

PAR. 4. The aforesaid false and misleading representations and the said defamatory and disparaging statements made in said periodical "Strength and Health" and elsewhere, as above alleged have the tendency and capacity to mislead and deceive the public into the false and erroneous belief that said statements and implications are true and that the various athletes whose portraits appear therein have been developed to their present extraordinary physical condition by the sole and exclusive use of the York Bar Bell Company's products and methods. As a direct consequence of the false, misleading and disparaging statements, made by the respondent as hereinabove set forth, a substantial number of the public has purchased a substantial number of training courses from the respondent, and athletic equipment. Further, said false and misleading statements and disparaging implications have the tendency and capacity to divert trade unfairly from competitors of respondent in like businesses to the respondent, and otherwise to injure said competitors who do not engage in unfair methods of competition.

PAR. 5. The above acts and things done by respondent are all to the injury and prejudice of the public and accomplish substantial injury to substantial competitors of respondent 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 31, 1935 issued and served its complaint, and on March 17, 1936 issued and served its amended complaint in this proceeding upon respondent, Robert C. Hoffman, trading as York Bar Bell Company, Strength and Health Publishing Co., and as York Athletic Supply Company, charging him with the

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use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and amended complaint and the filing of respondent's answer to the complaint and answer to the amended complaint, testimony and other evidence in support of the allegations of said complaint and amended complaint were introduced by William L. Pencke, attorney for the Commission, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint and the amended complaint by Herbert S. Ward, 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 amended complaint and the respective answers thereto, testimony and other evidence, briefs in support of the complaint and amended complaint, and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the same, 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, Robert C. Hoffman, is an individual trading under the respective names and styles of York Bar Bell Company, Strength and Health Publishing Co., and as York Athletic Supply Company, with his principal office and place of business located at York in the State of Pennsylvania. He is now and for more than one year last past has been engaged in the manufacture of athletic goods and in the sale and distribution of the same in the various States of the United States and in the District of Columbia; in the publication of a periodical devoted to the development of health and strength entitled, "Strength and Health," which is circulated widely throughout the United States; and in the sale of a course of physical training, likewise sold and distributed through the mails to customers throughout the United States. Respondent causes his said athletic goods when sold to be shipped from his place of business in Pennsylvania to purchasers thereof located in States other than the State of Pennsylvania and in the District of Columbia. The respondent is in substantial competition with other individuals, firms, copartnerships, and corporations likewise engaged in the sale and distribution in interstate commerce of athletic appliances and courses in physical training or culture.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling his said commodities as aforesaid, used the following methods and practices:

(a) Caused two portraits of himself to appear in advertisements, one of which was a photograph taken just after a serious illness which had reduced his weight by about forty pounds, and the other of a photograph taken some twenty weeks later, together with a statement that he had increased his weight from 210 to 250 pounds by the use of York bar-bell exercises;

(b) Caused the picture of the back of a man of unusual muscular development to appear in the periodical, "Strength and Health," accompanied by the words:

What would you give to have a body like this? * * * The wonderful strength athletes turned out by the famous York System of Physical Training are the amazement of the body building world today. They came as ordinary fellows but finished stars.

(c) In a catalogue widely circulated among customers and prospective customers, caused two portraits of one Joe Miller to appear among other portraits of athletes who use York bar-bells, one of such pictures representing Miller as a boy and the other as a young man, and accompanied by the words:

The story of this pupil is an everyday occurrence among York bar-bell students. It can be yours if you have the determination to get started.

(d) In the same publication caused pictures of "Bob Hoffman's War Medals" to appear, conspicuous among which is a pictorial representation of the American Distinguished Service Cross;

(e) In another advertisement, reference is made to the muscular development made by one Roger Eells of Lisbon, Ohio, who, it was stated, "built himself from a sick man weighing 121 pounds to 162 pounds of powerful, shapely, muscular manhood. After he had failed with other systems he succeeded with York methods";

(f) In the catalogue referred to, caused a pictorial representation of the building where his business is carried on to appear, having the words "York Bar Bell Co." in large and conspicuous letters across the top thereof.

PAR. 3. In the course and conduct of his business, the respondent, in a manner and form designed and well calculated to injure and to bring into disrepute generally competitors selling courses in physical training in commerce, among and between the various States of the United States, has been widely publishing, through the medium of said magazine, "Strength and Health," false, defam-

atory, and misleading statements purporting to be descriptive of the method of training taught by those of his competitors who sell courses for physical training and who in developing the physical strength of their pupils depend entirely upon exercises involving the resistance of one part of the body against another part. The respondent publishes from time to time in said magazine, "Strength and Health," articles written by himself and by some of his employees which said articles are written for the purpose of disparaging and maligning said competitors. By making the false and misleading claim that no physical strength and development can be attained without the use of bar bells, dumbbells or other apparatus, respondent thereby implies and represents that the systems of training taught by those competitors who do not advocate the use of such dumbbells, bar bells and other apparatus is of little or no value whatever.

PAR. 4. In the use of the "Before and After" pictures of himself the respondent creates the impression that the decided development of his physique is due entirely to the use of his system of training and the use of bar bells, when in fact a substantial part of the gain in weight and development was due to his recovery from an illness caused by an automobile accident. Moreover, the "After" picture alone was retouched in such a manner that the muscles appeared in stronger relief and gave the impression of greater strength than is apparent in the "Before" picture.

In using the picture of the back of a man of unusual development, and the descriptive text accompanying the picture, the impression is created that the phenomenal development of the back muscles is the result of respondent's training course. It was shown, however that the picture is one of a foreign athlete who never practiced respondent's system and who in fact flourished many years before the respondent entered upon the business of physical training.

Again, in using the "Before and After" pictures of one Joe Miller, the reader and prospective customer of respondent is led to believe that the decided and unusual development of Miller was due exclusively to respondent's course of training. No mention is made in the descriptive text of the facts that when the first picture of Joe Miller was taken he was an undeveloped boy of 14 years of age, and that the second picture was made when he had reached physical maturity; nor that Joe Miller had trained for a number of years with other teachers and had taken other physical training courses and was an athlete of some reputation at the time he commenced using respondent's course and apparatus.

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Conspicuous in the advertisement picturing the respondent with his "War Medals" there appears the picture of the American Distinguished Service Cross. Although the respondent rendered valiant service as a soldier in the United States army during the World War and did in fact receive numerous decorations for bravery, and although he was recommended for the Distinguished Service Cross, it was not awarded to him because the War Department ruled that the particular feat of gallantry performed by respondent was not of such a nature as to entitle him to the award of the Distinguished Service Cross; therefore the representation in the advertisement that he had in fact received said decoration was not in accordance with the facts.

The respondent published several advertisements in his said magazine, "Strength and Health," containing statements by one Roger Eells and other individuals testifying to the beneficial results achieved through training with respondent's equipment. These advertisements are accompanied by pictures of athletes, and the reader is led to believe that such pictures are of the persons about whom the story is written. In fact, the pictures are those of professional athletes who are in respondent's employ, yet the text fails to indicate that these pictures have no connection with the story about the individuals named in the advertisement.

One of the advertisements in respondent's catalog contains a picture of the building owned by respondent. Across the entire length of said building appears the sign "York Bar Bell Company." There was in fact no such sign on the building at the time the picture was taken. Said inscription was superimposed on the picture at the time the catalog was prepared for publication, and the impression is created that the entire building is occupied by the York Bar Bell Company alone, whereas the building housed not only the offices of the York Bar Bell Company and Strength and Health Publishing Company, but also of the York Oil Burner Company, another enterprise owned by respondent. A small sign near the entrance contains the names of all three companies; but it does not appear in the picture.

Under the pen name of Alan Carse, the respondent published an article in his magazine, "Strength and Health," entitled "The Old Athlete Tells a Secret." The writer relates the story of a meeting of a group of athletes in Atlantic City at which most of the greatest figures teaching physical training by mail were present. Among the speakers was one who is known for having won the title, "The World's Most Perfectly Developed Man" and who admitted that his system of training without any apparatus was largely the result

of chance; that he was advertising a course of training and was beginning to receive orders and money, while he was still casting about for novel and different apparatus to be used in said course; that senders of the orders complained to the Post Office or the Federal Trade Commission; that the strong man had to do something and sent the course without apparatus; that to his surprise he eliminated most of the complaints; that while his system helped most of his pupils on the principle that any exercise is better than none, no great strength, such as his own, could be developed without the use of weights. That ever since then, he has sold his course without apparatus; that, after all it is business, that he still gets five dollars for a few sheets of paper as a last offer after everything else has failed and "Every dollar counts."

In other articles written by respondent and by some of his employees, false, disparaging and defamatory statements are made, in that they refer to a competitor's system as "dynamic hooley," imply that no strength can be developed without the use of apparatus, that the use of dumbbells or bar bells is absolutely essential to the development of strength and that no athlete can attain great strength without the use of apparatus.

Among respondent's competitors is one Charles Atlas who has his principal place of business in New York City. Said Atlas likewise sells a course in physical training by mail in interstate commerce. He has developed a system of training in which he employs no apparatus whatever and which he has called "Dynamic Tension." Said system is based entirely upon the resistance of one part of the body against another part. The records show that he has employed and developed his said system since he was seventeen years of age and has attained his own great strength by the use of his own methods without relying upon apparatus. Some years ago there was awarded to him in a competitive meeting of athletes in New York City the title of "The World's Most Perfectly Developed Man," and he is widely known throughout the athletic world by that title.

By reason of the said false, defamatory, and disparaging magazine articles, said competitor has suffered substantial injury in that trade has been diverted from him to the respondent and in that many pupils canceled their courses and demanded moneys refunded which they had paid for tuition.

PAR. 5. There are among the competitors of respondent, as set forth herein, other individuals, firms, corporations, or partnerships who sell physical training courses and physical culture apparatus in interstate commerce who do not misrepresent their products and

who do not publish misleading and deceptive advertisements and who do not in any manner unfairly disparage their competitors.

PAR. 6. The acts and practices of respondent in using deceptive and misleading "Before and After" pictures; in using pictures of certain individuals calculated to deceive prospective purchasers of training courses into the belief that such individuals have attained their physical development through the use of respondent's courses when such is not the fact; in representing that respondent has been awarded the Distinguished Service Cross in connection with advertising his own prowess and accomplishments; in using pictures of professional athletes in connection with stories of pupils contained in advertisements of the respondent without indicating in any manner that said pictures are not the pictures of the individuals concerning whom the stories are written; in employing the picture of the building in which respondent does business and having across the top "York Bar Bell Company," when in fact such building is not exclusively for the athletic business; and in publishing false, defamatory, and unfairly disparaging articles about competitors, are all calculated to mislead and deceive and have and had the capacity and 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 products, trading system and publication on account of such belief.

As a result thereof trade is unfairly diverted to the respondent from competitors engaged in the sale in interstate commerce of physical training courses and physical culture apparatus, who truthfully represent their courses and their merchandise. 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.

CONCLUSION

The aforesaid acts and practices of the respondent, Robert C. Hoffman, an individual doing business under the firm names and styles of York Bar Bell Company, Strength and Health Publishing Co., and as York Athletic Supply 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 and amended complaint of the Commission, 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 amended complaint and in opposition thereto, briefs filed herein, and oral arguments by William L. Pencke, counsel for the Commission and by Herbert S. Ward, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent Robert C. Hoffman, trading as York Bar Bell Company, Strength and Health Publishing Company and York Athletic Supply Company, has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Robert C. Hoffman, individually and trading and doing business as York Bar Bell Company, Strength and Health Publishing Company and York Athletic Supply Company, his representatives, agents and employees, in connection with the offering for sale, sale and distribution in interstate commerce and in the District of Columbia, of courses in physical culture, of appliances for use in connection with physical culture and of the magazine "Strength and Health" do cease and desist:

From falsely representing in advertisements, catalogs, magazine articles, or any written or printed matter, through the use of pictures, photographs, cuts, "before and after" pictures or fabricated photographs or through any other means or device, or in any other manner;

(a) That the physical improvement of any person or pupil was due to the use of respondent Robert C. Hoffman's course of training, when such improvement is due wholly or partly to other causes;

(b) That the individuals whose pictures are reproduced are the individuals described or referred to in the accompanying text when such is not a fact;

(c) That respondent Robert C. Hoffman's athletic enterprises occupy an entire building when such building is in fact partly occupied by an enterprise other than the athletic business;

(d) That respondent Robert C. Hoffman has been awarded military decorations unless such decorations have actually been awarded to him;

(e) That the system or courses of training offered and sold by competitors of respondent are ineffectual or that said competitors misrepresent the facts concerning their own personal achievements and

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physical development, thereby unfairly disparaging and defaming said competitors.

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

Syllabus

IN THE MATTER OF
THE COOLERATOR COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2770. Complaint, Apr. 16, 1936—Decision, July 10, 1937*

Where a corporation engaged in distribution and sale of non-mechanical or ice refrigerators for resale by retail dealer purchasers thereof, in advertising its said non-mechanical refrigerators through large numbers of booklets and through folders, circulars, and other advertising literature distributed to members of the purchasing public in the various States or furnished to its customers for distribution to such public, and also through advertisements in newspapers and periodicals of general circulation—

(a) Represented that temperature of from 45 to 50 degrees is established or required standard necessary in all types of refrigerators for most satisfactory preservation of foods, and that in mechanical or electric refrigerators proper temperature for such preservation cannot be maintained without detrimentally disturbing natural composition of air and natural composition of food in the refrigerator, and that foods kept therein dehydrate to such an extent that their nutritive properties are impaired, whereas foods kept in the other do not, to any extent whatever, dehydrate, and that only with ice is it possible to produce proper temperature control of foods without disturbing natural composition of air or food;

Facts being, among others, there is no such established or required standard temperature necessary for satisfactory food preservation in all types of refrigerators, temperature range is not limited to that between 45 and 50 degrees, but food can properly be preserved at lower temperatures, maintained temperature of 50 degrees or lower is generally accepted by experts as adequate for proper preservation of perishable foods in edible condition for normal length of time in domestic refrigerators, proper temperatures for satisfactory preservation of usual foods in mechanical refrigerators for domestic use can generally be maintained without detrimentally disturbing natural composition thereof, foods stored therein for ordinary length of time do not dehydrate to such extent as to impair their nutritive properties, and while foods kept in non-mechanical refrigerators dehydrate to some extent, depending upon various factors, it is possible, through use of refrigerants other than ice, as well as ice, to produce proper food temperature control without disturbing natural composition of air or food in the refrigerator to any harmful extent, and representations hereinabove set forth were, as thus indicated, too general, lacking in specific limitation, misleading, and, in some instances, not true;

(b) Represented that various gases used in electric refrigerators as part of refrigerant escape from coils in which contained, permeate food chamber, and have a deleterious effect on and taint foods contained in refrigerator, and that certain poisonous gases, such as sulphur dioxide and chlorine, are formed from decay of food stored in such refrigerators in such quantities that they have a harmful effect in tainting foods and reducing nutritive value thereof, whereas in non-mechanical refrigerators

any poisonous gases formed from decay of foods are entirely absorbed by water from melting ice and carried away through drain pipes thereof, as contrasted with other in which they are not absorbed but remain in the ice cubes made in such refrigerators, and that gelatinous matter found in drain pipes of non-mechanical refrigerators is formed by absorption of gases emanating from food contained therein and carried away by water from the melting ice, and that in electric refrigerators ice cubes frozen therein contain same matter as is contained in drain pipe of the non-mechanical products;

Facts being, among others, that while there have been instances in which mechanical or electric refrigerating units have developed defects and refrigerant has escaped into food chamber and tainted food contained therein, such cases are relatively very infrequent, and various gases used as aforesaid do not generally escape from the coils as above set forth, there is generally no substantial decay or decomposition of foods stored in refrigerators holding a maintained temperature of 50 degrees or lower under usual conditions, type of refrigeration used has no bearing on formation of gases formed by decay and decomposition, it does not appear to have been scientifically established to what extent such gases are soluble in water, if at all, or to what extent they may be thus absorbed and carried away in drain pipe of the non-mechanical product, or be absorbed by water in ice cube trays or frost on cooling unit of the mechanical refrigerator, such gases do not form to any substantial or noticeable extent when temperatures are maintained at a point sufficient to inhibit bacterial growth and activity, and under such circumstances have no harmful effect in tainting foods or reducing their nutritive value, and it has not been scientifically determined to what extent contents of drain pipe of non-mechanical refrigerator are made up of gases and odors from food or from growth of bacteria, algae and molds in the pipe itself, and representations to effect that such matter may be found in ice cubes frozen in mechanical refrigerator are untrue and deficient in specific limitation; and

(c) Represented that users of electric refrigerators would not be able to eat food therefrom without tasting other foods stored in refrigerator at same time;

Facts being, that if two types of food are placed in refrigerator at the same time, namely, type of foods having characteristic and inherent odors constantly thrown off, irrespective of any process of decomposition or decay, and type of foods which, upon coming in contact with air, absorbs odors already contained therein, transference of odors from former to latter will take place to such extent that person consuming same may taste odor of the other, irrespective of type of refrigerator used, and it has not been scientifically determined to what extent such transference takes place in a non-mechanical or in a mechanical refrigerator, users of latter product will be able to consume food therein without tasting other foods therein stored, except as hereinabove noted, and many foods which do not absorb odors from others may be consumed by users of the electric or mechanical product without tasting others stored therein at same time;

With tendency and capacity to confuse and mislead public with respect to true facts as to the relative merits and operating factors of non-mechan-

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ical refrigerators and mechanical refrigerators, and into erroneous and mistaken beliefs that latter are undesirable and ineffective in use and harmful and dangerous to users thereof, and into purchase of its said non-mechanical product by reason of such beliefs thus induced, and thereby to unfairly divert trade to it from its competitors who do not make use of similar statements; 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.

Belt & Wallace, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that The Coolerator Company, a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Coolerator Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business at 50th Avenue W. and Wadena, in the city of Duluth, State of Minnesota. Respondent is now, and has been for some time, engaged in the business of distributing and selling to dealers for resale, in commerce as herein set out, refrigerators using natural or artificial ice as the cooling element therein.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said refrigerators, when sold, to be transported from its office and principal place of business in the State of Minnesota to purchasers thereof located in various States of the United States other than the State of Minnesota and in the District of Columbia. There is now, and has been at all times since the organization of respondent company, a constant current of trade in commerce in said refrigerators 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. Certain persons, partnerships, and corporations have been, and are now, engaged in offering for sale and selling, in commerce as

hereinabove set out, refrigerators that depend for their cooling processes upon the use of ice that is placed therein for that purpose. Such refrigerators have been for many years commonly known in the trade and by the public as "non-mechanical" refrigerators and are generally so designated.

Certain persons, partnerships, and corporations have been, and are now, engaged in offering for sale and selling, in commerce as hereinabove set out, refrigerators that do not depend for their cooling processes upon the use of ice that is placed therein for that purpose. Such non-ice-using refrigerators are commonly known in the trade and by the public as "mechanical" refrigerators and are so designated. One type of such mechanical refrigerators depends for its cooling processes upon certain appliances, attachments, and equipment operated by currents of electricity. Mechanical refrigerators of this type are commonly known in the trade and by the public as "electric" refrigerators and are so designated. In recent years, many electric refrigerators have been sold to the public and are now in use in large numbers by the public. A substantial portion of the public has expressed, and actually has, a preference for such electric refrigerators over any other type of refrigerators and the number of said electric refrigerators in use and operation is rapidly increasing.

In the course and conduct of its said business respondent is now, and has been, in competition, in commerce among and between various States of the United States and in the District of Columbia, with other corporations and with partnerships and individuals likewise engaged in distributing and selling such nonmechanical refrigerators in said commerce and is also in competition in said commerce with corporations, partnerships, and individuals distributing and selling in such commerce said mechanical refrigerators, including said electric refrigerators. All of the sellers of the several types of refrigerators are, and have been, in competition, in commerce as hereinabove set out, between and among themselves as to each and all of said types of refrigerators.

PAR. 4. In such competition between the sellers of nonmechanical refrigerators and the sellers of electric refrigerators, one of the controlling influences upon the purchasing public is the popular opinion as to the comparative desirability, effectiveness, and safety in actual operation of the said two types of refrigerators.

The use of ice in refrigerators has long been practiced and its desirability, effectiveness, and safety, such as it may be, is well-known and understood by the purchasing public. Electric refrigerators were only recently invented and introduced into popular use. The public is not generally so well-informed as to the desirability, effectiveness,

and safety of such electric refrigerators as it is with respect to these qualities in a nonmechanical refrigerator.

Sellers and distributors of nonmechanical, or ice-using refrigerators, are 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 said electric refrigerators in actual use.

The use of said electric refrigerators destroys, to the extent of the use thereof, the demand for and sale of ice for use in refrigerators. The increasing sale of electric refrigerators has caused the sellers of nonmechanical refrigerators and the sellers of ice for use therein to attempt to create public sentiment adverse to the use of said electric refrigerators.

PAR. 5. To meet the needs of its customers, the same being sellers of non-mechanical refrigerators and sellers of ice for use therein, respondent has compiled, printed, and published a certain booklet of propaganda against the desirability, effectiveness, and safety of electric refrigerators. Said booklet purports to state certain facts which respondent claims to have discovered which, it represents, demonstrates that electric refrigerators are in actual use undesirable, ineffective, and unsafe in their effect upon food kept therein and upon persons eating such food. Respondent names and designates such booklet as "Why Ice is Best for Refrigeration." In order to make such propaganda effective in behalf of sellers of non-mechanical refrigerators and sellers of ice for use therein, respondent furnishes copies of said booklet to its customers to be placed by them, in such ways as they deem most effective, in the hands of members of the purchasing public so as to influence public opinion and create sales resistance against such electric refrigerators and to promote and increase the sale of said non-mechanical refrigerators. Respondent also causes the distribution of said booklet direct to the members of the purchasing public.

Practically all of the purchasers of non-mechanical refrigerators from the respondent are manufacturers or distributors of natural or artificial ice, who resell said refrigerators in connection with their sale of ice for use therein. In some instances, several manufacturers and distributors of ice have organized sales agencies, which agencies purchase said refrigerators from the respondent and resell them to the public for use.

The said booklet is furnished by the respondent to said purchasers, same being manufacturers or distributors of ice, and their respective sales agencies. As furnished to said purchasers, the booklets sometimes do not have imprinted thereon the respondent's name and

address but do have imprinted the name and address of the respective purchaser who actually distributes the booklet to members of the public and actually sells respondent's refrigerators to members of the public.

In the ways hereinabove indicated and by reason of the facts above alleged, sellers of ice for use in non-mechanical refrigerators, as well as sellers of such refrigerators, have an interest adverse to the sale of electric refrigerators and are in practical effect in competition with such sellers of electric refrigerators along with the sellers of non-mechanical refrigerators. The purpose and effect of said booklet is the dissemination of misleading and disparaging propaganda in aid of the sale of non-mechanical refrigerators and of ice therefor.

PAR. 6. For the purpose and intent, and with the effect of disparaging electric refrigerators sold in commerce, as hereinabove set out, and for the purpose and with the intent and effect of promoting the sale in commerce, as aforesaid, of non-mechanical refrigerators and the sale of ice for use therein, the respondent in such booklet, designated as "Why Ice is Best for Refrigeration," by use of false and misleading statements or representations, has falsely represented, directly and by implication and inference, among other things:

1. That a temperature of from 45 to 50 degrees is the established or required standard temperature necessary to be obtained in all types of refrigerators for the most satisfactory preservation of foods;
2. That in mechanical or electric refrigerators the proper temperature for the preservation of foods cannot be maintained without detrimentally disturbing the natural composition of the air in the refrigerator and the natural composition of the food;
3. That the various gases used in electric refrigerators as part of the refrigerant escape from the coils in which they are contained, permeate the food chamber and have a deleterious effect on and taint the foods contained in said refrigerator;
4. That foods kept in electric refrigerators lose water, or dehydrate to such an extent that their nutritive properties are impaired, destroying essential parts of the chemical combination of various foods in their natural state;
5. That foods kept in non-mechanical refrigerators do not dehydrate or lose water, to any extent whatever.
6. That it is possible only with ice to produce the proper temperature control of foods without disturbing the natural composition of the air or food in the refrigerator, and that similar or comparable results can not be obtained by use of electric refrigerators;
7. That certain poisonous gases, such as sulphur dioxide and chlorine, are formed from the decay of foods stored in electric refrigerators in such quantities that said gases have a harmful effect in tainting foods and in reducing their nutritive value;
8. That in non-mechanical refrigerators any poisonous gases formed from decay of foods are entirely absorbed by the water from the melting ice and are carried away through the drain pipes thereof, but that in electric re-

refrigerators such poisonous gases are not absorbed, and said gases remain in the ice cubes made in said refrigerator;

9. That the gelatinous matter found in drain pipes of non-mechanical refrigerators is formed from gases emanating from food contained therein being absorbed and carried away by the water from the melting ice, and that the ice cubes frozen in an electric refrigerator contain the same matter as is claimed to be contained in the drain pipe of a non-mechanical refrigerator; and,

10. That the users of electric refrigerators will not be able to eat food therefrom, without tasting other food that was stored in the refrigerator at the same time.

PAR. 7. In truth and in fact a temperature of from 45 to 50 degrees is not an established or required standard temperature for the preservation of goods. Foods are generally better preserved at a temperature of from 40 to 45 degrees. In truth and in fact it is possible and practical to use electric refrigerators in such a manner that the proper temperature for the preservation of foods can be maintained without detrimentally disturbing the natural composition of the air in the refrigerator or the natural composition of the food therein. The various gases and liquids used as refrigerants in electric refrigerators do not escape from the coils in which they are contained, do not permeate the food chamber and do not have a deleterious effect on or taint the foods contained in electric refrigerators. In truth and in fact foods kept in electric refrigerators, and in the proper appliances and attachments furnished therewith, do not lose water or dehydrate to such an extent that their nutritive properties are impaired or that essential parts of their chemical combination in the natural state are destroyed. A great number of foods, when kept in an electric refrigerator, do not dehydrate to any noticeable or harmful extent. Foods kept in non-mechanical refrigerators do dehydrate or lose water to a certain extent. A proper temperature control of foods can be maintained with refrigerants other than ice, without disturbing the natural composition of the air or of the foods themselves. Poisonous gases, such as sulphur dioxide and chlorine, are not formed from the decay of foods stored in electric refrigerators in such quantities, if at all, that said gases have any harmful effect in tainting foods or have any harmful effect on the eaters of such foods. In truth and in fact no poisonous gases are formed from the decay of foods when the temperature of the refrigerator is properly controlled and such gases as may be formed from the decay of said foods are not harmful in the quantities found, and are not generally absorbed by the ice cubes made in said electric refrigerators. The gelatinous matter formed in the drain pipes of non-mechanical refrigerators is not formed from any gases thrown off by foods contained in said re-

frigerators. In truth and in fact the ice cubes made in an electric refrigerator do not contain the same gelatinous matter contained in the drain-pipe of a non-mechanical refrigerator. The users of electric refrigerators are able to eat food therefrom without tasting the other foods stored therein.

PAR. 8 The aforesaid false, misleading and disparaging representations so made in respondent's booklet, "Why Ice is Best for Refrigeration," as above alleged, have had, and now have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous beliefs that said statements are true and that electric refrigerators are undesirable, ineffective, and harmful in the ways alleged and are dangerous to the eaters of food kept in said refrigerators, and that the statements and representations made by respondent with reference to non-mechanical refrigerators and the results to be obtained from a use thereof are true. Further, said false and misleading statements and representations have the tendency and capacity to, and do, divert trade to the sellers of non-mechanical refrigerators, including the respondent and its customers, from sellers of electric refrigerators and induce the public to purchase non-mechanical refrigerators and ice to be used therein, in and because of such erroneous beliefs brought about as hereinabove set out. As a result thereof, substantial injury has been, and is now, being done by respondent to substantial competition in commerce among and between various 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 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 April 16, 1936 issued and served its complaint in this proceeding upon respondent, The Coolerator 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 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 William O. Belt and Robert K. Belt, Charles Aaron, and Franklin Raber, and Jay P. Taggart, attorneys 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 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 such statement of facts and upon the evidence and testimony theretofore 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 said complaint, the answer thereto, the 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 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 Coolerator Company, is a corporation, organized in 1928 under the laws of the State of Minnesota as The Duluth Refrigerator Company. Its corporate name was subsequently changed to The Coolerator Company. Its principal office and place of business is located at Fiftieth Avenue, West and Wadena in the city of Duluth, State of Minnesota. Since its incorporation, it has been, and now is, engaged in the business of distributing and selling to retail dealers for resale refrigerators using natural or artificial ice as the cooling element therein.

PAR. 2. The Coolerator Company causes said refrigerators, when sold, to be transported from its office and principal place of business in the State of Minnesota, or from one of its warehouses, to purchasers thereof located in various States of the United States other than the State of Minnesota or other than the State of the origin of said shipment and in the District of Columbia. Respondent's cus-

tomers are located in every State of the Union and in many foreign countries. The purchasers of said refrigerators in turn sell them to the members of the purchasing public for commercial and domestic use. The Coolerator Company has, at all times since its incorporation, maintained a constant current of trade in said refrigerators so distributed and sold by it in commerce between and among the various States of the United States and in the District of Columbia. In the year 1932, it sold approximately 9,000; in 1933, approximately 15,000; in 1934, approximately 35,000; in 1935, approximately 70,000; and from October 1, 1935 to July 1, 1936, approximately 85,000. The retail sale price of respondent's refrigerators designed for domestic use ranges from \$30.00 to \$175.00 per unit.

PAR. 3. There are two distinct types of refrigeration: one known as ice or non-mechanical refrigeration and the other as mechanical refrigeration. The refrigerators employing these two types of refrigeration are respectively referred to hereinafter as non-mechanical and mechanical refrigerators. In both types, the refrigeration is accomplished by use of an insulated cabinet in which the refrigerant is installed. In a non-mechanical refrigerator either natural or artificial ice is placed in a compartment known as the ice chamber. The melting of the ice absorbs the heat from the air as it circulates past the ice and through the food chamber. In a mechanical refrigerator, an apparatus known as a cooling unit or coil is installed in the food chamber and refrigeration is obtained by forcing a volatile gas under pressure through the coil. As this gas passes through the coil, it absorbs the heat from the air in the food chamber that comes in contact with the coil. Although mechanical refrigeration is a comparatively recent invention and has been in use a comparatively short period of time, it has developed in popularity and is widely used throughout the United States as a method of refrigeration. The manufacture and sale of various types of mechanical refrigerators has developed into a large industry. One type of such mechanical refrigerators depends upon certain appliances, attachments and equipment operated by electricity for its cooling processes.

PAR. 4. Other corporations have been, and are now, likewise engaged in offering for sale and selling refrigerators that depend upon the use of ice for their cooling processes and which retail for approximately the same amount as respondent's refrigerators. Among such are: Raney Refrigerator Company, Ice Cooling and Appliance Corporation, Progress Refrigerator Company, Tennessee Furniture Company, and McKee Refrigerator Company.

Other corporations have been, and are now, engaged in offering for sale and selling, refrigerators that depend upon the use of substances other than ice for their cooling processes and which retail from approximately \$100.00 to \$300.00 each. Among such are: Kelvinator Corporation, Frigidaire Corporation, General Electric Company, and Westinghouse Electric & Manufacturing Company.

The corporations and firms hereinabove named, and others not specifically named, which sell refrigerators, either non-mechanical or mechanical, ship said refrigerators, when orders therefor are received, from their respective places of business or warehouses to the purchasers thereof located in States other than the State in which said places of business or warehouses are located, or other than the State from which the respective shipments originate.

In the course and conduct of its business, The Coolerator Company is engaged in substantial competition, in commerce among and between the various States of the United States and in the District of Columbia, with many corporations and with partnerships and individuals, including those herein named, likewise engaged in distributing and selling non-mechanical refrigerators in said commerce; and is also in substantial competition, in said commerce, with many corporations, partnerships, and individuals, including those herein named, likewise engaged in distributing and selling in such commerce mechanical or electric refrigerators.

PAR. 5. In such competition between the sellers of non-mechanical refrigerators and the sellers of mechanical or electric refrigerators, one of the controlling influences upon the purchasing public is the popular opinion as to the comparative desirability, effectiveness and safety in actual operation of the two types of refrigerators. The use of ice in refrigerators has long been practiced and its desirability, effectiveness and safety as a method of refrigeration are well known and understood by the purchasing public. Because of its comparatively recent invention, the public is not generally so well informed as to the desirability, effectiveness and safety of mechanical or electric refrigerators as it is with respect to these qualities in non-mechanical refrigerators.

PAR. 6. In advertising the non-mechanical refrigerators which it sells, and for the purpose of promoting the sale of said refrigerators by retail dealers, The Coolerator Company has made use of booklets, folders, circulars and other advertising literature, some of which it distributes to members of the purchasing public located in the various States of the United States, and some of which it furnishes to its customers, to be by them placed in the hands of members of the

purchasing public. It has also made use of advertisements inserted in newspapers and magazines having a general circulation throughout the various States of the United States. It has also, in the past, made use of a certain booklet entitled "Why Ice is Best for Refrigeration." This booklet was first published and distributed by the respondent in the year 1930 and was also published in each succeeding year until 1935. In the fall of 1935, the respondent discontinued the publication of said booklet and since that time no copies have been published by it. The distribution of said booklet was discontinued about the middle of the year 1936 and has not been resumed. Approximately 150,000 copies of this booklet were published and distributed each year.

In said booklet entitled "Why Ice is Best for Refrigeration," the respondent, by direct statement and by implication, made the following representations:

1. That a temperature of from 45 to 50 degrees is the established or required standard temperatures necessary to be obtained in all types of refrigerators for the most satisfactory preservation of foods;
2. That in mechanical or electric refrigerators the proper temperature for the preservation of foods cannot be maintained without detrimentally disturbing the natural composition of the air in the refrigerator and the natural composition of the food;
3. That the various gases used in electric refrigerators as part of the refrigerant escape from the coils in which they are contained, permeate the food chamber and have a deleterious effect on and taint the foods contained in said refrigerator;
4. That foods kept in electric refrigerators lose water, or dehydrate to such an extent that their nutritive properties are impaired, destroying essential parts of the chemical combination of various foods in their natural state;
5. That foods kept in non-mechanical refrigerators do not dehydrate or lose water, to any extent whatever;
6. That it is possible only with ice to produce the proper temperature control of foods without disturbing the natural composition of the air or food in the refrigerator, and that similar or comparable results can not be obtained by use of electric refrigerators;
7. That certain poisonous gases, such as sulphur dioxide and chlorine are formed from the decay of foods stored in electric refrigerators in such quantities that said gases have a harmful effect in tainting foods and in reducing their nutritive value;
8. That in non-mechanical refrigerators any poisonous gases formed from decay of foods are entirely absorbed by the water from the melting ice and are carried away through the drain pipes there-

of, but that in electric refrigerators such poisonous gases are not absorbed, and said gases remain in the ice cubes made in said refrigerators;

9. That the gelatinous matter found in drain pipes of non-mechanical refrigerators is formed from gases emanating from food contained therein being absorbed and carried away by the water from the melting ice, and that the ice cubes frozen in an electric refrigerator contain the same matter as is claimed to be contained in the drain pipe of a non-mechanical refrigerator;

10. That the users of electric refrigerators will not be able to eat food therefrom, without tasting other food that was stored in the refrigerator at the same time.

Certain other advertising literature distributed by the respondent in commerce among and between the various States of the United States contains language which may serve as representations to the same effect as some of the representations hereinabove set out.

PAR. 7. A temperature of from 45 to 50 degrees Fahrenheit is not the established or required standard temperature necessary to be obtained in all types of refrigerators for the most satisfactory preservation of food and those temperatures have not been established as a standard in the industry or among doctors and food experts generally. At this time, there appears to be no established or required standard temperature necessary to be maintained in all types of refrigerators for the most satisfactory preservation of food. Doctors and food experts are not now entirely in accord on the question of the temperatures required in order to most satisfactorily preserve food stored in refrigerators. Such temperatures as will produce the desired preservation of food are not limited, however, to the range between 45 to 50 degrees Fahrenheit and food can properly be preserved at temperatures lower than 45 degrees Fahrenheit. The temperature necessary to preserve food depends, in part, upon the character of the food and the length of time it is to be preserved. Some foods will keep longer under a given temperature than other foods. It is generally understood and agreed by experts that a maintained temperature of 50 degrees Fahrenheit or lower will properly preserve perishable foods in an edible condition for the length of time that such foods are ordinarily kept for human consumption in a domestic refrigerator. Spoilage of food, so far as its edibility is concerned, takes place when it is dehydrated to such an extent that it becomes desiccated, or when there is excessive bacterial growth in or on the food. The rate and extent of dehydration, as well as of bacterial growth, depend upon the character of the food, the temperature, the relative humidity and the length of time the food

is kept. A maintained temperature of 50 degrees Fahrenheit or lower is generally sufficient to retard the growth of bacteria and preserve perishable foods in an edible condition for the length of time that such foods are ordinarily kept for human consumption in a domestic refrigerator. The representation to the effect that a temperature of from 45 to 50 degrees is the established or required standard temperature necessary to be obtained in all types of refrigerators for the most satisfactory preservation of food is susceptible of the mistaken meaning that those temperatures have been established as a standard in the industry and that a temperature of 45 degrees is the minimum temperature at which foods may properly be preserved in a refrigerator contrary to the facts.

PAR. 8. The natural composition of air is a mixture of nitrogen, oxygen, carbon dioxide, certain rare gases and water vapor. The water vapor or moisture content is the only factor involved in this proceeding. Air containing the maximum amount of moisture it can hold at a given temperature is said to be saturated or at 100% relative humidity. Air containing less moisture than it is capable of holding is unsaturated. Its degree of saturation at a given temperature is expressed by the ratio of its actual moisture content to its maximum possible moisture content divided by 100 and is expressed as percent relative humidity.

The quantity of water vapor or moisture content in the air is variable, depending upon the temperature of the air, the amount of available moisture and the temperature of the surrounding medium with which the air comes in contact. Until air reaches the saturation point, it has a tendency to absorb moisture from any moisture laden substance with which it comes in contact if the temperature of the substance is at the temperature of the air or at a higher temperature than the air. The higher the temperature of the air, the greater its capacity to hold moisture. Further, at any temperature, liquid water if it is at the same temperature or warmer than the surrounding air can evaporate into the surrounding air mixture until such air becomes saturated. Such process of taking up moisture by air is generally known as dehydration since this is the effect on the substance from which the water is taken. For the purpose of determining moisture loss the temperature of the air in a refrigerator is principally controlled by the temperature of the cooling medium, the temperature of the food and the temperature of any air coming into the refrigerator when opened. The cooling medium of a refrigerator, being colder than the air which passes it, chills the air and in so doing reduces its capacity to hold moisture. The air leaving the cooling element is at or near saturation (100% relative humidity) but it

carries less moisture than it did before contacting the cooling element because it is at a lower temperature. The surplus moisture is condensed on the surface of the cooling element (as water when ice is used or as water or frost when a mechanically cooled coil is used).

As the air passes through the refrigerator, it warms up. In so doing it regains its capacity to carry moisture and its relative humidity decreases. As this air passes over foods containing moisture, it picks up moisture in an amount which is dependent upon its relative humidity, the difference between the temperatures of the substances it contacts and the type and area of the substances or food surfaces exposed. Wet surfaces and leafy foods such as lettuce or celery give up moisture readily while foods protected by rinds or heavy skins give up moisture slowly.

Air at any given temperature requires a greater quantity of water to raise it from any given degree of saturation (percent relative humidity) to any other given degree of saturation than does air at any lower temperature and the same degree of saturation. For example: At a temperature of 40 degrees Fahrenheit and 40% relative humidity, air can hold approximately 0.002 lb. of water per lb. of dry air. At saturation point air at the same temperature can hold approximately 0.00525 lb. of water per lb. of dry air. In raising the relative humidity from 40% to saturation, 0.00325 lb. of water per lb. of dry air must be added.

At a temperature of 50 degrees Fahrenheit and 40% relative humidity, air can hold approximately 0.0031 lb. of water per lb. of dry air. At saturation air of the same temperature can hold approximately 0.00765 lb. of water per lb. of dry air. In raising the relative humidity from 40% to saturation, 0.00455 lb. of water per lb. of dry air must be added. By increasing the initial relative humidity of the 50 degrees Fahrenheit air to 50%, we find that the air can hold 0.0038 lb. of water per lb. of dry air. In raising the relative humidity from 50% to saturation, 0.00385 lb. of water per pound of dry air must be added. Thus, air at 50 degrees Fahrenheit and 50% relative humidity requires more water to raise it to saturation than does air at 40 degrees Fahrenheit and 40% relative humidity. The amount of water foods in a refrigerator can lose depends also upon how fast the water is evaporating from the foods (rate of evaporation) and the length of time the foods are kept in the refrigerator. The rate of evaporation from a substance depends principally upon the difference between the vapor pressure of the water in the substance and the vapor pressure of the moisture in the air. The vapor pressure of the water in the substance is generally the same as the temperature of the substance. The vapor

pressure of the air is its saturation moisture content (dew point temperature). When foods are placed in a refrigerator for a sufficient time to cool down to the temperature of the air, the vapor pressure of the water in the substance and the vapor pressure of the moisture in the air become substantially equal.

Because of the operation of the foregoing principles, the amount of moisture that can be taken up to bring air from any degree of saturation to its saturation point depends on the temperature of the air, its relative humidity and the rate of evaporation. In view of the foregoing, under certain conditions, there will be no greater dehydration in a mechanical refrigerator than in a non-mechanical refrigerator even though the relative humidity of the air therein is lower, because the differences in the vapor pressures of the substances and the vapor pressures of the air in the two types of refrigerators will be substantially equal.

Dehydration of food takes place in both mechanical or electric refrigerators and non-mechanical or ice refrigerators to a varying amount, depending upon the various factors herein set out. Excessive dehydration of food affects its appearance and its texture, and makes it less appetizing, even though it does not affect its nutritive properties. In an effort to overcome the factor of dehydration, manufacturers of mechanical or electric refrigerators have provided covered containers which are placed in the food chamber. These containers are not, however, standard equipment in all makes or types of mechanical or electric refrigerators. Foods that are readily susceptible to dehydration, like leaf vegetables, are placed in these covered containers, when provided, so that the air as it circulates in the food chamber does not come in direct contact with that food. By the use of these covered containers the dehydration of foods stored therein has been practically eliminated, and the dehydration that takes place in food stored in covered containers is substantially less than it would be if the same foods were stored in the open food compartments of a mechanical or electric refrigerator, or a non-mechanical or ice refrigerator. Such containers may also readily be used in non-mechanical or ice refrigerators with comparable results.

The representations of the respondent set out in sub-sections 2, 4, 5, and 6 of paragraph 6 hereof are too general, are lacking in specific limitation, are misleading and, in some instances, are not true. Proper temperatures for the satisfactory preservation of foods usually kept in mechanical refrigerators for domestic use can generally be maintained without detrimentally disturbing the natural composition of the food. Foods stored in mechanical refrigerators for the

length of time that foods are ordinarily and customarily stored in refrigerators when intended for domestic use do not dehydrate or lose water to such an extent as to impair their nutritive properties or to destroy the essential parts of the chemical combinations thereof. Foods kept in non-mechanical refrigerators do dehydrate or lose water to some extent, depending upon the factors herein set out. Refrigeration by use of ice as a refrigerant or by use of other refrigerants does disturb the natural composition of the air in a refrigerator. The extent of this disturbance depends upon the variable factors above referred to, but in refrigerators of both types, the extent of this disturbance is not generally sufficient to affect the natural composition of the food stored in the refrigerator to such an extent as to make it undesirable for human consumption. It is possible by use of refrigerants other than ice, as well as by use of ice, to produce the proper temperature control of foods without disturbing the natural composition of the air or the food in the refrigerator to any harmful extent.

The refrigerants most commonly used in mechanical or electric refrigerators are: sulphur dioxide, SO_2 , dichloro diflura methane, CCl_2F_2 , commonly known as Freon or Freon₁₂, dichlorotetra fluor-ethane, $\text{C}_2\text{Cl}_2\text{F}_4$, or certain derivatives, and dichloro methane DH_2Cl_2 , commonly known as Carrene. The refrigerant most commonly used is sulphur dioxide which is a corrosive and suffocating gas. However, in recent years, certain of the manufacturers of mechanical or electric refrigerators have used and are now using Freon, or other derivatives, and Carrene, none of which are corrosive or suffocating gases, as refrigerants. These refrigerants, when placed in the refrigerating unit of a mechanical or electric refrigerator, are under pressure as they pass through the cooling unit on the inside of the food chamber and if there is any defect in the tubing or in the connection from carelessness or misuse, these refrigerants may be forced out into the food chamber. There have been instances in which mechanical or electric refrigerating units have developed defects either as a result of construction or of improper use and in which the refrigerant has escaped into the food chamber and tainted the food contained therein. Such cases, however, are very infrequent considering the number of units in use.

The various gases used as refrigerants in mechanical or electric refrigerators do not generally escape from the coils into the food chamber and taint the foods contained therein.

The representation stating or implying that the various gases used as refrigerants in mechanical or electric refrigerators escape from the coils into the food chamber and taint the foods contained therein

is too general and is deficient in specific limitation as to the conditions under which the refrigerant may escape.

PAR. 9. There is generally no substantial decay or decomposition of foods that are stored in refrigerators holding a maintained temperature of 50 degrees Fahrenheit or lower when such storage is for the relatively short period of time usually encountered in the use of refrigerators for domestic use. At maintained temperatures below 50 degrees Fahrenheit, bacterial growth and activity are generally inhibited and the lower the temperature, the greater the capacity to inhibit such activity. Bacterial growth or activity is the primary cause of the decay or decomposition of food and various gases are formed by such decay and decomposition. The type of refrigeration used has no bearing on the formation of such gases. The extent to which these gases may be formed depends on the length of time the food has been separated from its source, upon the temperature at which it has been preserved, and upon the relative humidity of the air. Some of these gases are poisonous. The nature of the gases thus formed depends on the type of food and the type of bacteria involved. Such gases as may be formed from the decay or decomposition of food do not include sulphur dioxide or chlorine though they may include hydrogen sulphide and various chlorides and some, though not all of them, may be partially soluble in water. When food decays or decomposes, the gases thus formed may be given off into the air and be absorbed to a certain extent by other foods. In a non-mechanical refrigerator, a certain portion of those gases which may be soluble in water may be absorbed by the water from the melting ice as the air passes it and then carried down the drain pipe. In mechanical refrigerators, except as herein later discussed, a certain portion of those gases which may be soluble in water may be absorbed by the water in the ice cube trays and the frost on the cooling unit. It does not appear to have been scientifically established to what extent such gases as may be formed from food decay are soluble in water, if at all, and to what extent they may be absorbed by the water and carried away in the drain pipe of a non-mechanical refrigerator, or to what extent they may be absorbed by the water in the ice cube trays or the frost on the cooling unit of a mechanical refrigerator.

The representations by the respondent set out in sub-sections 7 and 8 of paragraph 6 hereof are deficient in specific limitation, indefinite, exaggerated and untrue in the particulars above set out.

Such gases as may be formed from the decay or decomposition of foods are not formed to any substantial or noticeable extent when temperatures are maintained at a point sufficient to inhibit bacterial

growth and activity and under such circumstances do not have any harmful effect in tainting foods or in reducing their nutritive value.

PAR. 10. The gelatinous mass sometimes found in the drain pipe of non-mechanical refrigerators is made up of gases and odors emanating from food and from the growth of bacteria, algae and mold in the drain pipe itself. It has not been scientifically determined to what extent the contents of the drain pipe of a non-mechanical refrigerator are made up from gases, odors and bacteria emanating from the food or to what extent the contents are made up of growth of bacteria, algae and molds taking place in the drain pipe itself. The gelatinous matter found in a drain pipe of a non-mechanical refrigerator will not be found in ice cubes frozen in a mechanical refrigerator. The growth of bacteria, algae and molds which may take place in the drain pipe of a non-mechanical refrigerator cannot take place in the cube trays or on a cooling unit of a mechanical refrigerator under normal operating conditions.

The representations to the effect that the gelatinous matter found in the drain pipes of non-mechanical refrigerators may be found in ice cubes frozen in a mechanical refrigerator are untrue and are deficient in specific limitation.

Many mechanical refrigerators are equipped with covers over the cube trays or with doors to the cube tray compartment of the cooling units as standard equipment. Some mechanical refrigerators do not have such equipment. In those types of mechanical refrigerators which do have such equipment, there is, for all practical purposes, no flow of air from the food chamber through the cube compartment of the cooling unit that can come in direct contact with the water in the cube trays. For that reason, there is, for all practical purposes, no absorption by the water in the cube trays of gases that may be formed from the decay or decomposition of foods in the food chamber or of any food odors.

PAR. 11. There are certain foods that have characteristic and inherent odors which are constantly being thrown off into the air, irrespective of any process of decomposition or decay. There are certain other foods which upon coming in contact with air will absorb odors already contained therein. If these two types of foods are placed in a refrigerator at the same time, the foods which have a tendency to absorb odors will absorb such odors of the other food to such an extent that a person eating such foods may taste the odor of the other foods. This transferring of odors from one food to another will take place in refrigerators of any type to a certain extent. It has not been scientifically determined to what extent this takes place in a non-mechanical refrigerator or in a mechanical refrigerator.

Order

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Users of mechanical or electric refrigerators will be able to eat the food stored therein without tasting other foods that were stored in the refrigerator at the same time except as to the type of food in which such transference of odors does actually take place. Many foods, however, do not absorb odors from other foods and as to those foods, users of electric or mechanical refrigerators may eat said foods without tasting other foods that were stored in the refrigerator at the same time.

PAR. 12. The aforesaid acts and practices of the respondent in making the representations hereinabove detailed, in selling and promoting the sale of its non-mechanical refrigerators, have had, and now have, a tendency and capacity to confuse and mislead the public with respect to the true facts as to the relative merits and operating factors of non-mechanical refrigerators and mechanical refrigerators and into the erroneous and mistaken beliefs that mechanical refrigerators are undesirable and ineffective in use and are harmful and dangerous to the users thereof, and into the purchase of respondent's non-mechanical refrigerators on account of said beliefs induced as aforesaid. As a result thereof there has been, and is, a capacity and tendency to unfairly divert trade to the respondent from its competitors who do not make use of similar statements, to the injury of competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, The Coolerator 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 heretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and a stipulation as to the facts executed by W. T. Kelley, Chief Counsel of said Commission and 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, The Coolerator Company, a corporation, its officers, servants, employees, agents, and representatives, in the course of the sale and distribution in interstate commerce of non-mechanical, or ice refrigerators, cease and desist from representing:

1. That a temperature of 45 to 50 degrees Fahrenheit is the established or required standard temperature necessary to be obtained in any or all types of refrigerators for the most satisfactory preservation of food; provided that the respondent is not hereby prohibited from representing that a maintained temperature of 50 degrees Fahrenheit, or lower, in a domestic refrigerator is a generally satisfactory temperature for the preservation of perishable foods usually kept in refrigerators for domestic use;

2. That in mechanical refrigerators a proper temperature for the preservation of foods cannot be maintained without detrimentally disturbing the natural composition of the air in the refrigerator or the natural composition of the food; provided that the respondent is not hereby prohibited from representing that the natural composition of air in both non-mechanical and mechanical refrigerators, except the air in hydrators or covered containers, is changed to the extent that its moisture content is diminished in the process of refrigeration and that the natural composition of certain foods stored in all refrigerators is affected to the extent to which moisture is absorbed by the air coming in contact with said foods;

3. That the various gases used in mechanical refrigerators as part of the refrigerant escape from the coils in which they are contained, permeate the food chamber and have a deleterious effect on and taint the food therein; provided that the respondent is not hereby prohibited from representing that sulphur dioxide is one of the gases commonly used as a refrigerant in stated or specified mechanical refrigerators; that it is a poisonous gas and that if it should escape from the coil in the refrigerating unit, it might permeate the food chamber and have a deleterious effect on and taint the foods contained therein;

4. (a) That foods kept in mechanical refrigerators lose water or dehydrate to such an extent that their nutritive properties are impaired and essential parts of the chemical combinations of various foods in their natural state destroyed; and (b) that foods kept in a non-mechanical refrigerator do not dehydrate or lose water to any extent whatever; provided that the respondent is not hereby prohibited from representing to what extent, under stated conditions,

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certain specified foods kept in a non-mechanical refrigerator dehydrate or lose water and to what extent, under the same conditions, the same specified foods kept under comparable conditions in a mechanical refrigerator dehydrate or lose water;

5. That sulphur dioxide or chlorine is formed from the decay of foods contained in mechanical refrigerators;

6. That poisonous or other gases are formed from the decay of foods stored in mechanical refrigerators in such quantities that they have a harmful effect in tainting said foods and in reducing their nutritive value;

7. (a) That in a non-mechanical refrigerator, such poisonous or other gases as may be formed from the decay of foods are entirely absorbed by water from the melting ice and are carried away through the drain pipe thereof, but that in mechanical refrigerators such poisonous or other gases as may be formed from the decay of foods remain in the ice cubes made in said refrigerators and are not absorbed and carried away; and (b) that the gelatinous matter found in the drain pipe of a non-mechanical refrigerator is formed solely and entirely or principally from gases emanating from foods contained therein being absorbed and carried away by the water from the melting ice and that the ice cubes frozen in a mechanical refrigerator contain the same matter contained in the gelatinous matter found in the drain pipe of a non-mechanical refrigerator;

8. That the users of mechanical refrigerators will not be able to eat the food therefrom without tasting such other food that was stored in the refrigerator at the same time; provided that the respondent is not hereby prohibited from representing what foods, under stated conditions, give off odors and what foods will absorb such odors and to what extent such transferring of odors from one food to another will take place.

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
ROGERS CANDY COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2834. Complaint, June 4, 1936—Decision, July 14, 1937*

Where a corporation engaged in manufacture and sale of so-called "draw" or "deal" assortments of candy, sale and distribution of which type candy by retailers by lot or chance has capacity and tendency to, and does, decrease sale of candy sold by many manufacturers without any sales plan or device involving lottery or game of chance, i. e., the "straight" goods, and sale of which type, providing, in connection with its sale to public, means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling, and is in violation of various municipal ordinances and regulations and State statutes and constitutions, and provides retail merchants with a means of violating the laws of the several States, and sale of which candy, so packed and assembled as to enable retail dealers, without alteration, addition, or rearrangement, to resell same to consuming public by lot or chance, is contrary to public policy—

Sold, to wholesale and retail dealers, certain assortments of candy which were so packed and assembled as to involve, or were designed to involve, use of a lottery scheme when sold and distributed to consumers thereof, and several of which were composed of a punchboard, together with a number of boxes of candy and other articles of merchandise, exceeding in value five cents each, for sale and distribution to consuming public under a plan, and in accordance with said board's explanatory legend, by which purchaser received, for five cents paid, one of said boxes of varying size, or one of said other articles of merchandise, or nothing other than privilege of making a punch, dependent upon number punched by chance, and purchaser of last punch was entitled to specified prize; so assembled and packed that such assortments might be, and were, exposed and sold to purchasing public, in accordance with aforesaid sales plan, by retail dealer purchasers thereof, and with knowledge and intent that such assortments could and would thus be used by retail dealer for distribution and resale to purchasing public by lot or chance, without alteration or rearrangement, in competition with many who do not make and sell "draw" or "deal" assortments, but sell their "straight" goods in interstate commerce in competition with the others;

With result that competitors who refused to, or do not, sell candy so packed and assembled that it can be resold to public by lot or chance, were put to a disadvantage in competing with it and with others employing methods similar to those described herein, trade was diverted to it and others using similar methods from those who do not use same, by reason of attraction to customers of so-called "draw" or "deal" assortments, there was diversion of trade to it from its said competitors, and a restraint upon and a detriment to the freedom of fair competition in trade concerned; to the prejudice and injury of the public and of competitors:

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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. Henry M. White*, trial examiners.

Mr. P. C. Kolinski and *Mr. Henry C. Lank* for the Commission.
Flood, Lenihan & Ivers, of Seattle, Wash., 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 Rogers 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, Rogers Candy Company, is a corporation organized and operating under the laws of the State of Washington, with its principal place of business located at 4547 University Way, Seattle, Wash. 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, jobbers, and retail dealers, located at points in the various States of the United States, and causes and has caused said products when so sold to be transported from its principal place of business in Seattle, Wash., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for more than one year last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of its said business, respondent is in competition with other corporations and with 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 packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof.

Several of the said assortments manufactured, sold and distributed by the respondent are composed of a number of boxes of candy,

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together with a number of other articles of merchandise and a device commonly called a "punchboard." The said boxes of candy and other articles of merchandise are distributed to the consuming public by means of the said punchboard in the following manner: The punchboard has a fixed number of holes and in each hole is secreted a slip of paper bearing a number. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. Sales are five cents each and when a punch is made from said board, a number is disclosed. The board bears a statement or statements informing customers and prospective customers as to which numbers receive a box of candy and the size thereof, and which numbers receive the other articles of merchandise. The board also bears a statement that the purchaser of the last punch on the board receives a specified prize. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or one of the other articles of merchandise or by punching the last punch from the board, receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy and other articles of merchandise are each worth more than five cents and a purchaser who obtains one of the numbers calling for a box of candy or one of the other articles of merchandise, receives the same for the price of five cents. The numbers on said board are effectively concealed from said purchaser or purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy and other articles of merchandise in said assortment are thus distributed to the purchasers from said board wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments, resell said assortments to retail dealers, and said retail dealers, and the retail dealers to whom respondent sells direct, expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its 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 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 box of candy or another article of merchandise.

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 June 4, 1936, issued and on June 9, 1936, served its complaint in this proceeding upon the respondent, Rogers Candy 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 P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by Emmett G. Lenihan, attorney for the respondent, before Charles P. Vicini and Henry M. White, examiners 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, this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of Henry C. Lank, counsel for the Commission, and Emmett G. Lenihan, counsel for the respondent; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Rogers Candy Company, is a corporation organized under the laws of the State of Washington, with its principal office and place of business located at 4547 University Way, in the city of Seattle, State of Washington. Respondent is now, and for several years last past has been, engaged in the manufacture of candy in the city of Seattle and in the sale and distri-

bution thereof to retail and wholesale dealers and jobbers located in the State of Washington and in the States of Oregon, Idaho, Montana, California, and the Territory of Alaska. It causes the said candy when sold to be shipped or transported from its principal place of business in the State of Washington to purchasers thereof in Washington and in other States of the United States and the Territory of Alaska, as mentioned above. In so carrying on said business, respondent is and has been engaged in interstate commerce and is and has been engaged 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 Territory of Alaska, as mentioned above.

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, as above described, certain assortments of candy so packed and assembled as to involve, or which are designed to involve, the use of a lottery scheme when sold and distributed to the consumers thereof.

Several of said assortments are composed of a number of boxes of candy, together with a number of other articles of merchandise and a device commonly called a "punchboard." The said boxes of candy and other articles of merchandise are distributed to the consuming public by means of the said punchboard in the following manner: The punchboard has a fixed number of holes, and in each hole is secreted a slip of paper bearing a number. The numbers begin with one and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. Sales are 5¢ each, and when a punch is made from said board a number is disclosed. The board bears a statement or statements informing customers and prospective customers as to which numbers receive a box of candy and the size thereof, and which numbers receive the other articles of merchandise. The board also bears a statement that the purchaser of the last punch on the board receives a specified prize. A purchaser who does not qualify by obtaining one of the numbers calling for one of the boxes of candy or one of the other articles of merchandise, or by punching the last punch from the board, receives nothing for his money other than the privilege of punching a number from the board. The boxes of candy and other articles of merchandise are each worth more than 5¢, and a purchaser who obtains one of the numbers calling for a box of candy or one of the other articles of merchandise receives the same for the price of 5¢. The numbers on said board are effectively concealed from said purchasers or pros-

pective purchasers until a punch or selection has been made and the particular punch separated from the board. The boxes of candy and other articles of merchandise in said assortment are thus distributed to the purchasers from said board wholly by lot or chance, and the fact as to whether a purchaser receives a box of candy or one of the other articles of merchandise or nothing for his money is also 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" 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, 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 sales plan as described above.

PAR. 5. All sales made by respondent, whether to wholesale dealers 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 are designed to 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 hereof, 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 many manufacturers of candy competing with respondent in the territory served by respondent who do not manufacture and sell "draw" or "deal" assortments of candy and who sell their "straight" goods in interstate commerce in competition with the "draw" or "deal" assortments. The sale or distribution of candy by retail dealers by lot or chance has the capacity and tendency to and does decrease the sale of candy sold without any sales plan or device involving a lottery or game of chance.

Several witnesses testified, and the Commission finds, that customers coming into retail establishments and desiring candy similar to that distributed by respondent would take chances or make purchases by means of said pushcards or punchboards, and that in such cases when unsuccessful in obtaining candy by means of said pushcard or punchboard some of such customers would then purchase candy as a "straight" purchase and without the use of the lottery device; that the gambling feature connected with the sale of respondent's assortments, as described above, was attractive to customers; and that before making "straight" purchases it was not unusual for customers to endeavor to procure the candy desired by means of such lottery devices rather than to make a "straight" purchase.

PAR. 7. The sale and distribution of "draw" or "deal" assortments of candy, or of candy which has connected with its sale to the public the means or opportunity of obtaining a box of candy as a prize or becoming a winner by lot or chance, teaches and encourages gambling and is in violation of various municipal ordinances and regulations and various state statutes and constitutions. The sale and distribution of candy by retailers by the method described herein is the sale and distribution of candy by lot or chance and constitutes a lottery or gaming device and the Commission finds that the sale and distribution of assortments of candy as described herein provides retail merchants with a means of violating the laws of the several states. Competitors who refuse to or who do not sell candy so packed and assembled that it can be resold to the public by lot or chance are put to a disadvantage in competing with respondent and with others employing similar methods to that described herein. Because the "draw" or "deal" assortments are attractive to customers purchasing from retail dealers, the Commission finds that trade is diverted to respondent and others using similar methods from competitors who do not use such methods. The use of such method 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. An officer of the respondent corporation testified, and the Commission finds, that the total annual volume of respondent's sales is approximately \$60,000, and further that approximately 25% of respondent's business consists of assortments of candy with which a punchboard is furnished.

PAR. 9. The Commission further finds that the sale and distribution in interstate commerce of assortments of candy so packed and assem-

bled 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, Rogers 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 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 P. Vicini and Henry M. White, 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 of Henry C. Lank, counsel for the Commission, and Emmett G. Lenihan, 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, Rogers Candy Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard," which punchboard is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "punchboard," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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 respondent, Rogers Candy Company, a corporation, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
KRAFT-PHENIX CHEESE CORPORATION

COMPLAINT, OPINION, AND ORDER OF DISMISSAL IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1938

Docket 2935. Complaint, Sept. 30, 1936—Order, July 17, 1937

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSEC. (A)—“COMMERCE”—RETAILER PURCHASER OF PRODUCER SELLER'S JOBBERS UNDER PRODUCER SELLER'S INTEGRATED NATION-WIDE PRICING SYSTEM AND PLAN, WHERE DIRECT PRODUCER SELLER TO RETAILER CONTACT, SOLICITATION AND SERVICE AND UNINTERRUPTED FLOW FROM WAREHOUSE TO JOBBER TO RETAILER, AS “PURCHASER.”

Complaint charged with unlawful discrimination in violation of aforesaid section, respondent, engaged on a nation-wide scale in distributing and selling its extensively advertised processed cheese, packaged cheese and salad dressing from its various warehouses to jobbers and wholesalers for resale to retailers, contacted by its salesmen, serviced by it, and supplied by continuous flow and current of commerce in its products from factories to warehouses and from warehouse to retailer over regularly established routes to known retailers, business of which, as aforesaid, it personally solicited, and as to which it made effective price policies and schedules of its own:

Held, Respondent, in setting up and putting into effect, as aforesaid, its said price system to retailers, engaged in interstate commerce, and sales of its products to retailers likewise in course of such commerce, and retailer, purchasing its said goods from jobbers and wholesalers, equally “purchaser” under act with retailer buying direct.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSEC. (A)—QUANTITY AND VOLUME DISCOUNTS AND DIFFERENTIALS—COSTS—WHERE PRACTICAL IMPOSSIBILITY OF ACCURATE ALLOCATIONS TO EACH KIND AND AMOUNT OF PRODUCT FROM SAME DELIVERING INSTRUMENTALITY, BUT REASONABLE PRESUMPTION OF SUPPORTING DIFFERENCE.

Where any reasonable allocation of delivery cost would unquestionably leave a difference large enough to support a given difference in price on the basis of certain varying quantity purchases and delivery methods, and there is a reasonable presumption that such difference would justify entire price differential, practical impossibility of making accurate allocation of costs to each kind and amount of product delivered from same truck is no ground for ignoring such reasonable inference.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSEC. (A)—QUANTITY AND VOLUME DISCOUNTS AND DIFFERENTIALS—WHERE REASONABLE IN PURPOSE AND AVAILABILITY AND ADVERSE COMPETITIVE EFFECT ON PRODUCER SELLER'S COMPETITORS NEITHER INTENDED NOR EVIDENT, NOR INJURY PERCEPTIBLE AS BETWEEN FAVORED AND NON-FAVORED RETAILER PURCHASERS

Where, on complaint charging respondent, engaged as aforesaid, with unlawful discrimination in violation of section in question in allowing from one-half cent to two and one-half cents discount, as case might be,

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on certain quantity purchases of loaf cheese, and five per cent discount upon weekly purchases of \$5.00 worth of package cheese or salad products, subject to certain delivery limitation (and extended to group purchasers contracting for \$100.00 or more of such products), it appeared, among other things, as respects the effect on producer seller's competitors, that use of such discounts was prevalent in the industry, no adverse competitive effect was intended or evident, nor ground to apprehend one, and, as respects differentials and effect on favored and unfavored retail sellers of its said products, that such discounts, as case might be, were reasonable in purpose, and reasonably open to all, were justified by cost, and benefit conferred, and did not operate prejudicially to any perceptible extent as between those who received or failed to receive particular discount, or as between those falling within certain different discount ranges: *Held*, That price differentials established by it in sales of its said products to retailers did not tend to create a monopoly in it or to lessen or injure competition between it and its competitors, nor to injure competition between retailers reselling its said products, no violation of aforesaid section, and order of dismissal should issue.

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

Mr. Allen C. Phelps and *Mr. James I. Rooney* for the Commission.
Nicholson, Snyder, Chadwell & Fagerburg, of Chicago, Ill.,
Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C.
and *Mr. Robert Gordon*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" as amended by an Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 15, section 13), and for other purposes", the Federal Trade Commission, having reason to believe that Kraft-Phenix Cheese Corporation is violating and has been violating the provisions of Section 2 (a) of said Act, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kraft-Phenix Cheese Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 400 Rush Street, Chicago, Ill. Respondent corporation maintains five division or branch offices located as follows: Eastern Division Office, New York, N. Y.; Southeastern Division Office, Atlanta, Ga.; Southwestern Division Office, Denison, Tex.; Central Division Office, Chicago, Ill.; and Western Division Office, San Francisco, Calif.

PAR. 2. Said respondent corporation is and has been prior to June 19, 1936, engaged in the business of manufacturing, processing, offering for sale, selling and distributing cheese, cheese products, and salad products. 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 to be shipped and transported from the respective places of origin or concentration thereof, located in various States of the United States, to purchasers of such products, located in all States of the United States and the District of Columbia, and there is and has been, at all times herein mentioned, a continuous current of trade and commerce in said products between respondent's factories, processing plants, branch offices, and distributing points and purchasers located in all of the States of the United States and the District of Columbia; that said commodities are so sold and distributed for use, consumption, and resale within all of said States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now and during the time herein mentioned, has been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, processing, offering for sale, selling, and distributing cheese, cheese products and salad products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as above described, respondent since on or about August 29, 1936 has discriminated in price and is now discriminating in price between different purchasers buying such products of like grade and quality for resale to consumers, by giving and allowing to some of its said purchasers of cheese, cheese products and salad products lower prices than those given or allowed other of its said purchasers competitively engaged one with the other in the resale of said products to the consumer within the United States. Said discriminations consist in the following:

1. In connection with the offering for sale and sale of Kraft Loaf Cheese in five pound boxes, in the granting of an allowance of a one cent discount from the unit pound price set for lots of 5 pounds to 29 pounds of such product for purchases in lots of 30 pounds to 149 pounds; in the allowance of a one cent per pound discount from the price set for lots of 30 pounds to 149 pounds for purchases of lots from 150 pounds to 749 pounds; in the allowance of a one-half cent per pound discount from the price set for lots of 150 pounds to 749 pounds for purchases of 750 pounds or over.

2. In connection with the offering for sale and selling of Kraft package cheese and cheese products, except loaf cheese:

(a) In the allowance of a five percent discount on all specific purchases of such products amounting to \$5.00 or more in which one delivery is required;

(b) In the allowance of a five percent discount to all group purchasers contracting for \$100.00 or more of such products per week, where store-door delivery is made and one billing only required.

3. In connection with the offering for sale and selling of Kraft salad products:

(a) In the allowance of a five percent discount on all specific purchases of such products amounting to \$5.00 or more in which one delivery is required;

(b) In the allowance of a five percent discount to all group purchasers contracting for \$100.00 or more of such products per week, where store-door delivery is made and one billing only required.

PAR. 5. That the purchasers of such commodities from respondent, so bought and sold in interstate commerce, are in competition in the resale of such products to the consumer with other such purchasers in the different States of the United States in which said purchasers are respectively located and engaged in business; that the effect of such discriminatory prices is to enable some of said purchasers to purchase such commodities at a lower price than competing purchasers can buy the same products, solely because of the variation of volume of resale trade done in such products by the different purchasers thereof.

PAR. 6. The general effect of said systematic discriminations in price, made by said respondent as above set forth has been or may be to substantially lessen competition or to injure, destroy, or prevent competition in the sale and distribution of cheese, cheese products and salad products, between the said respondent and other manufacturers and distributors of similar products engaged in interstate commerce, and also between the said favored purchasers of said products receiving such discriminatory prices and other unfavored competing purchasers of said products not receiving said discriminatory prices; and the effect of said discriminations has been or may be to tend to create a monopoly in respondent in said line of commerce and also in the said favored purchasers receiving said discriminatory prices from said respondent, in the resale of said products in different localities or trade territories in the United States in which such purchasers respectively operate.

PAR. 7. The foregoing alleged acts of the said respondent are in violation of Section 2 (a) of said Act of Congress, approved June 19,

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1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, section 13), and for other purposes."

MEMORANDUM OPINION

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," the Federal Trade Commission, on September 30, 1936, issued and served its complaint in this proceeding upon the respondent Kraft-Phenix Cheese Corp., charging it with violating the provisions of Subsection A of Section 2 of said Act as amended. 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 Allen C. Phelps, attorney for the Commission, before Charles F. Diggs, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Nicholson, Snyder, Chadwell & Fagerburg, attorneys for said respondent; and said testimony and other evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for consideration by the Commission on the said complaint, the answer thereto and the testimony and other evidence constituting the record herein; and the Commission having considered the same and being fully advised in the premises, issues this memorandum statement of pertinent facts deduced from the record and the conclusions which it has drawn therefrom.

Respondent Kraft-Phenix Cheese Corporation, individually and through subsidiaries, manufactures and distributes on a nationwide scale a line of processed cheese, package cheese, and salad dressing. Respondent itself ships these products across State lines from factories to warehouses and the products are usually distributed from warehouses to retailers by truck by sales subsidiaries of respondent or independently owned jobbers and wholesalers. The distribution from the warehouses to retailers is usually within the confines of a single State, although in some cases this distribution crosses State lines. Respondent advertises its products extensively to the pur-

chasing public and maintains a force of salesmen who contact retailers, most of whom buy Kraft products from independent jobbers. There is a continuous, uninterrupted flow and current of commerce in respondent's products from the factories to warehouses and from the warehouses over regularly established routes to retailers, whose identity is known in advance. The course of such commerce runs between, among, across, and within all the States of the United States and the District of Columbia.

Considered in their character as interstate commerce, respondent's products, upon reaching the warehouse, do not become mixed with or a part of the general mass of property within the State in which such warehouse is located. On the contrary, such warehouses are clearing houses or distributing points, serving one function in respondent's system of making its perishable products available for sale by retailers to the ultimate consumer, the purchasing public. Respondent's advertising, its solicitation of retailers, and the facilities which it provides for the sale and distribution of its products to the retailer, are all vital and essential elements in the process of marketing these commodities.

The purpose and intent of respondent in manufacturing and processing its products, in transporting them to warehouses, and in selling them directly and indirectly to retailers, is from beginning to end to reach through the channels of interstate commerce retailers who sell to consumers. Respondent's plan of doing business is an integrated whole and, in so far as its character as interstate commerce is concerned, cannot be separated into parts. The various steps by which this plan and policy as a whole are made workable and successful are inextricably commingled and intertwined. Respondent's products in a large majority of cases, cross State lines from the factory to the warehouse, and the interstate character of this commerce continues, under the facts and circumstances in this case, down to and including the sale and delivery of such products to the retailer.

Respondent admits that it attempts to make its prices and discounts available to all retailers by one means or another, and that its efforts are in the main successful. It issues price lists to jobbers and wholesalers to be used by them in selling retailers. The evidence shows that respondent exercises a control over the distributing channels through which its products move. This control is made effective until such products come into the hands of the retailer where the control ends. The passing of the naked legal title to the goods from respondent to a jobber in the course of this flow of commerce before the products reach their ultimate destination, the retailer, is

not determinative of the question as to where the flow stops. In fact, in this case the current of commerce in respondent's products terminates when and only when the merchandise reaches the retailer.

Respondent is charged with unlawful price discrimination in the use of quantity discounts and volume discounts in sales to retailers. A 5 percent discount upon package cheese and cheese products, other than loaf cheese, is available to retailers who buy more than \$5.00 worth in a single purchase, and to group buyers who buy more than \$100 worth in a single week and who are billed jointly. The same discounts are available upon the same conditions to retailers who buy salad products. Buyers of loaf cheese receive a discount of one cent for purchases of from 30 to 149 pounds, an additional cent for purchases of from 150 to 749 pounds, and an additional half cent for purchases of 750 pounds or over.

Discounts are made unlawful by the Clayton Act, as amended by the Robinson-Patman Act, when their effect may be substantially to lessen competition or to tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with those who grant or receive the discounts. Evidence introduced relevant to the charge of a lessening of competition or a tendency toward monopoly as between respondent and its competitors indicates generally that the use of discounts similar to those used by respondent is prevalent in the industry. Moreover, the evidence indicates that respondent's products are sold to the retailer at prices which in most cases exceed those of its competitors. While respondent sells a very considerable proportion of the loaf and packaged cheese and salad dressings sold in the United States, there is no reason to infer from the evidence that the system of discounts set up by respondent are used to unfairly deprive competitors of business or that it is promotive of monopoly. Nor does such system of discounts appear to have been used to effect a lessening of competition between respondent and its competitors or to injure such competition.

There remains the question of the effect of such differentials in price on competition between favored and unfavored retailers reselling Kraft-Phenix products.

The five percent discount upon \$5.00 worth of package cheese and cheese products or salad products is denied only to those concerns which are unable or unwilling to handle \$5.00 worth of the respondent's products within a period of two or three weeks.

In an effort to preserve the freshness of its products and to encourage their use, respondent undertakes to exchange new goods for any of its products which may have deteriorated in the retailer's stock. Consequently, in spite of the perishable character of cheese

and salad products, a retailer who wishes to do so may safely buy a two or three weeks' supply at one time without fear of spoilage.

Although, even under these conditions, an appreciable number of retailers do not obtain the discount, the Commission does not believe that respondent is required by law to make no distinction between these and other retailers. Respondent maintains a system of truck delivery to retailers designed to insure the freshness of the product when delivered, to facilitate the return of products which are not fresh, and to stimulate the retailer's interest in cheese. This system of deliveries is by nature expensive, its cost averaging about 13 or 14 percent of the gross value of sales so made. Witnesses for the respondent testified that the respondent's ability to use such a delivery system without loss depends upon the size of the average sale, and that the discount for \$5.00 purchases was intended to make sales large enough to justify such a method of delivery. The evidence shows, too, that the freshness and uniformity of packaged cheese and salad products to which this system of merchandising contributes has been the cause of a considerable increase in the use of such products. To encourage the purchase of packaged cheese and salad products in quantities sufficient to make this system of distribution economically possible is a reasonable policy in the promotion of competition.

Moreover, the discount by which such purchase is encouraged does not appear to inflict any perceptible injury upon those who do not receive it. The prices of the more frequently sold package cheese items at retail vary by as much as two or three cents; whereas the difference in the purchase price of such cheese products because of the five percent discount would amount to $\frac{3}{4}$ of a cent a package or less. Concerns which do not receive a discount are among those with the lowest retail prices, and concerns which do receive a discount among those with the highest. The retail price depends so much upon the character of the store, the buying power of its customers, the importance of its cheese trade, and the nearness of other competing stores that there is no basis for concluding that the price of these products is governed by the receipt of the discount. Considerable evidence in the record indicates that there is no appreciable diversion of trade in cheese products even where a two or three cent price difference exists; but, apart from this evidence, diversion of trade, which is one of the elements of injury to competition, can only be attributed to price differentials, if such differentials exercise a perceptible influence upon retail prices.

Evidence of injury to competition by impairment of the profits of some competitors is likewise absent. The profit margins of retail-

ers who receive no discount are apparently adequate. The general testimony of such retailers that they are satisfied is reinforced by the fact that their operating margins in sales of cheese are roughly equivalent to the average margin in the sale of grocery products, in spite of the fact that the turnover of cheese products is more rapid than the average. The effect of failure to receive the discount is not the necessity of selling at a loss, but at most the receipt of a somewhat smaller profit than is received by others who pursue the same price policy. But even this effect upon profits is negligible. To a concern purchasing \$5.00 worth of Kraft packaged cheese products every two weeks throughout the year the aggregate annual discount would be \$6.50. Such remote and minute effects upon the income of certain competitors can not be regarded as injurious to competition within the meaning of the Statute.

The discount to group buyers who buy more than \$100 worth of products in a week is alternative to the discount upon individual purchases of \$5.00 worth. Its effect, therefore, is to make the discount available to certain groups when individual purchases are so low that they would not earn the discount. Instead of increasing, it reduces the disparities in purchase price which follow from the individual purchase discount already considered. The fact that this reduction operates only on behalf of group buyers means that such buyers are treated more favorably than certain stores which do not engage in group buying. Nevertheless, the considerations already set forth apply to this discount also, and lead to the conclusion that it does not work an injury to competition.

The range of discounts upon loaf cheese is greater than upon package cheese and salad products. The buyer who falls in the highest of four quantity brackets pays $2\frac{1}{2}$ cents a pound less than his competitor who falls in the lowest. However, respondent's method of delivering to buyers in the two upper brackets differs from that to buyers in the two lower brackets. Purchasers of 150 pounds or more of loaf cheese receive it direct from the warehouse at a delivery cost of about $7\frac{1}{2}$ cents per hundred pounds, which is roughly equivalent to $\frac{1}{10}$ of 1 percent of the sale price. Purchasers of less than 150 pounds receive it from the same truck which delivers package cheese and salad products. If the cost of loaf cheese deliveries from such trucks were considered equal to the average cost of delivery of all products by this means, the difference in cost between the two methods would be about \$3.70 per hundred pounds. Although there might well be argument that the delivery of loaf cheese is less expensive than the average, any reasonable allocation of cost would unquestionably leave a difference large enough to support the difference

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in price of one cent per 100 pounds which has been established between those who buy less than 150 pounds and those who buy 150 pounds or over. Indeed, there is a reasonable presumption that this difference in cost would justify the entire difference of $2\frac{1}{2}$ cents per pound between the prices paid by those who buy 750 pounds or more of loaf cheese and those who buy less than 30 pounds. The practical impossibility of making an accurate allocation of costs to each kind and amount of product delivered from the same truck is no ground for ignoring this reasonable inference.

Since the difference in price between those who buy loaf cheese in the two upper brackets and those who buy it in the two lower brackets is justified by cost, there is no need to examine further the question of competitive injury which may arise from this difference. There remain, however, price differences between the lowest and next lowest brackets and the highest and next highest brackets. These differences are not accounted for by differences in method of delivery. The discount of one cent a pound which becomes available to those who buy 30 pounds or over is roughly analogous to the five percent discount upon purchases of \$5.00 worth of package cheese, but amounts to less than 5 percent. The considerations pertinent to the question of injury to competition are not different in the case of this loaf cheese from those already raised about package cheese. Therefore, this discount can not be held injurious. The discount to buyers of 750 pounds or more of loaf cheese is only $\frac{1}{2}$ a cent a pound. This smaller rate of discount may be presumed to be of even less significance as a possible source of injury to competition, and nothing appears in evidence to counteract this presumption.

The Commission concludes that respondent, in setting up its pricing system to retailers and putting it into effect by the means which it uses, is engaged in interstate commerce and that the sales of its products to retailers are likewise made in the course of such commerce. A retailer who purchases respondent's goods from jobbers and wholesalers is considered by the Commission to be a "purchaser" within the meaning of the Robinson-Patman Act as well as retailers buying direct. This is because of the fact that respondent recognizes the retailers buying through jobbers as customers by personally soliciting them and by making effective its price policies and schedules as applied to them. A retailer is none the less a purchaser because he buys indirectly if, as here, the manufacturer deals with him directly in promoting the sale of his products and exercises control over the terms upon which he buys.

The Commission further concludes that the price differentials established by the respondent in the sales of its products to retailers do

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not tend to create a monopoly in respondent or to lessen or injure competition between respondent and its competitors. The Commission also concludes that such price differentials do not tend to injure competition between retailers reselling said products.

For the reasons herein stated the Commission is of the opinion that respondent is not violating subsection (a) of Section 2 of the Clayton Act, as amended, as charged in the complaint herein, and that an order of dismissal should issue.

ORDER DISMISSING COMPLAINT

This matter coming on to be heard by the Commission, and the Commission having duly considered the record herein and being now fully advised in the premises;

It is ordered that the complaint herein be, and the same hereby is dismissed, for the reasons set forth in a memorandum opinion filed simultaneously herewith.

IN THE MATTER OF
BIRD & SON, INC., BIRD FLOOR COVERING SALES CORPORATION, MONTGOMERY WARD & COMPANY, INC.

COMPLAINT, OPINION, AND ORDER OF DISMISSAL IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 2937. Complaint, Sept. 30, 1936—Decision, July 17, 1937

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSEC. (a)—SELECTION OF CUSTOMERS—ACT'S SCOPE

The Act declares that nothing in it "shall prevent persons engaged in selling goods, wares, and merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade." So the Act does not purport to interfere with the right of a seller to select his customers. He may discriminate in the choice of his customers. Not until there is a discrimination in price among those chosen does Section 2 (a) of the Act have any application.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2, SUBSECS. (a) AND (f)—SELECTION OF CUSTOMER—CHANGE OF POLICY AND TRANSITION PERIOD—WHERE SUPPORTING COSTS FOR DIFFERING PRICES AND BUSINESS INVOLVED NEGLIGIBLE

Where, on complaint charging respondent manufacturer of hard-surfaced felt base floor coverings sold as yard goods or in form of rugs under trade names "Neponset" and "Economy," and its sales subsidiary, with unlawfully discriminating in price in prices allowed to mail-order houses as compared with prices allowed to competitively engaged retailers, in violation of subsec. (a) of Sec. 2 of aforesaid act, and respondent mail-order house with violation of subsec. (f) of said Sec. 2, in knowingly receiving from said first described seller respondents such discrimination, it appeared that (1) at time of passage of aforesaid amending act only about 1 percent of all sales of said seller respondents was made to ordinary retailers direct, as a result of change in sales policy inaugurated about a year and a half prior to said time, and not long thereafter such seller respondents had discontinued all their warehouses and sales agents, no goods were sold direct to retailers, and jobbers and mail-order houses were sold at same net prices; (2) difference between cost of selling direct to ordinary retailers during period of discrimination concerned and cost of selling to mail-order houses exceeded difference in alleged unlawful discriminatory prices involved; (3) new sales policy of seller respondents was not one of discrimination in price between or among the two classes of customers which, exclusively, they had selected to sell in order to reduce distribution costs; and (4) any discrimination involved was only during four months' period of transition of policy of selling ordinary retailers direct, to one of supplying them through sales made to jobbers, and was incidental thereto and involved negligible proportion and amount of seller respondents' business:

Held, No violation by seller respondents and, case failing against them, so does case against buyer respondent, and entry of order for dismissal of complaint and termination of proceeding directed.

Complaint

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

Mr. William L. Pencke and *Mr. James I. Rooney* for the Commission.

Warner, Stackpole & Bradlee, of Boston, Mass., for Bird & Son, Inc., and Bird Floor Covering Sales Corp.

Mr. Stuart Ball, Scott, MacLeish & Falk and *Winston, Strawn & Shaw*, of Chicago, Ill., for Montgomery Ward & Co., Inc.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved June 19, 1936, Public 692 (the Robinson-Patman Act), amending Section 2 of an Act approved October 15, 1914 (the Clayton Act), the Federal Trade Commission hereby issues its complaint against Bird & Son, Inc., Bird Floor Covering Sales Corporation and Montgomery Ward & Co., Inc., stating its charges in that respect as follows:

I

PARAGRAPH 1. Respondent, Bird & Son, Inc., is a corporation organized and existing under the laws of the State of Massachusetts, with its office and principal place of business in the city of East Walpole, Mass. It maintains branch offices in New York and Chicago.

Respondent, Bird Floor Covering Sales Corporation is a subsidiary selling corporation wholly owned and operated by respondent Bird & Son, Inc., whose office and principal place of business is the same as that of respondent, Bird & Son, Inc.

Respondents, Bird & Son, Inc. and Bird Floor Covering Sales Corporation, are now and for many years have been engaged in the business of manufacturing, selling and distributing a hard surfaced felt base floor covering sold as yard goods or in the form of rugs under the trade names of "Neponset" and "Economy."

Respondent, Montgomery Ward & Co., Inc. is an Illinois corporation, with its office and principal place of business in the city of Chicago, State of Illinois, and is engaged in selling, among other articles of commerce, floor covering direct to consumers in the United States by means of mail orders and catalogs, and also through retail stores owned or controlled by it.

Respondents sell and distribute their products in commerce to their customers located in the several States of the United States causing said products when sold to be shipped from their respective places of business in the States of Massachusetts, New York, and

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Illinois to purchasers thereof located in the several States of the United States other than said stores.

PAR. 2. In the course and conduct of their businesses as aforesaid, respondents are now and for many years have been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of selling and distributing floor covering in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their businesses, as described in paragraphs 1 and 2 hereof, respondents, Bird & Son, Inc. and Bird Floor Covering Sales Corporation, since June 19, 1936, have been and are now discriminating in price, between different purchasers of their said product of like grade and quality by giving and allowing certain purchasers of floor covering different prices than given or allowed other of their said purchasers, competitively engaged in the resale of their product within the United States, as is more specifically shown in the following price list, #19-A dated July 1, 1936, issued by the respondent, Bird Floor Covering Sales Corporation. The prices shown below are net, after deducting rebates, cash allowances and handling allowances. The prices at which mail order house retail stores are sold refer to any quantity and are lower than the prices at which competing retailers are sold.

	<i>Heavy Weight (Neponset) 9 x 12 Rugs</i>	<i>Light Weight (Economy) 9 x 12 Rugs</i>
<i>Retailers</i> —Purchasing less than 15 rolls.....	\$ 4.85 Net	\$ 3.72 Net
“ — “ 15 to 29 rolls.....	4.54 “	3.42 “
“ — “ 30 to 49 rolls.....	4.42 “	3.34 “
“ — “ 50 to 74 rolls.....	4.33 “	3.28 “
“ — “ 75 to 99 rolls.....	4.28 “	3.24 “
“ — “ 100 rolls or more.....	4.24 “	3.21 “
<i>Wholesalers</i>	3.57 “	2.71 “
<i>Mail Order Houses</i> —(Warehouse & Carload		
Shipments)	3.64 “	2.71 “
“ “ “ —(Retail Stores).....	3.82 “	2.85 “
	<i>Heavy Weight (Neponset) 8 1/4 Yard Goods</i>	<i>Light Weight (Economy) 8 1/4 Yard Goods</i>
<i>Retailers</i> —Purchasing less than 15 rolls.....	\$0.337 Net	\$0.276 Net
“ — “ 15 to 29 rolls.....	.316 “	.254 “
“ — “ 30 to 49 rolls.....	.309 “	.247 “
“ — “ 50 to 74 rolls.....	.303 “	.242 “
“ — “ 75 to 99 rolls.....	.299 “	.240 “
“ — “ 100 rolls or more.....	.296 “	.238 “
<i>Wholesalers</i>254 “	.206 “
<i>Mail Order Houses</i> —(Warehouse & Carload		
Shipments)257 “	.204 “
“ “ “ —(Retail Stores)271 “	.219 “

PAR. 4. The effect of said discriminations in price made by respondents, Bird & Son, Inc. and Bird Floor Covering Sales Corporation, as set forth in paragraph 3 hereof, has been, or may be substantially to lessen competition, or to injure, destroy, or prevent competition, in the sale and distribution of the said floor covering between the said respondents and other manufacturers and distributors of floor covering, and also between the respondent, Montgomery Ward & Co., Inc. and other purchasers of said product in granting said discriminatory prices; and the effect of said discriminations has been, or may be, to tend to create a monopoly in the said favored customer receiving said discriminatory price from said respondents in the distribution of said product in the United States.

PAR. 5. The foregoing alleged acts of said respondents, Bird & Son, Inc. and Bird Floor Covering Sales Corporation are a violation of Section 2 (a) of said Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes."

II

PARAGRAPH 1. Paragraphs 1 and 2 of the first charge hereof are hereby adopted and made a part of this charge as fully as if set out herewith verbatim.

PAR. 2. In the course and conduct of its business as described in paragraphs 1 and 2 of charge 1 hereof, respondent, Montgomery Ward & Co., Inc., since June 19, 1936, has knowingly received and is now knowingly receiving from respondents Bird & Son, Inc., and Bird Floor Covering Sales Corporation, a discrimination in price as more fully set forth in paragraph 3 of the first charge hereof, by receiving a lower price than given or allowed other purchasers of like grade and quality of floor covering purchased from the aforesaid respondents. Respondent Montgomery Ward & Co., Inc. is enabled to purchase floor covering, by reason of, to wit, a certain contract entered into on or about June 10, 1936 with Bird Floor Covering Sales Corporation, 9 x 12 rugs for \$3.82 apiece, regardless of quantities purchased and by warehouse and carload lot shipments at a price of \$3.64 apiece, whereas rugs of like grade and quality are purchased by retailers from said respondents, Bird & Son, Inc. and Bird Floor Covering Sales Corporation for from \$4.85 to \$4.24 apiece and similar differences in price exist on the other floor covering, as more fully set forth in paragraph 3 of charge 1 hereof.

PAR. 3. The foregoing alleged acts of said respondent, Montgomery Ward & Co., Inc. are in violation of Section 2 (f) of said Act of Congress approved June 19, 1936 entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes."

MEMORANDUM OPINION

This case involves a complaint charging respondents with unlawful discrimination in price contrary to the provisions of the so-called Clayton Act of 1914, as amended by the so-called Robinson-Patman Act approved June 19, 1936. Respondents, Bird & Son, Inc., and Bird Floor Covering Sales Corporation, are charged with selling at discriminatory prices in favor of respondent, Montgomery Ward & Company, Inc., in violation of Section 2 (a) of the act, and Montgomery Ward & Company is charged with knowingly receiving such prices, all to the injury of retail dealers competing with the latter concern. The commodity involved is hard surfaced felt base floor covering.

The case was tried and a record of the evidence presented in support and in defense of the charges is before the Commission.

The facts are that between the passage of the Robinson-Patman Act and issuance of the complaint on September 30, 1936, retailer-competitors of Montgomery Ward & Company, when purchasing from the seller-respondents, were subject to prices that were higher than those paid by Montgomery Ward & Company and other mail order houses by as much as 14 and 18 per cent. At the time of passage of the Robinson-Patman Act, however, only about 1 per cent of all the sales of seller-respondents was made to ordinary retailers direct. The remainder was being sold to jobbers for resale to retailers and to mail order houses such as Montgomery Ward. This was the outcome of a change in sales policy inaugurated about a year and a half before the Robinson-Patman Act was passed. Under the new policy, direct sales to retailers were discontinued and their needs were supplied through jobbers. By the time the complaint could be tried, the seller-respondents had discontinued all their warehouses and sales agencies, and in fact, most of them had been discontinued before the act was passed. By the end of October 1936, no goods were being sold direct to retailers, while jobbers and mail order houses were being sold at the same net prices.

With reference to the amount of the price discrimination which existed during the 4-month period following passage of the Act,

evidence was introduced by seller-respondents showing that the cost of selling to mail order houses was 18.6 percent as against a cost of selling direct to ordinary retailers at 47.1 percent. Thus, costs differed by over 28 percent while the difference in price was less than 20 percent. This evidence was corroborated by an accountant for the Commission. Since the Act specifically permits differentials in price that "make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered," the amount of discrimination existing in this case was apparently within the terms of this proviso. These considerations would appear to be controlling.

It also appears, however, that the present sales policy of seller-respondents is not one of discrimination in price between or among the only two classes of customers they have chosen to sell. The Act declares that nothing in it "shall prevent persons engaged in selling goods, wares, and merchandise in commerce from selecting their own customers in bona fide transaction and not in restraint of trade." So the act does not purport to interfere with the right of a seller to select his customers. He may discriminate in the choice of his customers. Not until there is a discrimination in price among those chosen does Section 2 (a) of the act have any application. There is no suggestion that the selection of customers here involved was the result of any combination in restraint of trade. Rather, it was in order to reduce seller-respondents' costs of distribution. The courts have consistently upheld the right of individual traders to select their customers in the absence of such combination.

The price discrimination alleged is to be found only during a 4-month period of transition from a policy of selling ordinary retailers direct, to one of supplying them through sales made to jobbers. Any price discrimination during that period was incidental to that transition and involved a negligible proportion and amount of seller-respondents' business.

Since the case against seller-respondents fails for the reasons above stated, the case against buyer-respondent, for receiving an unlawful price discrimination, also fails.

The Commission therefore directs the entry of an order for dismissal of the complaint and termination of the proceeding herein.

ORDER DISMISSING COMPLAINT

This matter coming on to be heard upon the complaint of the Commission, testimony and evidence in support of the allegations of the

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complaint, and testimony and evidence in opposition thereto, and the Commission having duly considered the same, and being fully advised in the premises;

Now, therefore, it is hereby ordered, That the complaint in this proceeding be, and the same hereby is dismissed, for the reasons set forth in a memorandum opinion filed simultaneously herewith.

Complaint

IN THE MATTER OF
HOLLYWOOD HAT COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (A) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936, AND OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3020. Complaint, Dec. 23, 1936—Decision, July 17, 1937

Where a corporation engaged in manufacture, sale, and distribution of women's hats to customers in the several States, largest customer of which was a syndicate maintaining in excess of 200 millinery departments in stores located throughout the United States, in competition with, in many cases, other customers of such hat manufacturer—

- (a) Sold, to said customer, in practically all instances, assorted suede hats at \$21.00 per dozen and assorted velours at \$36.00 per dozen, while contemporaneously selling competitor-purchasers, of much smaller volume, assorted suede and assorted velour hats of same style, grade, and quality at prices of \$24.00 or \$27.00 per dozen for the former, and \$39.00 or \$42.00 per dozen for the latter; without justification therefor by reason of differences in cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such commodities were to such purchasers sold and delivered, or other justification under the saving exceptions or provisos of the statute, and with result that effect of such discrimination might be to destroy, injure, or prevent competition with such customers who received benefit thereof;

Held, That such discriminations were in violation of Section 2 of the Clayton Act, as amended; and

Where aforesaid corporation—

- (b) Shipped, pursuant to order offered a customer of style line #200 hats at \$27.00 per dozen, and placed and accepted, at \$24.00 a dozen, substituted hats of a cheaper grade and quality than that shown and priced in sample line at \$27.00, as above set forth, without knowledge or consent of customer placing order for the superior grade and quality; and
- (c) Shipped a jobber, pursuant to order therefrom for its assorted #100 line of Ballibuntl hats at a price of \$25.50 per dozen, Ballibuntl hats of the cheapest grade customarily sold by it for \$24.00 a dozen;

With result of misleading its customers, in that articles of millinery of a grade and quality inferior to that ordered were received:

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. A. W. DeBirny for the Commission.

Roberts & McInnis, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, (the Clayton Act) as amended by an Act approved

June 19, 1936, Public 692 (the Robinson-Patman Act); 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 hereby issues its complaint against Hollywood Hat Company, Inc., stating its charges in respect thereto as follows:

I

PARAGRAPH 1. The respondent, Hollywood Hat Company, Inc., is a corporation organized under the laws of New York with its principal place of business at 42 West 39th Street, New York City, and is and has been engaged in the business of manufacturing and selling women's hats. Pursuant to such sales, and as a part thereof, respondent ships and has shipped its hats from its place of business through and into various other States of the United States to the purchasers thereof.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is now, and for many years past has been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of selling and distributing women's hats in commerce between and among the various States of the United States; and the customers of respondent have been and are now in competition with each other.

PAR. 3. In the course and conduct of its business as aforesaid, said respondent, contrary to the provisions of subsection (a) of Section 2 of said Act of Congress approved October 15, 1914, as amended, has been, since June 19, 1936, and now is, discriminating in price between different purchasers of its said hats of like grade and quality, sold for resale within the United States, by giving and allowing certain purchasers, particularly Si Fish, Inc., a retail dealer of women's hats with retail stores at San Francisco, Sacramento, and Oakland, Calif., different prices than those given or allowed other of its purchasers competitively engaged in the resale of women's hats, particularly in said cities of San Francisco, Sacramento, and Oakland, Calif., and other cities of the United States. Respondent discriminates as aforesaid by allowing the said Si Fish, Inc., and others, a lower price for women's hats than it allows other customers of respondent competing with them.

PAR. 4. The effect of said discriminations in price made by respondent, as described in paragraph 3 hereof, has been, or may be, substantially to lessen competition, or to injure, destroy, or prevent competition in the sale and distribution of women's hats between

those of respondent's customers who receive the benefit of such discrimination and lower prices, and competing customers who do not receive such benefits and are charged higher prices.

PAR. 5. The foregoing alleged acts of said respondent, Hollywood Hat Company, Inc., are a violation of subsection (a) of Section 2 of said Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended by said Act approved June 19, 1936.

II

PARAGRAPH 1. Paragraphs 1 and 2 of charge 1 hereof are hereby adopted and made a part of this charge as fully as if set out herein verbatim.

PAR. 2. In the course and conduct of its business as aforesaid, respondent has followed the practice of filling orders for its hats with hats of a grade and quality lower than its customers are led to believe they will receive by the exhibition of samples by, and representations of, its salesmen and other agents at the time of soliciting and receiving such orders.

PAR. 3. The foregoing acts and practices of respondent, as described in paragraph 2 of this charge, constitute unfair methods of competition in commerce in that said acts and practices have a tendency to lead its said customers to believe that they are receiving women's hats of a higher grade and quality than they do in fact receive, and of a higher grade and quality than the women's hats they are offered by competitors of respondent at the same or similar prices, thus diverting business to respondent from its said competitors.

PAR. 4. The acts and things hereinabove in this charge alleged to have been done by respondent are to the prejudice of the public and the competitors of respondent, and constitute an unfair method of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U. S. C., title 15, sec. 13) and pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal

Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914 (U. S. C., title 15, sec. 45), the Federal Trade Commission, on December 23, 1936, issued and served its complaint in this proceeding upon the respondent, Hollywood Hat Company, Inc., a corporation, charging it with discriminating in price between different purchasers of hats in violation of subsection (a) of Section 2 of the aforesaid act of October 15, 1914, and charging it with the use of unfair methods of competition in commerce in violation of the said act of September 26, 1914.

After the issuance of said complaint, the respondent herein filed answer thereto. Thereafter said respondent petitioned the Commission to allow it to withdraw the answer theretofore filed and, pursuant to permission granted by the Commission, filed its substituted answer thereto, in which substituted answer the respondent stated that it waived hearing on the charges set forth in the complaint, that it admitted all of the material facts alleged in the complaint, and the Commission having duly considered the same, and being now fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Said corporate respondent, Hollywood Hat Company, Inc., now is, and at all times since June 19, 1936, has been a corporation organized under the laws of the State of New York, with its principal office and manufacturing plant located at 65 West 39th Street, New York, N. Y. At all times herein mentioned said respondent has been engaged in the business of selling and distributing women's hats to customers located in the several States of the United States.

PAR. 2. The millinery industry consists of approximately 1200 establishments, more than 50% of which are located in New York City. New York milliners comprise about 70% of the industry by volume. The gross annual business of all milliners in the United States is approximately one hundred million dollars.

PAR. 3. Said respondent purchases the so-called "body" of the hat which it styles, reshapes and frequently ornaments with brilliants or similar articles. Straw and felt hats are seasonally manufactured and sold. The straw hat manufacturing season extends from December to May inclusive and reaches its height between February 1 and March 15. The manufacturing season for felt, suede or velour hats made from fur felts commences about July 1 and extends through October. The respondent has a longer season than most

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manufacturers in the industry. Generally, the straw hats are first sold in Florida and California and according to public acceptance the styles are developed. Each design or style is given a number by the respondent herein and generally so in the industry. There are certain variations from such style numbers by reason of desire of the buyers for certain ornaments or different grade and quality of bodies.

PAR. 4. Fur felt bodies were purchased by respondent during the period from June 19, 1936 to January 1, 1937 at prices of \$8.00, \$8.50 and \$10.00 per dozen, the prices depending upon size and quality and the advancement of the season. Bodies advanced in price steadily from June to August 1936. Price of fur felts for the bodies of the same general class did not vary at the same time by reason of grade and quality more than 50¢ a dozen. Suede is produced by brushing and clipping a felt base which, prior to being sueded, is somewhat thicker than the felt of which plain felt hats are constructed. Poorer grades of suedes can easily be distinguished from the higher grades but it is difficult to distinguish the intermediate successive grades.

PAR. 5. There is a great variation in the number of hats sold in the several style numbers. Many styles are developed early in the season and manufacturing processes completed for production, and styles which do not attract consumers are closed out as the season progresses. The designers, stock room employees, blockers, and other employees engaged in the preparation of the hat for trimming are carried on a weekly wage, but other operations in forming the hat and the important operation of trimming are on a piece work basis. The unit cost of trimming does not vary between large and small orders in the production styles in which there is considerable selling. Differentials are established for trimming graduated with selling prices. Thus, for labor in trimming hats of the \$16.50 to \$19.50 per dozen grade the prices for stated operations in applying similar trim are \$1.25, \$2.00 and \$2.50. Whereas, hats that sell for \$19.50 to \$28.50 per dozen required, in one instance, labor costs for trimming of \$1.40, \$2.35 and \$2.75. Similar trimming on hats of like style, but higher quality, selling from \$28.50 to \$39.00 a dozen necessitated labor costs from \$1.65, \$2.75 and \$3.30 per dozen. Occasionally, buyers require variation from the standard trim for a given style, usually for small lots of a few dozen hats. In such instances, special piece work rates are contemporaneously agreed upon between the manufacturer and the head of the labor committee representing the employees who do the trimming. Whereas, the

labor contracts of the respondent are all graduated in accordance with price range classifications. Certain other manufacturers producing hats of more restricted quality variation have labor contracts with the unions which are fixed regardless of selling price. The respondent's business is almost exclusively with jobbers and "syndicates," representing numerous retail outlets and in the quantities customarily purchased there is no major variation in production costs by reason of the quantity involved in a particular order so far as the piece work labor is concerned. Hats are customarily packed in lots of three to the box.

PAR. 6. The largest customer of respondent is a syndicate maintaining in excess of two hundred millinery departments in stores located throughout the United States, many of said departments being competitive with other customers of Hollywood Hat Company, Inc.

PAR. 7. During the felt hat buying season, commencing about July 1, 1936, and extending through the fall of 1936, the respondent, Hollywood Hat Company, Inc., sold, in practically all instances, to its said largest customer suede hats, usually designated as assorted suede, at \$21.00 per dozen. Similarly assorted velours were, in practically all instances, sold to such customer at \$36.00 per dozen. Competitors of this largest customer, purchasers of much smaller volume, were sold assorted suede and assorted velour hats of the same style, grade and quality, at the same time, at prices of \$24.00 or \$27.00 per dozen for suede hats and at \$39.00 or \$42.00 per dozen for velour hats.

PAR. 8. Si Fish, Inc. is a corporation located in the State of California, engaged in the retail sale of millinery in competition with others engaged in similar business. It operates five retail stores in California. It employs a salaried buyer located in the city of New York who purchases millinery for its account. The salaried buyer representing Si Fish, Inc. likewise represents some 500 retail outlets and purchases approximately \$2,500,000 worth of millinery per year.

PAR. 9. In the cities where Si Fish, Inc., operates its several retail stores are located competitors who purchase millinery from the Hollywood Hat Company, Inc., respondent herein. Said competitors purchase frequently directly from the manufacturers and the respondent and otherwise.

PAR. 10. The respondent herein, Hollywood Hat Company, Inc., during the months of July and August employed a salesman in the State of California to sell its millinery. During the month of June 1936, the aforesaid sales representative of the respondent, Hollywood Hat Company, Inc., called upon Si Fish, Inc. in the State of California and offered to sell an assortment of style line #200 hats at

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\$27.00 a dozen. This sales representative was advised by Si Fish, Inc. that the same hat could be purchased by Si Fish, Inc. through its salaried buyer in New York for \$24.00 a dozen. Thereupon the salesman in California accepted an order for seven dozen assorted style line #200 hats at \$24.00 a dozen and advised the respondent herein that he had accepted the order at \$24.00 a dozen rather than at \$27.00 per dozen because of the statement made by Si Fish, Inc. Thereafter on July 3, 1936, Hollywood Hat Company, Inc. accepted the order at \$24.00 per dozen and so advised its salesman in Los Angeles by letter, stating also that "in order for me to fill the order at this price I will be compelled to use a cheaper price body. The reason I did not want to return this order is that I do not want to get in wrong with their New York office." And further advising that the salesman not tell Si Fish, Inc. of the substitution of a cheaper grade and quality than that shown which was priced in the sample line at \$27.00 per dozen. Replacement orders for style #200 hats were placed by Si Fish, Inc. through its salaried buyer in New York City and shipped on August 4 and August 27, 1936 as evidenced respectively by invoices A 2043, A 2342, and A 2343, all at a price of \$24.00 per dozen.

PAR. 11. In manufacturing straw hats, the respondent purchases an imported straw body known as Ballibuntl which is purchased by the respondent in assorted lots containing approximately 10% of the finest quality, grade 1, 40% each of intermediate grades, designated as 2 and 3, and 10% of the cheapest grade, designated as grade 4. The casual observer can detect little, if any, difference between grades 1 and 2 or 2 and 3 but there is a marked difference between grades 1 and 4. For practical economic reasons, the respondent separates the Ballibuntl bodies into two quality lines for which during the past season prices of \$25.50 and \$24.00 were charged, grades 1 and 2 being used in the hats sold for \$25.50 and grades 3 and 4 were consumed in the manufacture of the \$24.00 price line.

PAR. 12. During the month of March 1937 respondent, Hollywood Hat Company, Inc., sold a jobber in the city of Chicago assorted #100 line Ballibuntl hats at a price of \$25.50 per dozen and shipped, pursuant to the order for \$25.50 per dozen hats, Ballibuntl hats of the cheapest grade customarily sold by respondent for \$24.00 per dozen.

PAR. 13. Respondent's acts in the matters referred to in paragraphs 10 and 12 resulted in misleading its customers in that articles of millinery of a grade and quality inferior to that ordered were received. The difference between the \$27.00 per dozen grade of

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suede hats and the \$24.00 per dozen grade of similar merchandise is so slight as not to be readily discernible by the average retailer unless samples of each grade are at the same time available for comparison.

PAR. 14. The Commission concludes that the aforesaid acts and practices of the respondent, Hollywood Hat 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."

PAR. 15. The Commission concludes that the price discriminations found in paragraph 7 were not justified by reason of differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities were to such purchasers sold or delivered, nor justified by any other exception or proviso contained in Section 2 of the Clayton Act as amended. The Commission further concludes that the effect of such discrimination may be to injure, destroy or prevent competition with such customers who receive the benefit of the said discrimination. The Commission, therefore, finds that the said discriminations were and are in violation of Section 2 of said Clayton Act as amended by the Robinson-Patman Act.

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 filed herein on July 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 conclusions, which findings and conclusions are hereby made a part hereof, 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," and also violated the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended;

It is ordered, That the respondent, Hollywood Hat Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of hats in interstate commerce or in the District of Columbia, do forthwith cease and desist

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from, selling, shipping, and invoicing millinery of a grade and quality different from the goods ordered, unless the buyer is advised of such difference.

It is further ordered, That the respondent, Hollywood Hat Company, Inc., its officers, representatives, agents, and employees, do forthwith cease and desist from the unlawful discriminations in price found in paragraph 7 of the aforesaid findings as to the facts and conclusions.

It is further ordered, That the respondent, Hollywood Hat Company, Inc., its officers, representatives, agents, and employees cease and desist from engaging in any similar discrimination in price in sales in interstate commerce under substantially like circumstances and conditions between purchasers competitively engaged with one another in the resale of suede hats of like assortment, style, grade and quality.

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

IN THE MATTER OF
BIDDLE PURCHASING COMPANY, ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. C OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3032. Complaint, Jan. 13, 1937—Decision, July 17, 1937

Where manufacturers, processors, and producers engaged in sale of commodities, in course of interstate commerce, to distributing concerns and buyers of such commodities in course of such commerce, through orders placed with it in behalf of such buyers by a purchasing agency engaged in (1) sale under contract of a market information service to over 2,400 distributing concerns scattered over the United States, and consisting principally of wholesalers of groceries, drugs, hardware, plumbing, automobile and electrical supplies, lumber, stationery, and other general merchandise, and in (2) providing, under said contract as interpreted, optional purchasing service for its contracting buyers under which service by it, if any, to seller was incidental, seller shipped direct to buyer in response to order placed with such purchasing agency by buyer, buyers rendered no service to sellers or to agency which, as agent and representative of buyer and subject to his control, received and accepted, for use of and payment over to buyer, in its entirety, such brokerage, with result that such payments, in effect, were actually made from seller to buyer, and latter received a discount in price equivalent to brokerage fee paid, and such buyers secured a lower price on commodities thus purchased than others, not members of such purchasing organization, received, on similar goods in like quantity bought direct from such sellers; in pursuance of a general plan and scheme whereby fees and commissions paid by sellers were made available to and transmitted to buyer—

(a) Payed fees and commissions as brokerage on the sale of commodities to various distributing concerns and buyers engaged in purchase of commodities in course of interstate commerce, with knowledge of the fact that such fees were intended to be and were being paid over to such buyers by aforesaid purchasing company, as above set forth; and

Where distributing concerns engaged in sale of commodities in course of interstate commerce, and purchasers of the market information service and purchasing service of the purchasing company or agency hereinabove described—

(b) Received and accepted fees and commissions paid as brokerage by such various sellers, as hereinabove set forth, in connection with purchase of commodities by such buyers through such purchasing agency; and

Where such purchasing agency, as hereinabove set forth, as instrumentality and means through which such sellers unlawfully were enabled to make payment of such fees and commissions as brokerage to such buyers and latter were enabled to receive and accept same—

(c) Received such fees and commissions as brokerage from aforesaid sellers; and

(d) Transmitted and paid over same to aforesaid buyers:

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Complaint

Held, That such acts and practices constituted a violation of Subsection C of Section 2 of Act of Congress approved Oct. 15, 1914, as amended.

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

Mr. Allen C. Phelps and *Mr. A. W. Chapman* for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., and *Mr. Samuel J. Rawak*, of New York City (with whom also appeared, for various respondents, counsel as hereinbelow set forth), for Biddle Purchasing Co. and nine other respondents.

Kaufman & Weitzner, of New York City (with whom also appeared counsel as hereinbelow set forth), along with aforesaid firm and said *Samuel J. Rawak*, for said Biddle Purchasing Co. and eight other respondents.

Mr. Milton Lowenfsh, of New York City, along with aforesaid firm and said *Samuel J. Rawak*, for Middendorf & Rohrs.

Mr. Louis D. Schwartz, of New York City, along with aforesaid firm, *Mr. Samuel J. Rawak*, and *Kaufman & Weitzner*, for Colonial Molasses Co., Inc.

Tenney, Harding, Sherman & Rogers, of Chicago, Ill., for Albert Dickinson Co.

Mr. Erwin C. Easton, of San Francisco, Calif., for Cava Packing Co.

Milling, Godchaux, Saal & Milling, of New Orleans, La., for Godchaux Sugars, Inc.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as amended by an Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," the Federal Trade Commission, having reason to believe that the respondents named above in the caption hereof and hereinafter more particularly designated and described, have violated, and are now violating, the provisions of Subsection (c) of Section 2 of said act as amended, hereby issues its complaint against the said respondents, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Biddle Purchasing Company, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 107 Chambers Street in the city and State of New York.

PAR. 2. Respondent, General Grocer Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and principal place of business located at 301 South Eighth Street, in the city of St. Louis, State of Missouri. Respondent, Smart & Final Co., Ltd., is a corporation organized and existing under and by virtue of the laws of the State of California, with an office and principal place of business located at 315 Marine Avenue, in the city of Wilmington, State of California. Respondent, The Eavey Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with an office and principal place of business located at Detroit and Third Streets, in the city of Xenia, State of Ohio. Respondent, Michigan Trading Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with an office and principal place of business located at 140 Twelfth Street, in the city of Detroit, State of Michigan. Respondent, C. G. Meaker Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 139 Wall Street in the city of Auburn, State of New York. Respondent, Midden-dorf & Rohrs, is a copartnership composed of Peter Rohrs and John Rohrs, with an office and principal place of business located at 3 Little West Twelfth Street in the city and State of New York. Respondent, Koll Grocer Company, is a corporation organized and existing under and by virtue of the laws of the State of Kentucky, with an office and principal place of business located in the city of Owensboro, State of Kentucky.

PAR. 3. Respondent, Dannemiller Coffee Company, is an importing corporation organized and existing under and by virtue of the laws of the State of New York with an office and principal place of business located at 116 39th Street, in the city of Brooklyn, State of New York. Respondent, Colonial Molasses Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 616 Kent Avenue, in the city of Brooklyn, State of New York. Respondent, Albert Dickinson Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 2750 West 35th Street, in the city of Chicago, State of Illinois. Respondent, Ervin A. Rice Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 2230 South LaSalle Street, in the city of Chicago, State of Illinois. Respondent, Cava Packing Company, is a corporation organized and existing under and by virtue

of the laws of the State of California, with an office and principal place of business located in the city of Salinas, State of California. Respondent, Godchaux Sugars, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Louisiana, with an office and principal place of business located at Masonic Temple Building in the city of New Orleans, State of Louisiana.

PAR. 4. Said respondent, Biddle Purchasing Company, is engaged in the business of providing market information and purchasing services for numerous and divers wholesalers, jobbers, merchants, and dealers located in the several States of the United States, certain of whom are named in paragraph 2 above and joined as respondents herein, and being hereinafter more particularly described and referred to for convenience as respondent buyers. Said respondent, Biddle Purchasing Company, in the course and conduct of its business, as aforesaid, pursues a policy and practice of purchasing commodities, particularly foodstuffs, for the wholesalers, jobbers, merchants, and dealers above referred to, from numerous and divers manufacturers, processors, importers, and producers, located in the several States of the United States, certain of whom are named in paragraph 3 above and joined as respondents herein, and being hereinafter more particularly described and referred to for convenience as respondent sellers. In the course and conduct of its business, as aforesaid, said respondent, Biddle Purchasing Company, represents and acts for or on behalf of said respondent buyers and the other buyers above mentioned generally and as a group or class engaged in common practices, and specifically for each and every named respondent buyer, in the purchase of commodities, which are transported between and among the several States, whenever specifically requested so to do, and in the manner and form specified, directed, and ordered by said respondent buyers, and such other buyers acting individually.

PAR. 5. That said respondent buyers named in paragraph 2 above are each engaged in the business of buying commodities usually from sellers located in States other than the State in which such buyers are located and of reselling such commodities to their customers.

Said respondent buyers are fairly typical and representative members of a large group or class of wholesalers, jobbers, merchants, and dealers all of whom have by contract subscribed to the market and buying service furnished by respondent Biddle Purchasing Company. Said group or class embraces approximately 2,400 of such dealers and is so numerous as to make it impracticable to specifically name each and every one of them as respondents herein or to bring them before the Commission in this proceeding. All of said buyers are or

have been engaged in similar practices to those hereinafter charged against the respondent buyers.

PAR. 6. Said respondent sellers named in paragraph 3 above are each engaged in the business of selling commodities usually to buyers located in States other than the State in which said sellers are respectively located. Said respondent sellers are fairly typical and representative members of a large group or class of manufacturers, processors, importers, and producers, engaged in the common practice of selling some of their commodities, in interstate commerce, through respondent Biddle Purchasing Company, to said respondent buyers and other buyers of the above class or group who use the purchasing services of said respondent Biddle Purchasing Company. Said group or class of said sellers comprises a large number of such manufacturers, processors, importers, and producers and are too numerous to be individually named herein as respondents.

PAR. 7. Respondent Biddle Purchasing Company, in the course and conduct of its said business, receives orders to purchase commodities, particularly groceries and foodstuffs, from members of said group of buyers, including respondent buyers, located in the various States of the United States, and transmits such orders to and executes the same with members of said group of sellers, including respondent sellers, who in most cases are located in States of the United States other than the State in which such buyer or buyers are located. As a result of the transmission of said orders by such buyers to respondent Biddle Purchasing Company, the execution of the same by said respondent at the instance and request of said buyer or buyers, and the acceptance of said orders by said sellers or one or more of them, goods, wares and merchandise particularly foodstuffs, are in the case of each order and in a continuous succession of such orders sold and delivered by one or more of the said sellers to one or more of the said buyers. By such means and in the manner stated all of the respondents cause to be transported from one State to another goods and commodities to be resold to the buyers' customers or to consumers. In the operations and activities referred to, each and every one of the respondents is engaged in interstate commerce, in practices which contemplate and result in the transportation of commodities in interstate commerce and in making sales and purchases which directly affect and bring about such commerce.

PAR. 8. In the course of the buying and selling transactions hereinabove referred to, resulting in the delivery of commodities from one or more of the said sellers to one or more of the said buyers, by means of the purchasing services of respondent Biddle Purchasing

Company, as agent for said buyers, said sellers have transmitted and do transmit, pay to and deliver to said respondent Biddle Purchasing Company, a so-called brokerage fee or commission, the amount of which varies, but which is usually between one and five per cent of the quoted sale price agreed upon by buyer and seller. Said respondent Biddle Purchasing Company has and does receive such fees and commissions for the use and benefit of said buyers and has transmitted and does transmit and pay over said fees or commissions to said buyers, in the amount and to the extent to which such fees or commissions are received by it, such payments to the individual buyer being the amount paid by the individual seller in the given transaction to which such buyer is a party.

PAR. 9. In all of said transactions respondent Biddle Purchasing Company is the agent and representative of said buyers, acting for them and in their behalf and under their direct control. In fact, such so-called brokerage fees or commissions are not transmitted by said sellers to respondent Biddle Purchasing Company nor are the same received, held or retained by said Biddle Purchasing Company as payment for any services rendered by said respondent Biddle Purchasing Company to said sellers, but on the contrary such fees and commissions are so paid and received for the use of said buyers. In fact such fees or commissions are not paid to said buyers by respondent Biddle Purchasing Company as compensation for any services rendered to it by said buyers. The payment of said fees or commissions by said sellers to said buyers through the intermediary respondent Biddle Purchasing Company and the receipt and acceptance of such fees and commissions by said buyers from said sellers, through said intermediary, in the manner and under the circumstances hereinabove set forth, is in violation of the provisions of section 2, subsection (C) of the act described in the preamble hereof. The receipt of said fees and commissions by respondent Biddle Purchasing Company from said sellers and the acceptance thereof for the benefit of said buyers, and the transmission of and payment of the same by respondent Biddle Purchasing Company to said buyers is in violation of the terms of said statute.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies,

and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," the Federal Trade Commission on January 13, 1937, issued and served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violating the provisions of subsection C of section 2 of the said act as amended. 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 and Albert W. Chapman, Attorneys 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 Davies, Richberg, Beebe, Busick & Richardson and Samuel J. Rawak, attorneys for all of the above named respondents except respondents Dannemiller Coffee Company, Albert Dickinson Company, Cava Packing Co., and Godchaux Sugars, Inc., and by Tenney, Harding, Sherman & Rogers, Attorneys for respondent Albert Dickinson Company, Erwin C. Easton, Attorney for respondent Cava Packing Co., Milling, Godchaux, Sall & Milling, Attorneys for respondent Godchaux, Sugars, Inc.; and said testimony and other evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and 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 Biddle Purchasing Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 107 Chambers Street in the city and State of New York.

PAR. 2. Respondent, General Grocer Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and principal place of business located at 301 South Eighth Street, in the city of St. Louis, State of Missouri. Respondent, Smart & Final Co., Ltd., is a corporation organized and existing under and by virtue of the laws of the State of California, with an office and principal place of business located at 315 Marine

Avenue, in the city of Wilmington, State of California. Respondent, the Eavey Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with an office and principal place of business located at Detroit and Third Streets, in the city of Xenia, State of Ohio. Respondent, Michigan Trading Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with an office and principal place of business located at 140 Twelfth Street, in the city of Detroit, State of Michigan. Respondent, C. G. Meaker Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 139 Wall Street in the city of Auburn, State of New York. Respondent, Middendorf & Rohrs, is a copartnership composed of Peter Rohrs and John Rohrs, with an office and principal place of business located at 3 Little West Twelfth Street in the city and State of New York. Respondent, Koll Grocery Company, is a corporation organized and existing under and by virtue of the laws of the State of Kentucky, with an office and principal place of business located in the city of Owensboro, State of Kentucky.

PAR. 3. Respondent, Dannemiller Coffee Company, is an importing corporation organized and existing under and by virtue of the laws of the State of New York with an office and principal place of business located at 116 39th Street, in the city of Brooklyn, State of New York. Respondent, Colonial Molasses Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 616 Kent Avenue, in the city of Brooklyn, State of New York. Respondent, Albert Dickinson Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 2750 West 35th Street, in the city of Chicago, State of Illinois. Respondent, Ervin A. Rice Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with an office and principal place of business located at 2230 South LaSalle Street, in the city of Chicago, State of Illinois. Respondent, Cava Packing Company, is a corporation organized and existing under and by virtue of the laws of the State of California, with an office and principal place of business located in the city of Salinas, State of California. Respondent, Godchaux Sugars, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Louisiana, with an office and principal place of

business located at Masonic Temple Building in the city of New Orleans, State of Louisiana.

PAR. 4. Respondent Biddle Purchasing Company is engaged in the business of selling a market information service and also purchasing services to over 2,400 distributing concerns scattered over the United States, who are principally wholesalers of groceries, drugs, hardware, plumbing, automobile and electrical supplies, lumber, stationery, and other general merchandise. These distributing concerns are located in 744 cities in every State of the United States, except Nevada, and in Hawaii, Canada, and the District of Columbia. Respondents named in paragraph 2 hereof are among the distributing concerns purchasing the market information service and the purchasing services of respondent Biddle Purchasing Company and they are representative members of the entire group, insofar as the practices charged in the complaint are concerned. This group will hereafter be referred to as buyers. In making available and providing its purchasing services to the said buyers, the Biddle Purchasing Company agrees to and does purchase merchandise for said buyers from more than 5,000 individual manufacturers, processors, importers, or producers who are scattered over the United States. Respondent manufacturers, processors, and producers named in paragraph 3 hereof are representative of this entire group, all of whom in making sales to the buyers above mentioned through respondent Biddle Purchasing Company use the same methods as the named respondents. This group will hereafter be referred to as sellers.

PAR. 5. Respondent sellers are engaged in selling commodities in the course of interstate commerce. Respondent buyers are engaged in purchasing commodities in the course of interstate commerce. Respondent Biddle Purchasing Company transmits orders for merchandise from respondent buyers to respondent sellers, as a result of which commodities are shipped from sellers to buyers usually from one State to another. All of said respondents are engaged in interstate commerce in participating in the commercial transactions hereafter more specifically described.

PAR. 6. Respondent Biddle Purchasing Company is an 1893 New Jersey corporation, successor to a company formed in 1879. It has branch offices in Meridian, Miss., Chicago, Ill., Pittsburgh, Pa., Baltimore, Md., San Francisco, Calif., and Seattle, Wash. It has a force of from five to ten salesmen who habitually travel throughout the United States and parts of Canada and Hawaii to solicit distributing concerns to purchase the Biddle market information service and purchasing services. These men at times also contact manufacturers

and processors. It also has thirty-two buyers and twenty-five assistant buyers who place orders for the Biddle subscribers and who contact manufacturers, processors, and producers on behalf of Biddle clients. Respondent Biddle Purchasing Company often examines and tests the wares of such manufacturers and producers and get descriptions of goods and prices, which information is sent to the Biddle subscribers. It sends bulletins, surveys, forecasts, tables, charts, and cards to subscribers, to keep them posted on general market conditions and on the merchandise which can be purchased by them. Bulletins go weekly or twice a week from New York, Chicago, San Francisco, Meridian, and Seattle and seasonally from Baltimore, giving prices and all data requisite on hundreds of items offered. It also supplies subscribers in some of its lines with indexed wooden trays in which to keep for ready reference the price cards, revisions of which it sends in constantly. It is in a favorable position to furnish accurate, constant, regular and reliable market information service. It handles, through its buying operations, the goods upon which it reports to its clients. Among its employees are specialists who have devoted many years to their respective lines of merchandise and who are in constant contact with the markets in performing their duties with said respondent.

PAR. 7. The Biddle Purchasing Company subscribers severally employ Biddle at a stipulated monthly sum ranging from \$50.00 to \$25.00 or under. This employment is evidenced by a contract between Biddle and the subscriber which is in the following form:

The Undersigned hereby employs BIDDLE PURCHASING COMPANY OF NEW YORK, to purchase such material as they may order from time to time, with reasonable credit limits, and agree to pay BIDDLE PURCHASING CO., for such services.....dollars per month from..... for twelve months. This arrangement will continue thereafter at the same monthly rate until thirty days' written notice is given by either party to the other of desire to discontinue.

THE BIDDLE PURCHASING CO., will issue frequent Bulletins or other mediums reporting price changes, quotations and such market information as may seem advisable.

Signed.....
 By.....
 Making Address.....

Accepted:
 BIDDLE PURCHASING COMPANY;
 By.....
 Date.....

No subscriber has any exclusive right to the Biddle services, but they are sold to any wholesaler who wants them, subject only to the requirement that we have good credit rating. The Biddle services

are quite often bought by several dealers in the same line in the same town. Biddle yearly buys for its subscribers from said sellers several million dollars worth of commodities for resale by the buyers and as a result of said purchases such merchandise is shipped and transported from the State in which the same is located when the order is placed into and through other States of the United States, where they are delivered to purchasers who are Biddle subscribers. Biddle receives daily from its subscribers from 1,000 to 1,500 orders. When a subscriber forwards an order to Biddle, usually at a specified price, Biddle transmits the order to the seller. The seller ships the product direct to the buyer, in most cases billing the buyer at the price specified in the order. The buyer in most cases makes payment direct to the seller. The seller then sends Biddle a commission or brokerage on the transaction and Biddle pays this to the buyer or credits it to his account. If a buyer fails to name the purchase price, he expects to get the last price quoted by Biddle in its bulletins, or a lower price. If Biddle finds that the market has advanced he communicates with the buyer and confirms the order at the new price before transmitting it to the seller. The buyer in some cases names the seller whose products are wanted, but in some cases he relies upon Biddle to transmit the order to some producer who will supply goods of the quality and standard required.

PAR. 8. All respondent sellers have made sales of commodities in interstate commerce through Biddle Purchasing Company to respondent buyers and other Biddle buyers and have paid brokerage fees on such transactions to respondent Biddle Purchasing Company, which brokerage fees were later paid over or credited by respondent Biddle Purchasing Company to the particular respondent buyer or other buyer. Respondent Dannemiller Coffee Company, after some correspondence in August 1936, discontinued the practice of paying the Biddle Purchasing Company brokerage on sales made to the Biddle buyers through the Biddle Purchasing Company. Respondent Albert Dickinson Company has secured Biddle Purchasing Company's promise to refund brokerage fees if the law is construed to make it illegal for it to pay such fees to Biddle. Respondent Godchaux Sugars, Inc. stopped selling sugar through the Biddle Purchasing Company early in August 1936. All of the respondent sellers at the time of payment of brokerage fees to respondent Biddle Purchasing Company had knowledge of the fact that the Biddle Purchasing Company paid such fees over to the buyer placing the order and to whom the goods were shipped.

PAR. 9. The sellers from whom respondent Biddle Purchasing Company buys for its clients pay to Biddle brokerage fees at the

same rate that they pay other brokers who sell goods for them. This rate ranges from 1 to 5% usually. It is a matter of common knowledge in the trade that the Biddle Purchasing Company receives these fees for the use of its subscribers and pays them over in their entirety to the buyers. Respondent Biddle Purchasing Company receives and accepts these brokerage fees for the use and benefit of its subscribers and does not claim any right, title, or interest in such fees. The buyers receive and accept these brokerage fees from respondent Biddle Purchasing Company and know that they are to receive them at the time they place orders for merchandise for execution by Biddle. The Biddle buyers, by reason of the fact that they receive the brokerage fees paid to Biddle, get a lower price on commodities purchased through Biddle from the sellers than other buyers who are not members of the Biddle organizations get on similar goods in like quantity bought direct from said sellers.

PAR. 10. In all of the purchasing transactions which the respondent Biddle Purchasing Company executes for its buyers, the Biddle Company is the agent and representative of the buyer, and acts in fact for such buyer and in his behalf, and is subject to his control, insofar as such purchasing transaction is concerned. Said respondent Biddle Purchasing Company in such purchasing transactions is neither the agent nor representative of the seller nor does it act for or in behalf or is it under the control of such seller. Such services as respondent Biddle Purchasing Company may render to the seller in selling his commodities are incidental to the particular purchase and sale transaction, and if any services are so rendered by Biddle in connection with the sale or purchase of such commodities, such services are donated by the Biddle company to the seller. There is not, in fact, any payment of brokerage commissions made by any of respondent sellers to respondent Biddle Purchasing Company, which is not intended for the buyer and which does not reach the buyer. Such brokerage commissions, being intended for the buyers, are not in fact paid in satisfaction of any contractual or other indebtedness due from the seller to respondent Biddle Purchasing Company for services rendered, or otherwise. These payments, in effect, are actually made from the seller to the buyer and the buyer receives a discount in price equivalent to the brokerage fees paid to him. Respondent buyers render no service to respondent sellers in connection with the purchase of commodities through respondent Biddle Purchasing Company. Respondent buyers render no service to respondent Biddle Purchasing Company in connection with the purchase of goods, wares and merchandise made for them by said respondent Biddle Purchasing Company.

PAR. 11. The contract between respondent Biddle Purchasing Company and its subscribers is construed by the parties thereto as being a contract for the sale and purchase of the Biddle market information service with a privilege extended to the buyers of using the Biddle purchasing services at their option. The buyers pay the monthly fee stipulated in the contract for the market information service. The buyers exercise their option to use the Biddle Purchasing Company's purchasing services in order to secure a discount in price from the current marketing price and the buyers when purchasing commodities through Biddle compute the net price at which the purchase is made as being the quoted price less the fee or commission paid by the seller as brokerage to Biddle and by Biddle transmitted to them. The buyers, in their bookkeeping, do not treat the brokerage fees and commissions received from respondent Biddle Purchasing Company as being an offset to the monthly fee paid by them to Biddle. The amount of the monthly fee paid by the buyers to Biddle is fixed at the time the contract is made, but the amount of the brokerage fees and commissions which may be received by a given buyer from the utilization of the Biddle purchasing services is unknown and incapable of ascertainment at the time the contract is entered into.

PAR. 12. All payments of brokerage fees made by respondents as hereinabove set forth are made as a part of a general plan or scheme which contemplates and results in payment of brokerage fees from the seller to the buyer through the respondent Biddle Purchasing Company, and which enables the buyers to secure discounts in price from the sellers under the guise of brokerage payments.

CONCLUSION

The Commission concludes that respondents Dannemiller Coffee Company, Colonial Molasses Company, Inc., Albert Dickinson Company, Ervin A. Rice Company, Cava Packing Company and Godchaux Sugars, Inc., have violated and are violating Subsection C, Section 2 of the Clayton Act as amended, by paying fees and commissions as brokerage to respondent Biddle Purchasing Company in the sale of commodities to respondent buyers and other buyers, with knowledge of the fact that such fees and commissions were and are intended to be and were and are being paid over by said respondent Biddle Purchasing Company to said buyers.

The Commission further concludes that respondents General Grocer Company, Smart & Final Company, Ltd., The Eavey Company, Michigan Trading Corporation, C. G. Meaker Company, Inc., Mid-

dendorf & Rohrs and Koll Grocery Company have violated and are violating the provisions of subsection C, section 2 of said statute, by receiving and accepting fees and commissions paid as brokerage by said respondent sellers and other sellers, in connection with the purchase of commodities by said buyers through respondent Biddle Purchasing Company.

The Commission further concludes that respondent Biddle Purchasing Company has violated and is violating the provisions of subsection C, section 2 of said statute, by receiving such fees and commissions as brokerage from respondent sellers and transmitting and paying over the same to respondent buyers; further, that said respondent Biddle Purchasing Company is the instrumentality and means by which respondent sellers unlawfully are enabled to make payment of such fees and commissions as brokerage to respondent buyers, and by which respondent buyers are enabled to receive and accept the same.

The Commission further concludes that the violations of said statute referred to are in pursuance of a general plan and scheme whereby fees and commissions paid by the sellers are made available to and transmitted to the buyers.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of all of the 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, briefs filed herein and oral arguments by Allen C. Phelps, counsel for the Commission, and by Davies, Richberg, Beebe, Busick & Richardson and Samuel J. Rawak, counsel for respondents Biddle Purchasing Company, Colonial Molasses Company, Inc., and Ervin A. Rice Co., General Grocer Co., Smart & Final Co., Ltd., The Eavey Co., Michigan Trading Corporation, C. G. Meaker Co., Inc., Koll Grocery Company, Inc., and Middendorf & Rohrs, and Erwin C. Easton, counsel for respondent Cava Packing Company, 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 as approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes."

It is ordered, That respondents Dannemiller Coffee Company, Colonial Molasses Co. Inc., Albert Dickinson Company, Ervin A. Rice Co., Cava Packing Company and Godchaux Sugars, Inc., and their officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of commodities in interstate commerce or in the District of Columbia, do forthwith cease and desist from paying or granting to respondent Biddle Purchasing Company any fee or commission on sales of commodities, as brokerage or as an allowance in lieu thereof, which fee or commission is intended to be paid over or which is in fact subsequently to be paid over, in whole or in part, by said respondent Biddle Purchasing Company to any purchaser of such commodities.

It is further ordered, That respondents General Grocer Company, Smart & Final Company, Ltd., The Eavey Co., Michigan Trading Corporation, C. G. Meaker Co., Inc., Middendorf & Rohrs and Koll Grocery Company, and their officers, representatives, agents, and employees, in connection with the purchase of commodities in interstate commerce or in the District of Columbia, do forthwith cease and desist from accepting or receiving from respondent Biddle Purchasing Company any fee or commission which has been paid or granted to said Biddle Purchasing Company, as brokerage or as an allowance in lieu thereof, by a seller of commodities on sales made by such seller to said respondents.

It is further ordered, That respondent Biddle Purchasing Company, its officers, representatives, agents, and employees, in connection with the purchase or sale of commodities in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Receiving or accepting any fee or commission, as brokerage or as an allowance in lieu thereof, from any seller of commodities, which fee or commission is intended to be paid over to the purchaser of such commodities, or which is to be applied for the use and benefit of such purchaser;

2. Paying or granting to any purchaser of commodities any fee or commission received or accepted by said Biddle Purchasing Company, as brokerage or an allowance in lieu thereof, from the seller of such commodities.

It is further ordered, That the respondents and each of them shall within 90 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
EASTERN PHARMACAL 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 2948. Complaint, Oct. 16, 1936—Decision, July 19, 1937

Where a corporation engaged in distribution and sale of a certain liquid pharmaceutical product, in substantial competition with others engaged in distribution and sale of acetyl salicylic acid products, such as aspirin, in commerce among the various States and in the District of Columbia, and including among such competitors those who make, sell and distribute acetyl salicylic acid products, such as aspirin, as above set forth, without in any wise misrepresenting the composition, nature, quality, or effectiveness of their products—

Made use of name "Aspiral" in designating its said product in advertising literature of various types circulated to prospective purchasers, and featured said name on the cartons in which its said product was displayed for sale to purchasing public, and set forth in its advertising literature that its said "Elixir Aspiral offers the better way of prescribing aspirin," facts being its said "Aspiral" was neither true acetyl salicylic acid nor aspirin, as commonly designated and long, well, and favorably known to drug trade and to purchasing public as meaning acetyl salicylic acid preparation of recognized merit and value;

With capacity and tendency to mislead and deceive substantial number of purchasing public into erroneous and mistaken belief that said product was aspirin and designed and intended for treatment of same ills and conditions as aspirin, and that it contained all ingredients contained in aspirin, and with effect of causing a substantial volume of such public to buy substantial volume of its said product on account of such belief, and of causing an unfair diversion of trade from, and otherwise substantially injuring, competitors in commerce:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Morton Nesmith for the Commission.

Mr. George H. Rosen, of New York City, and *Mr. Isaac Silberman*, of Monticello, 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 Eastern Pharmacal Company, Inc., hereinafter referred to as respondent, has been and now is using unfair methods of competition in com-

merce 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, Eastern Pharmacal Company, 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 at 151 Ludlow Street, Yonkers, N. Y. Respondent is now, and has been for some time, engaged in the business of distributing and selling, in commerce as herein set out, a certain product designated by it as "Aspiral." It causes said product, when sold, to be transported from its principal place of business in the State of New York to purchasers thereof located at various points in other States of the United States and in the District of Columbia. It has, at all times since its incorporation, maintained a constant current of trade in the product distributed and sold by it, in commerce among and between the various States of the United States and in the District of Columbia. In the course and conduct of its business, it is now, and has been, in substantial competition with other corporations and with firms and individuals 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. 2. In the course and operation of its business, and for the purpose of inducing individuals, firms, and corporations to purchase said "Aspiral," respondent has caused advertising literature of various types to be circulated, through the United States mails and through other means, to prospective purchasers of its product. In said advertising literature, the product is designated by the respondent as "Aspiral" and the following statement is also used:

Elixir Aspiral offers the better way of prescribing aspirin.

On the cartons in which said product is displayed for sale to the purchasing public, the product is also designated by the name "Aspiral" appearing in large and conspicuous letters. The statement, hereinabove set out, appearing in respondent's advertising matter, together with the respondent's use of the name "Aspiral" to designate its product, and other similar statements and designations, serve as representations on the part of the respondent to the effect that the product designated by it as "Aspiral" is in fact aspirin, or the same as aspirin, and is designed and intended for similar usage.

Complaint

PAR. 3. For a number of years, various competitors of the respondent have been manufacturing, distributing, and selling a certain pharmaceutical preparation, acetyl salicylic acid, commonly designated as aspirin. Through use, over a period of many years, this product has become well and favorably known to the drug trade and to the purchasing public under the designation aspirin. It has been, and now is, generally used in the treatment of certain ills and conditions of the human body and in relieving the pain attendant to certain ills and conditions of the human body. The word "aspirin," when used in connection with pharmaceutical preparations, means, and the public well understands it to mean, that the product being referred to is an acetyl salicylic acid preparation and is of recognized merit, as herein detailed.

PAR. 4. The representations made by the respondent with respect to the nature of its product are false, misleading, and untrue. In truth and in fact, respondent's product, designated by it as "Aspiral," is not an acetyl salicylic acid product, is not the same as aspirin and is not designed and intended for all of the usages for which aspirin may be used.

PAR. 5. The use by the respondent of the statements and representation, hereinabove set out, and the use of the designation "Aspiral" to describe its product, have the capacity and tendency to, and do, mislead and deceive the purchasing public into the erroneous and mistaken belief that said product is aspirin and is designed and intended for the treatment of the same ills and conditions of the human body as aspirin and that said product contains all of the ingredients contained in aspirin. Acting in said beliefs, induced as aforesaid, a substantial portion of the purchasing public has purchased a substantial volume of respondent's product on account of such beliefs. As a result thereof, trade is unfairly diverted to the respondent from competitors engaged in the distribution and sale of acetyl salicylic acid products, commonly designated as aspirin, who truthfully advertise and represent the nature and effectiveness of said products. In consequence thereof, injury has been, and is now being, done by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and 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 issued and served its complaint upon the respondent herein, Eastern Pharmacal Company, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and having filed its answer herein did on the 21st day of June 1937, the date set for hearing, execute its motion to withdraw said answer and file a consent answer attached to said motion waiving hearing on the charges set forth in the complaint and consenting that without further evidence or other intervening procedure the Commission may issue and serve upon it findings as to the facts and conclusion drawn therefrom, and an order to cease and desist from the violations of law charged in the complaint. Contemporaneously respondent entered into a stipulation as to the facts which stipulation was dictated into the record. All of this was done, of course, subject to the approval of the Commission:

And, thereupon, this proceeding came on for final hearing and the respondent having waived the filing of briefs and oral argument herein before the Commission, and the Commission having approved and accepted said stipulation as to the facts and having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Eastern Pharmacal Company, Inc., was incorporated under and by virtue of the laws of the State of New York in 1931. Its principal office and place of business is located at 1 Herriot Street, Yonkers, N. Y. The respondent is now and has been for some time engaged in the business of distributing and selling in commerce a certain pharmaceutical product designated by it as “Aspiral.” This product has been and is now sold and transported by the respondent in substantial quantities in commerce among and between the several States of the United States and in the Dis-

trict of Columbia. It has at all times since its incorporation maintained and still maintains a constant current of trade in "Aspiral" in commerce among and between the various States of the United States and in the District of Columbia. The respondent sells its product designated as "Aspiral" in substantial competition with other corporations, firms, and individuals 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. 2. In the course and operation of its business, and for the purpose of inducing individuals, firms, and corporations to purchase said "Aspiral," respondent has caused advertising literature of various types to be circulated through the United States mails and through other means to prospective purchasers of this product. In this advertising literature the product is designated by the respondent as "Aspiral," and the following statement was also used in literature accompanying or descriptive of the product:

Elixir Aspiral offers the better way of prescribing aspirin.

This statement, however, was discontinued in respondent's advertising in June 1936. On the cartons in which respondent's product is displayed for sale to the purchasing public, appears the name "Aspiral" in large and conspicuous type.

PAR. 3. For a number of years there have been many persons, firms, and corporations, competitors of the respondent, who have manufactured, distributed, and sold a certain pharmaceutical preparation known as acetyl salicylic acid, commonly designated as aspirin. Through use over a period of many years, this product has become well and favorably known to the drug trade and to the purchasing public under the designation "Aspirin." Aspirin has been and is now generally used in the treatment of certain ills and conditions of the human body for relieving the pain attendant to said ills and conditions of the human body. The word "Aspirin" when used in connection with pharmaceutical preparations means, and the public well understands it to mean, that the product being referred to is an acetyl salicylic acid preparation and is of recognized merit and value.

PAR. 4. Respondent's product "Aspiral" is sold only in liquid form, and although pure acetyl salicylic acid may have been used in its preparation, nevertheless, when this acid was mixed with the liquid vehicle the acetyl salicylic acid was broken up into free salicylic acid, a sodium aspirin, sodium salicylate acetic, and sodium acetate, the result being that after this break-down less than 50 percent true acetyl salicylic acid remained. In truth and in fact the respondent's product

designated by it as "Aspiral" is neither true acetyl salicylic acid nor aspirin, and the use by the respondent of the name "Aspiral" together with the representation that "Elixir Aspiral offers the better way of prescribing aspirin" has the capacity and tendency to mislead and deceive a substantial number of the purchasing public into the erroneous or mistaken belief that said product is aspirin and is designed and intended for the treatment of the same ills and conditions of the human body as aspirin and that said product contains all the ingredients contained in aspirin, and has caused a substantial portion of the purchasing public to purchase a substantial volume of respondent's product on account of such belief.

PAR. 5. There are among the competitors of the respondent many persons, firms, and corporations who manufacture, sell, and distribute 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, who in no wise misrepresent the composition, nature, quality, or effectiveness of their products.

PAR. 6. The designation by the respondent of its product as "Aspiral" and the representation by it that "Elixir Aspiral offers the better way of prescribing aspirin" are misleading and untrue and have caused an unfair diversion of trade from, and otherwise substantially injured, competitors of respondent in commerce.

CONCLUSION

The acts and practices of the respondent are all 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding coming on for final hearing by the Federal Trade Commission upon the record, including the complaint of the Commission, the answer of the respondent admitting all of the material allegations to be true, and waiving the taking of further evidence and of other intervening procedure, and a stipulation as to the facts, and the Commission having made its findings as to the facts and conclusion that said respondent, Eastern Pharmacal Company, 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.”

It is now ordered, That the respondent, Eastern Pharmacal Company, Inc., a corporation, its officers, representatives, agents, and employees in connection with the offering for sale, sale, and distribution in interstate commerce and in the District of Columbia of its pharmaceutical preparation known as “Aspiral” forthwith cease and desist from:

Using the name “Aspiral” or any word or words containing the letters “Aspir” as a trade name or designation for its product unless said product is aspirin or acetyl salicylic acid at the time of its sale.

It is further ordered, That the respondent, Eastern Pharmacal Company, Inc., a corporation, its officers, representatives, agents, and other employees, in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia of its pharmaceutical preparation known as “Aspiral,” do forthwith cease and desist from representing directly or indirectly in advertising matter, circular letters, by means of radio broadcasting, or by any other means:

1. That “Aspiral” is aspirin.
2. That Elixir Aspiral offers the better way of prescribing aspirin.

It is further ordered, That the said respondent within 90 days from and after the date of service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist as hereinabove set forth.

IN THE MATTER OF
FAIRFIELD 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 2447. Complaint, June 20, 1935—Decision, July 20, 1937

Where a corporation engaged, as rectifier of distilled spirits, in purchasing, rectifying, and blending whiskies, gins, and other spirituous beverages, and in producing gin with a still used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products among the various states to wholesaler-purchasers thereof, in substantial competition with those engaged in the manufacture by true distillation of whiskies, gins 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 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 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 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 "Distilling" in its corporate name, on its stationery, mailing cards, and invoices, and on the labels attached to the bottles in which it sold and shipped its said products, that it was a producer of distilled spirits from raw materials, and so represented 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 and other spirituous beverages contained in such bottles were by it made through process of distillation, as aforesaid, from mash, wort or wash, notwithstanding fact it did not thus distill said various beverages, thus bottled, labelled, 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 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 and other spirituous beverages sold by it were by it made and distilled from mash,

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wort, or wash, and with capacity and tendency to induce dealers and purchasing public, acting in such beliefs, to buy its said whiskies and other spirituous beverages 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 whiskies or other spirituous beverages; 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. Joseph W. Fowler, Jr., of Louisville, Ky., 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 Fairfield Distilling Co., Incorporated, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to 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 Kentucky, with its office and principal place of business in the city of Louisville, 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 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. 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 alcohol 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 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, advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller and that the said whiskies, gins, and other alcoholic beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other alcoholic beverages by it so 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 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 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 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 20, 1935, issued, and on June 22,

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1935, served its complaint in this proceeding upon respondent Fairfield Distilling 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 the 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 said testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony or other evidence in opposition to the allegations of the complaint were introduced by J. W. Fowler, attorney for the respondent. 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 (no brief in opposition thereto having been filed and no oral argument 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 Kentucky corporation organized April 26, 1934, and was engaged in the distilled spirits rectifying business from October 1934, until December 31, 1936, at which time it gave up its rectifier's permit. During said period respondent operated under a basic rectifier's permit from the government known as "R-501" a rectifying establishment with a capacity of approximately 180,000 gallons of whiskey and gin annually, at 234 East Main Street, Louisville, Ky., rectifying all kinds of whiskies, using distilled spirits purchased from the Empire Distilling Company and other distillers. Upon its premises, aforesaid, there was a still for use in the production of gins by a process of rectification whereby alcohol purchased but not produced by respondent was redistilled over juniper berries and other aromatics.

During the period between October 1934, and December 31, 1936, respondent was engaged in the business of purchasing, rectifying and blending whiskies, gins and other spirituous beverages in its aforesaid plant under its said permit, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States. In the course and conduct of its said business it caused its said products when sold to be transported

from its place of business in Louisville, Ky., into and through various States of the United States to the purchasers thereof, consisting of wholesalers located in States of the United States other than the State of origin of said shipments.

In the course and conduct of its business as aforesaid respondent, during said period, was 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 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 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. "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).

Many distillers operate a separate establishment 500 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 distillers have a tax paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery or at any rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "by the ----- Company." If the distilled spirits therein contained are bottled by a distiller 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 on the bottle "Blended 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, viz, "D" for a distiller and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus, "R-501" 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. This number is placed on the bottle to identify the bottler.

Knowledge of these details is not widespread among the retail trade and is very limited among the general public. All whiskeys, whether coming from a distillery or rectifier, are generally conceded to be "distilled" products. Therefore, it is not possible to determine from the presence of the phrase "Blended and Bottled by" alone, or the phrase "Bottled by" alone on the label whether the package was bottled by a rectifier who is a distiller, or by a rectifier who is not a distiller.

This respondent does not now and never has 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 authorizes 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.

PAR. 3. The evidence adduced in this case from approximately eight competitive trade witnesses (both rectifiers and distillers) and nineteen members of the purchasing public shows, and the Commission finds, that for a long period of time the word "distilling," when used in connection with the liquor industry and the products thereof, has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

The rectification of alcoholic spirits by this respondent as aforesaid in the production of its gin, does not make or constitute it a distiller or a distilling company as defined by Sec. 3247 of the Revised Statutes of the United States regulating Internal Revenue.

The testimony of those having long experience in both the distilled spirits rectifying industry and the distilling industry, established,

and the Commission finds 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 or by the general public.

PAR. 4. This respondent, by the use of the word "distilling" in its corporate name, on its stationery, mailing cards, invoices, and on the labels attached to the bottles in which it sold and shipped its products in interstate commerce, represented itself as a producer of distilled spirits from raw materials, and was so regarded, by virtue of said representations, by the trade and purchasing public. It thus represented to its customers and furnished them with the means of representing to their vendees, both wholesalers and the ultimate consuming public, that it was a distiller and that the whiskies and other spirituous beverages in said bottles contained were by it manufactured by the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not now and never was a distiller, does not now and never did distill the said whiskies, or other spirituous beverages, by it so bottled, labeled, sold, and transported, and does not now and never did own, operate, or control any place or places where such beverages are or 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 "distiller" 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," "distiller," or "distillers" as a part of their corporate or trade names, on their stationery or advertising, or on the labels attached to the bottles in which they sold and shipped their said products.

PAR. 6. Representations by the respondent as hereinabove set forth had the capacity and tendency to and did mislead and deceive dealers and the purchasing public into the belief that respondent was a distiller and that the whiskies and other spirituous

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beverages by it sold were manufactured and distilled by it from mash, wort, or wash, and had the capacity and tendency also to induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies 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 whiskies or other spirituous beverages. Thereby respondent did 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 Fairfield Distilling Company were to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the 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 the said complaint, brief filed herein by DeWitt T. Puckett, counsel for the Commission (no testimony or other evidence having been offered on behalf of respondent, and no brief having been filed on behalf of respondent, and no 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

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Trade Commission, to define its powers and duties, and for other purposes,"

It is ordered, That the respondent, Fairfield 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.

MEMORANDUM

BYRD DISTILLING COMPANY, Docket 2454. Commission, as of July 20, 1937, also issued similar findings and order in aforesaid case, in which complaint issued on June 22, 1935, and in which it appeared, from the first paragraph of the findings, otherwise similar to those in the Fairfield case, above reported in full, that respondent was a Kentucky corporation organized on Jan. 4, 1934, and engaged since then in distilled spirits rectifying business at 1730 Brook Street, Louisville, Kentucky, operating under basic rectifier's government permit "R-201," "a rectifying establishment with a production capacity of approximately 200,000 proof gallons annually, rectifying all kinds of whiskies purchased from various distillers," with the

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bulk of its alcohol "purchased from Commercial Solvents, the United States Industrial Alcohol Company, and the Empire Distilling Company," and with stills on its premises used "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."

Before *Mr. John L. Hornor*, trial examiner. *Mr. DeWitt T. Puckett* for the Commission. *Miller & Grafton*, of Louisville, Ky., for respondent.

Syllabus

IN THE MATTER OF

KELPE'KOE, INC., AND C. C. HANSON

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

Docket 2353. Complaint, Apr. 6, 1935—Decision, July 24, 1937

Where a corporation engaged in sale and distribution of "Kelp'e'Koe," alleged medicinal preparation, purported to possess therapeutic or curative properties, through sales, principally, direct to users thereof, and an individual, agent, and representative thereof, engaged in sale and distribution of said product direct to ultimate users, principally, in various States; in advertising their said preparation through distribution of circulars, leaflets, booklets, form letters, and other printed advertising matter—

- (a) Falsely represented and implied that said preparation might with safety be substituted for product insulin in treatment of diabetes, and that it would cure or be of substantial benefit in treatment of some twenty-five or twenty-six other ailments, afflictions, diseases, and conditions, including nervous disorders, undue fatigue, neuritis, rheumatism, arthritis, kidney trouble, etc.;
- (b) Falsely represented and implied that said preparation was of great benefit as a tonic and builder of children of all ages, and more particularly those who showed a tendency to be backward, and those who were ill-nourished, defective, stunted, and puny, and that it would supply vital elements required by nature in the building and formation of bone, tissue and cell structure, and provided elements required to harmonize glandular activity during childhood;
- (c) Falsely represented and implied that it was an effective tonic for men and women, and especially so during the trying periods of a woman's life, and that its regular use exerted a normalizing influence upon organs and toned up the system generally, building up the blood, and that use thereof had an invigorating effect, not temporary, on the body; and
- (d) Falsely represented and implied that use thereof would result in remineralization of the body, noticeably reflected in a keener expression, more youthful appearance, etc., and that regular use thereof by one in a weak and run-down condition would "bring one power," "quicken the brain and body activities," and make one healthier and happier, etc., and that it supplied the salts necessary to maintain a strong and vigorous body and insure a greater expectancy for a happier and healthier life;

Facts being only therapeutic value of preparation in question was an eliminant, possibly, and as a tonic, possibly, for use by persons suffering from anemia or other ailments requiring an extra amount of iron in the diet, it was not efficacious as a treatment or palliative for diabetes and did not act in same manner or with same effect as, and was not a substitute for, insulin, unique product, as long recognized by medical profession, useful in control of said dangerous and progressively destructive disease, for which no cure is known, and aforesaid representations and implications were grossly exaggerated and false, and preparation in

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question was not of any benefit as a tonic and a builder of children of all ages, etc., as an effective tonic for men and women, and of any benefit to a woman at any period of her life, and did not have an invigorating or other effect on the body, as hereinabove set forth, or bring about results claimed therefor, and did not cure and was of no substantial therapeutic value in the treatment of any of the enumerated ailments, afflictions, diseases, and conditions;

With effect of misleading and deceiving many prospective purchasers of remedies for such ailments, etc., about which said representations and implications were made, and of causing a substantial portion of such persons erroneously to believe that such representations and implications were true and that preparation in question possessed therapeutic efficacy represented and implied by them, and was a competent and effective treatment and corrective for use in remedying said ailments, etc., for which recommended, and that users thereof, for purposes other than as a treatment for specific ailments, etc., would derive the general benefits represented and implied by them, and of causing a substantial portion of prospective purchasers to buy said preparation, thereby unfairly and unlawfully diverting trade in commerce to them from competitors engaged in substantial competition with them in offer, sale and distribution of mineral salts, drugs, remedies, and other medicants used and useful in treatment of ailments, etc., for which said "Kelp'e'Koe" was recommended, and who truthfully represent their products; to substantial injury of such competitors and to injury of public:

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* and *Mr. W. W. Sheppard*, trial examiners.

Mr. John W. Hildrop and *Mr. Edw. W. Thomerson* for the Commission.

Mr. Guston T. Fitzhugh, of Memphis, Tenn., for respondents.

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 Kelp'e'Koe, Inc., a corporation, and C. C. Hanson, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Kelp'e'Koe, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arizona, with its principal office and place of

business in the city of Seattle, State of Washington. It is now and has been for more than two years last past engaged in the distribution and sale in both liquid and solid form, of a shale-like mineral of alleged therapeutic or curative properties which it designates as "Klepe'Koe". In solid form this mineral is a shale-like clay containing iron and aluminum sulphates with a trace of sulphur, and in liquid form it is an aqueous solution of iron and aluminum sulphates with traces of calcium, magnesium and potassium salts. When this said product of said respondent, designated as aforesaid as Kelpé'Koe, is packed or bottled, the said respondent causes the same when sold to be transported from its said place of business in Seattle, Wash., into and through the various other States of the United States of America for delivery to the purchasers thereof located in such various other States of the United States. In the advertising and in the promotion of the sale of said Kelpé'Koe between and among the various States of the United States, the said respondent transmits through the mails of the United States from its said principal place of business to various and divers places in the several other States of the United States, circulars, leaflets, and other advertising literature, soliciting various persons in the different States of the United States to buy said product, Kelpé'Koe.

Respondent, C. C. Hanson, is a resident of the city of Memphis in the State of Tennessee, and is an agent of said respondent Kelpé'Koe, Inc., in the sale and distribution of the aforementioned products sold and distributed by said Kelpé'Koe, Inc. From his place of business in the city of Memphis, Tenn., the said C. C. Hanson ships the said product aforesaid known and designated as Kelpé'Koe, into and through divers other States of the United States, to various customers and purchasers who have bought said product, and from the said city of Memphis, Tenn., said respondent, C. C. Hanson, transmits through the United States mails, pamphlets, leaflets, and circulars furnished him by said respondent Kelpé'Koe, Inc., in the selling and the promoting of sales of Kelpé'Koe in commerce between and among the various States of the United States.

In the course and conduct of the business aforesaid, both respondents are and have been at all times hereinafter referred to, in substantial competition with other individuals and corporations and with partnerships, associations, and firms engaged in the sale and distribution in interstate commerce of mineral salts, drugs, remedies, and other medicants of therapeutic value.

PAR. 2. In the course and conduct of their business aforesaid the said respondents in soliciting the sale by them of said Kelpé'Koe in

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commerce among the various States of the United States, have represented and still represent by circulars, leaflets, labels, and other advertising matter, through and by means of the United States mails, that Kelpé'Koe, in both liquid and solid form, and when used either externally or internally, according to directions, will be of substantial therapeutic benefit, remedy, and cure for

nervous disorders	glandular trouble	arthritis
anemia	prostate trouble	abnormal blood pressure
undue fatigue	liver trouble	constipation
asthma	eczema	indigestion
catarrh	rickets	feminine disorders
neuritis	diabetes	goiter
lumbago	mal-nutrition	sexual weakness
acidosis	general debility	dropsy
stomach ulcers	hay fever	skin infections
kidney trouble	rheumatism	and hemorrhoids;

that Kelpé'Koe has been found a great benefit as a tonic and builder of children of all ages, particularly those who show a tendency to be backward, ill-nourished, defective, stunted, and puny, that it supplies vital elements required by nature in the building and formation of bone, tissue, and cell structure, and provides elements required to harmonize glandular activity at this important time of life; that it is an effective tonic for women as well as for men; that for all ages during the trying periods of a woman's life, including adolescence, pregnancy, and the menopause, the regular use of Kelpé'Koe exerts a normalizing influence upon the organs and tones up the system generally; that it is a powerful blood builder and tonic, and has a remarkable invigorating effect which is not temporary in duration; that the remineralization of the body through the Kelpé'Koe treatment is noticeably reflected in a keener expression, clearer complexion and more youthful appearance; that if one is in a weak and run-down condition, the regular use of Kelpé'Koe should bring one power, quicken the brain and bodily activities, and make one healthier and happier; that Kelpé'Koe supplies the body with the mineral salts required in maintaining a strong and vigorous body, and that the use of Kelpé'Koe assures a greater expectancy for a happier and more healthy life.

PAR. 3. In truth and in fact the said product of respondents, Kelpé'Koe, was not and is not in either liquid or solid form and when used either externally or internally, according to directions, or in any other way, of substantial therapeutic benefit, remedy, or cure for

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nervous disorders	glandular trouble	arthritis
anemia	prostate trouble	abnormal blood pressure
undue fatigue	liver trouble	constipation
asthma	eczema	indigestion
catarrh	rickets	feminine disorders
neuritis	diabetes	goiter
lumbago	mal-nutrition	sexual weakness
acidosis	general debility	dropsy
stomach ulcers	hay fever	skin infections
kidney-trouble	rheumatism	and hemorrhoids;

Kelpe'Koe has not been found, nor is it of great benefit nor of any benefit, as a tonic or builder of children of all ages, particularly those who show a tendency to be backward, ill-nourished, defective, stunted, and puny; it does not supply vital elements required by nature in the building of bone, tissue and cell structure; it does not provide elements required to harmonize glandular activity at this important time of life, and it is not an effective tonic for women as well as for men; for all ages during the trying periods of a woman's life, including adolescence, pregnancy, and the menopause the regular use of Kelpe'Koe will not exert a normalizing influence upon the organs, nor will it tone up the system generally; Kelpe'Koe is not a powerful blood builder and tonic; it has no invigorating effect which is not temporary in duration; the remineralization of the body through the Kelpe'Koe treatment is not noticeably reflected in a keener expression, clearer complexion and more youthful appearance; if one is in a weak and run-down condition the regular use of Kelpe'Koe will not bring one power, quicken the brain and bodily activities and will not make one healthier and happier; Kelpe'Koe does not supply the body with the mineral salts required in maintaining a strong and vigorous body, and the use of Kelpe'Koe does not assure a greater expectancy for a happier and more healthy life.

PAR. 4. The respondents in the conduct of their said business between and among the various States of the United States, by their advertisements, consisting of circulars, labels, pamphlets, personal letters and other forms of publicity, which are mailed to various customers and prospective customers, and to certain of the public at large in the various States of the United States of America, while not claiming that said product designated aforesaid as Kelpe'Koe is a cure for diabetes, yet by suggestion, implication, and innuendo, endeavor to create, and do create the impression that said Kelpe'Koe is a cure for diabetes, and that it is superior as a treatment for diabetes to insulin. While not directly advising diabetic patients to discontinue the use of insulin and to use in its room and stead said

Kelpe'Koe, yet the general tenor and purpose of its said advertisements have a tendency and capacity to create on the minds of diabetic patients the belief and impression that Kelpe'Koe as a treatment for diabetes is superior to insulin, and that insulin should be discontinued by them and Kelpe'Koe substituted in its room and stead.

PAR. 5. In truth and in fact, respondents' said product, Kelpe'Koe, is not a cure, remedy, or palliative for diabetes, and is in no sense superior to the insulin treatment which for a number of years has been recognized by the medical profession, both in the United States of America and in other countries, as the approved, standard and regular treatment for diabetes, and has been, and is now extensively used therefor.

The said mineral material contained in Kelpe'Koe in both solid and liquid form, and when used externally or internally or both, according to respondents' directions, acts and operates as an antiseptic astringent mineral oil, and will not act and operate as a benefit, remedy, or cure to or of persons afflicted with the maladies and diseases heretofore set out, and has little or no therapeutic value for any disease.

PAR. 6. The foregoing misrepresentations and exaggerations advertised, published, and distributed by respondents in the manner and form as aforesaid, in interstate commerce, are calculated to, and do have a tendency and capacity to mislead and deceive the public, and particularly that portion thereof which is suffering from various forms of human ailments hereinbefore set out, by creating in their minds the erroneous impression and belief that by purchasing and using respondents' Kelpe'Koe according to directions, they will be benefited, remedied, or cured of their diseases and ailments. By such misrepresentations and exaggerations the purchasing public, and particularly that portion thereof which is suffering from the various forms of human ailments hereinbefore set out, are induced to purchase respondents' said Kelpe'Koe under the erroneous impressions and with the erroneous beliefs hereinbefore stated.

PAR. 7. The foregoing misrepresentations and exaggerations of facts have a capacity and tendency to, and do unfairly divert trade to respondents from other individuals, corporations, associations, and firms selling and distributing in interstate commerce similar or like products and remedies to that of respondents' Kelpe'Koe, but which are honestly and truthfully advertised and labeled; thereby substantial injury is done by respondents to substantial competition in interstate commerce.

PAR. 8. The acts and things done as herein alleged by respondents are to the prejudice of the public and the competitors of the respond-

ents and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on April 6, 1935, issued, and thereafter served its complaint in this proceeding upon respondents Kelpé' Koe, Inc. and C. C. Hanson, 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. Hilldrop, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, no testimony or other evidence was offered 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 complaint, the answer thereto, 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 Kelpé'Koe, Inc. is a corporation organized under the laws of the State of Arizona, and has its office and principal place of business in the city of Seattle, State of Washington. The respondent is now and has been for more than two years last past engaged in the sale and distribution of an alleged medicinal preparation, purported to possess therapeutic or curative properties, under the name Kelpé'Koe.

Respondent markets the preparation Kelpé'Koe principally through sales direct to the users thereof located in the several States of the United States and in the District of Columbia, and causes said preparation Kelpé'Koe when sold to be transported from its place of business in Seattle, Wash., to the said purchasers thereof

located at various points in the said several States of the United States other than the State of Washington and in the District of Columbia.

PAR. 2. The respondent C. C. Hanson is an individual residing in the city of Memphis, in the State of Tennessee, and he acts as an agent for and the representative of the respondent Kelpé'Koe, Inc. in the sale and distribution of said preparation Kelpé'Koe. He maintains an office and principal place of business in the city of Memphis, Tenn., from which point he solicits customers in nearby States.

The respondent C. C. Hanson sells the preparation Kelpé'Koe principally direct to the ultimate users located in various of the States of the United States and causes said preparation when sold to be transported from his said place of business in the city of Memphis, State of Tennessee, to the purchasers thereof located at various points in the several States of the United States other than the State of Tennessee.

The respondents Kelpé'Koe, Inc. and C. C. Hanson have acted together and cooperated with each other in doing the acts and things hereinafter set out.

PAR. 3. Respondents Kelpé'Koe, Inc. and C. C. Hanson, in offering for sale, selling, and distributing the preparation "Kelpé'Koe" in commerce, as above set out, are in substantial competition with other corporations and individuals and with partnerships, firms, and associations engaged in said commerce in offering for sale, selling, and distributing mineral salts, drugs, remedies, and other medicants possessing therapeutic and used and useful in the treatment of the ailments, afflictions, diseases, and conditions for which the respondents recommend the preparation "Kelpé'Koe."

PAR. 4. The preparation "Kelpé'Koe" is a "natural" product "mined" in the State of Oregon from what are claimed to be crystallized deposits of kelp, or seaweed, found underground.

An analysis of the preparation "Kelpé'Koe" on April 27 1935, by The A. L. Kinsely Chemical Laboratory of Seattle, Wash., produced the results indicated in the following report:

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Sample KELPEKOE ORE

taken from package.

Kelpekoe Inc.

Bayview Bldg.

Seattle, Washington.

Gentlemen: Submitted sample of "Kelpekoe Ore" has been analyzed and the results are as follows:

Water soluble portion amounted to 17.76% and the analysis was made on the dried water soluble portion.

Findings

	<i>Water soluble portion</i>	<i>Calculated to original ore</i>
Ferrous Sulphate-----	28.45%	5.05%
Ferric Sulphate-----	21.58%	3.83%
Aluminum Sulphate-----	28.90%	5.13%
Nickel Sulphate-----	0.45%	0.08%
Manganese Sulphate-----	0.32%	0.05%
Calcium Sulphate-----	2.78%	0.49%
Magnesium Sulphate-----	11.80%	2.00%
Sodium Sulphate-----	2.92%	0.52%
Sodium Chloride-----	0.18%	0.03%
Sodium Phosphate-----	0.20%	0.04%
Potassium Sulphate-----	0.46%	0.44%
Silica-----	0.13%	0.02%
Copper-----	Trace	Trace
Cobalt-----	Trace	Trace
Iodine-----	Trace	Trace
Lithium-----	Trace	Trace
Nitrates, Nitrites-----	Trace	Trace
Carbonates-----	Trace	Trace

The preparation is sold in its natural state and is "put up" in capsule form. The user of the preparation in its natural state concocts a tea for drinking by brewing the "ore," and the user of the preparation in capsule form uses it as purchased by taking the capsules by mouth.

PAR. 5. The respondents advertise the preparation Kelpé'Koe by distributing circulars, leaflets, booklets, form letters and other printed advertising matter. In said advertising matter, respondents make many representations and implications concerning the therapeutic efficacy of the preparation Kelpé'Koe and concerning the symptoms, and the treatment and cure, of various of the ailments, afflictions, diseases, and conditions from which mankind suffers. Many representations and implications are made concerning the benefits which users derive from Kelpé'Koe, other than as a treatment for specific ailments, afflictions, diseases, and conditions.

In said advertisements, respondents represent and imply that the preparation Kelpé'Koe when used according to directions will cure or be of substantial therapeutic benefit in the treatment of the following ailments, afflictions, diseases, and conditions:

nervous disorders	stomach ulcers	mal-nutrition
anemia	kidney trouble	general debility
undue fatigue	glandular trouble	hay fever
asthma	prostate trouble	rheumatism
catarrh	liver trouble	arthritis
neuritis	eczema	abnormal blood
lumbago	rickets	pressure
acidosis	diabetes	constipation

Findings

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indigestion
feminine disorders
gotter

sexual weakness
dropsy
skin infections

and
hemorrhoids.

The preparation Kelpé'Koe will not cure, nor is it of substantial therapeutic benefit in the treatment of the above enumerated ailments, afflictions, diseases, and conditions.

In said advertisements respondents represent and imply that the preparation Kelpé'Koe is of great benefit as a tonic and builder of children of all ages, more particularly those who show a tendency to be backward and those who are ill-nourished, defective, stunted, and puny, that it will supply vital elements required by nature in the building and formation of bone, tissue and cell structure, and that it provides the elements required to harmonize glandular activity during childhood. Respondents also represent and imply that the preparation Kelpé'Koe is an effective tonic for men and women, especially so during the trying periods of a woman's life, such as adolescence, pregnancy and the menopause and that its regular use exerts a normalizing influence upon the organs and tones up the system generally, building up the blood. Respondents also represent and imply that the use of the preparation Kelpé'Koe has an invigorating effect on the human body, which is not temporary in its duration, and that the remineralization of the body through the use of the preparation is noticeably reflected in a "keener expression," "clearer complexion" and a "more youthful appearance." Respondents also represent and imply that, if one is in a weak and run-down condition, regular use of the preparation will "bring one power," "quicken the brain and body activities" and make one healthier and happier, and that its use supplies the body with the mineral salts necessary to maintain a strong and vigorous body and assures a greater expectancy for a happier and healthier life.

The preparation Kelpé'Koe is not of great benefit, or of any benefit at all, as a tonic or builder of children of all ages, and is of no benefit to children who are backward, ill-nourished, defective, stunted or puny, and it does not supply vital elements required by nature in the building and formation of bone, tissue, and cell structure, and it does not provide the elements required to harmonize glandular activity during childhood. The preparation Kelpé'Koe is not an effective tonic for men and women and is of no benefit to a woman at any period of her life, and its regular use does not exert a normalizing influence upon the organs and tone the system generally, nor does it build up the blood.

The use of the preparation Kelpé'Koe does not have an invigorating effect on the human body. It does not result in remineralization

of the human body nor does it result in a "keener expression," "clearer complexion," or a "more youthful appearance." The use of the preparation Kelpé'Koe will not "bring one power," "quicken the brain and body activities," and "make one healthier and happier" nor will it supply the body with the mineral salts necessary to maintain a strong and vigorous body, nor does it assure one of a greater expectancy for a happier and healthier life.

PAR. 6 In said advertisements, respondents represent and imply that the preparation Kelpé'Koe may be substituted for insulin as a treatment or palliative for diabetes. The preparation Kelpé'Koe is not efficacious as a treatment or palliative for diabetes, and will not and does not act in the same manner or with the same effect as, and is not a substitute for, insulin in the treatment and control of diabetes. For many years insulin has been recognized in the medical profession as the one product useful in the control of diabetes, which is a dangerous and progressively destructive disease and for which there is no known cure. The representations and implications of respondents as above stated in regard to the use of the preparation Kelpé'Koe as a treatment or palliative for diabetes or as a substitute for the product insulin in the control of diabetes lead many sufferers from this disease to discontinue the use of insulin in the treatment of diabetes and to substitute therefor the preparation Kelpé'Koe to the injury of such sufferers.

PAR. 7. The representations and implications made by the respondents for the preparation Kelpé'Koe as hereinabove set out are grossly exaggerated and false, for the preparation does not possess the therapeutic efficacy represented and implied by the respondents, its only therapeutic value being as an eliminant, possibly, due to the presence in the preparation of magnesium and sodium sulphate, and as a "tonic," possibly, for use by persons suffering from anemia or other ailments requiring an extra amount of iron in the diet, due to the presence in the preparation of ferrous and ferric sulphate.

PAR. 8. The representations and implications so used by the respondents in connection with the sale of the preparation Kelpé'Koe in said commerce, in the manner hereinabove set out, have had, and do have, the tendency and capacity to and do mislead and deceive many prospective purchasers of remedies for the ailments, afflictions, diseases, and conditions hereinabove mentioned and 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 the preparation Kelpé'Koe possesses the therapeutic efficacy represented and implied by the respondents, and that it is a competent and effective treatment and

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corrective for use in remedying the ailments, afflictions, diseases, and conditions for which it is recommended, and that the users of Kelpé'Koe for purposes other than as a treatment for specific ailments, afflictions, diseases, and conditions will derive the general benefits as represented and implied by the respondents as hereinabove set out. The acts and practices of the respondent as above described cause a substantial portion of prospective purchasers to purchase the preparation Kelpé'Koe, thereby unfairly and unlawfully diverting trade in said commerce to the respondents from their competitors, as described in paragraph 3 hereof, who truthfully represent their products, to the substantial injury of such competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondents Kelpé'Koe, Inc., and C. C. Hanson are to the prejudice of the public and of 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."

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 Edward M. Averill, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint, and brief in support of the complaint (no brief having been filed by the respondents and no request for oral argument having been made), 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 Kelpé'Koe, Inc., a corporation, its officers, agents and employees, and C. C. Hanson, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of the product now known as, and sold under the name, Kelpé'Koe, or any other product or preparation, under whatever name sold, composed of similar ingredients and possessing therapeutic properties similar to the product Kelpé'Koe,

in interstate commerce or in the District of Columbia, forthwith cease and desist from representing, directly or by implication:

1. That the use of said preparation will cure, or be of substantial benefit in the treatment of, the following ailments, afflictions, diseases and conditions:

nervous disorders	rheumatism	abnormal blood pressure
undue fatigue	arthritis	indigestion
asthma	acidosis	feminine disorders
catarrh	stomach ulcers	goiter
neuritis	kidney trouble	sexual weakness
lumbago	glandular trouble	dropsy
diabetes	prostate trouble	skin infections
mal-nutrition	liver trouble	hemorrhoids;
general debility	eczema	
hay fever	rickets	

2. That said preparation provides the elements required to harmonize glandular activity during childhood or that it will supply vital elements required by nature in the building and formation of bone, tissue and cell structure;

3. That said preparation is an effective tonic for use by women during adolescence, pregnancy and the menopause, or that its regular use will exert a normalizing influence upon the organs and tone up the system generally or build up the blood;

4. That the use of said preparation will result in remineralization of the body or that its use will supply the body with the mineral salts necessary to maintain a strong and vigorous body;

5. That said preparation may, with safety, be substituted for the product insulin in the the treatment of diabetes;

6. That said preparation has any therapeutic value except as an eliminant and as a "tonic" where additional iron in the diet is indicated.

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
JOE ANDERSON, TRADING AS THE A & O COMPANY

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

Docket 3121. Complaint, May 1, 1937—Decision, July 24, 1937

Where an individual engaged in compounding, distributing, and selling, in commerce, his "A & O" pharmaceutical preparation; in advertisements circulated among the general public in various forms of printed matter and by radio broadcasts and otherwise—

- (a) Represented that said product opened the head, let one breathe freely, healed irritated membranes, checked fever, etc., and relieved and cured the most stubborn cold when other treatments failed, and protected one from influenza, pneumonia, and serious lung trouble;
- (b) Represented that it gave instant, guaranteed, and effective relief and opened the bowels and cleared the digestive tract, and restored system to normal, and was quicker and safer than pills and salves, and that there was nothing else that acted as quickly and thoroughly; and
- (c) Represented that said product was a secret combination of ingredients which doctors prescribe for colds, and was based on a secret formula within his exclusive knowledge, making product entirely different from any other known preparation;

Facts being said statements and representations were exaggerated, preparation in question was not a sure, quick, and effective remedy and cure for colds and did not relieve the systemic causes thereof or give instant and thorough relief, check fever, etc., or protect patient from influenza, pneumonia, or other cold complications, was not unique, as claimed, in its action nor based on a secret formula sponsored by reliable physician, could not with safety be given to any and all children indiscriminately, was not entirely different from any other known preparation in view of substantially similar composition of many competing products, and representations in question as to nature, curative value, and effect of said preparation were exaggerated, misleading and deceptive;

With capacity and tendency to mislead a substantial portion of the purchasing public into the belief that all said representations were true, and into purchase of said product in such beliefs, and with result that a number of the consuming public, as a direct consequence of mistaken and erroneous beliefs thus induced, purchased substantial volume of his said product, and trade was thereby unfairly diverted to him from competitors likewise engaged in distribution and sale of like and similar pharmaceutical preparations, and who truthfully represent effectiveness of their said products and results to be obtained from use 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.

Mr. Joseph C. Fehr for the Commission.

Mr. Clinton Robb, 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 Joe Anderson, an individual doing business under the trade name of The A & O Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Joe Anderson, is an individual doing business under the trade name of The A & O Company, with his principal office and place of business located in the city of New Bern, State of North Carolina. Respondent, for more than one year last past, has been, and still is, engaged in the manufacture and sale of a pharmaceutical preparation known as "A & O" which he represents to be an adequate treatment for colds. In the course and conduct of his business respondent offers said product for sale and sells the same in commerce between the State of North Carolina and the several States of the United States, and in the District of Columbia.

When said product is sold, respondent transports same from his place of business in the State of North Carolina to the purchasers thereof located in States of the United States other than the State of North Carolina, 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 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 one year last past has been engaged in substantial competition with 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 his "A & O," 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 forms of printed matter, by radio broadcasts, and in other ways. In said ways and by said means respondent makes and has made to the

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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 is as follows:

Opens bowels.

Quicker and safer than pills and salve.

Unconditionally guaranteed.

Gives quick guaranteed relief.

For instant relief take A & O.

Relieves the most stubborn colds when all other treatments fail.

Acts instantly and thoroughly.

Restores the system to normal order.

Reliable for adults and children.

A & O starts giving relief from the first dose.

Even the most stubborn colds respond to A & O.

For colds and coughs due to colds, there is absolutely nothing else that acts as quickly and thoroughly as A & O.

A & O soothes and heals irritated membranes, clears the nasal passages, opens the head, checks fever and clears the digestive tract.

Colds tear down the system, subject you to influenza, pneumonia and serious lung troubles.

The ORIGINAL liquid prescription for colds . . . and did you know that users say A and O is, by far, the most effective colds prescription yet discovered?

A and O is a secret combination of ingredients that doctors everywhere prescribe for colds.

This great colds prescription is compounded by a secret process and differs entirely from any other preparation for colds they've ever tried.

A and O is ONE colds prescription that "WORKS"!

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and many others similar thereto, serve, and have served, as representations on the part of respondent to purchasers and prospective purchasers as to the nature of the product and its effectiveness as a cure and remedy in use. Said representations are that "A & O" opens the head and lets one breathe freely; that it checks fever; that it opens the bowels; that it relieves bodily discomfort and restores the system to normal; that it gives instant, guaranteed or thorough relief; that it relieves and cures the most stubborn colds when other treatments fail; that it starts giving relief from the first dose; that it heals irritated membranes, clears the nasal passages, clears the digestive tract; that it is quicker and safer than pills and salve; that it protects one from influenza, pneumonia, or serious lung trouble; that it is a secret combination of ingredients which doctors prescribe for colds; that respondent has exclusive knowledge of a formula which is the basis of his product and that it is entirely different from any other known preparation.

In truth and in fact, respondent's said product is not a sure and quick remedy and cure for colds, nor does it relieve the systematic

causes of colds. It has no effect on the causatives of colds. It does not give instant and thorough relief nor does it check fever or open the head and bowels or protect the patient from influenza or pneumonia or other complications of a cold. It is not true that there is absolutely nothing else that acts as quickly and thoroughly as "A & O," nor is it true that a secret formula is the basis of said product sponsored by reliable physicians. Said preparation can not with safety be given to any and all children indiscriminately. It is not true that said "A & O" is entirely different from any other known preparation, as there are many competing products which contain essentially the same ingredients. In truth and in fact, the representations made by respondent as to the nature, curative 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, as hereinabove alleged, and as a consequence thereof substantial injury is done by respondent to competition in commerce as herein described.

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 the 1st day of May, A. D., 1937, issued and served its complaint in this proceeding upon respondent, Joe Anderson, an individual doing business under the trade name of The A & O 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 said respondent's answer thereto, a stipulation as to the facts was entered into by and between Clinton Robb, Esq., attorney for 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 in said complaint, the answer thereto, and the statement of facts as agreed upon in lieu of testimony, briefs and arguments have 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, Joe Anderson, trading and doing business under the trade name of The A & O Company, has his principal office and place of business located at New Bern, N. C. He has been for more than one year last past, and is now, engaged in the business of compounding, distributing and selling in commerce, as herein set out, a pharmaceutical preparation known as "A & O," which he represents to be an adequate treatment for colds. In the course and conduct of his business, respondent offers said product for sale, and sells the same, in commerce between the State of North Carolina and the several 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 the State of North Carolina to the respective purchas-

ers thereof located at various points in the States of the United States other than the State of North Carolina, and in the District of Columbia. Respondent has at all times maintained 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 one year last past has been, engaged in substantial competition with 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 directing the operation of his said business, and for the purpose of inducing the purchase of this product, respondent 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 forms of printed matter, by radio broadcasts, and in other ways. In said ways and by said means respondent makes, and has made, to the general public misleading and deceptive statements with reference to the alleged therapeutic value of said product and its effect upon the users thereof, a portion of which is as follows:

Opens bowels.

Quicker and safer than pills and salve.

Unconditionally guaranteed.

Gives quick guaranteed relief.

For instant relief take A & O.

Relieves the most stubborn colds when all other treatments fail.

Acts instantly and thoroughly.

Restores the system to normal order.

Reliable for adults and children.

A & O starts giving relief from the first dose.

Even the most stubborn colds respond to A & O.

For colds and coughs due to colds, there is absolutely nothing else that acts as quickly and thoroughly as A & O.

A & O soothes and heals irritated membranes, clears the nasal passages, opens the head, checks fever and clears the digestive tract.

Colds tear down the system, subject you to influenza, pneumonia, and serious lung troubles.

In June, 1936, the respondent stipulated and agreed with the Federal Trade Commission to discontinue making and advertising the foregoing representations and statements, and other representations and statements equivalent thereto in form and substance. Among the statements and representations made by the respondent since June 12, 1936 have been the following:

The original liquid prescription for colds * * * and did you know that users say A & O is, by far, the most effective colds prescription yet discovered?

A & O is a secret combination of ingredients that doctors everywhere prescribe for colds.

This great colds prescription is compounded by a secret process and differs entirely from any other preparation for colds they've ever tried.

A & O is ONE colds prescription that "WORKS"!

PAR. 3. The statements and representations set forth in paragraph 2 hereof, and others similar thereto, serve, and have served, as representations on the part of respondent to purchasers and prospective purchasers as to the nature of his product and its effectiveness as a cure and remedy in use. Said representations are that "A & O" opens the head and lets one breathe freely; that it checks fever; that it opens the bowels; that it relieves bodily discomfort and restores the system to normal; that it gives instant, guaranteed or thorough relief; that it relieves and cures the most stubborn colds when other treatments fail; that it starts giving relief from the first dose; that it heals irritated membranes, clears the nasal passages, clears the digestive tract; that it is quicker and safer than pills and salves; that it protects one from influenza, pneumonia, or serious lung trouble, that it is a secret combination of ingredients which doctors prescribe for colds; that respondent has exclusive knowledge of a formula which is the basis of his product and that it is entirely different from any other known preparation.

PAR. 4. The said statements and representations made by the respondent, as herein set out in paragraph 2, are exaggerated and have the capacity and tendency to deceive and mislead purchasers and prospective purchasers of respondent's said product. In truth and in fact, respondent's said product is not a sure, quick and effective remedy and cure for colds, nor does it relieve the systemic causes of colds. It has no effect on the causatives of colds. It does not give instant and thorough relief nor does it check fever or open the head and bowels, or protect the patient from influenza or pneumonia or other complications of a cold. It is not true that there is absolutely nothing else that acts as quickly and thoroughly as "A & O," nor is it true that a secret formula is the basis of said product sponsored by reliable physicians. Said preparation cannot with safety be given to any and all children indiscriminately, nor is it true that said "A & O" is entirely different from any other known preparation, as there are many competing products which contain essentially the same ingredients. In truth and in fact, the representations made by respondent as to the nature, curative value, and the effect of his

preparation, when used, are exaggerated, misleading, and deceptive, as said preparation will not accomplish the results claimed for it.

PAR. 5. There are, among the respondent's competitors in commerce, as herein described, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and therapeutic value of their respective products, and who do not advertise and otherwise represent that such products have merit and therapeutic value which they do not have.

PAR. 6. 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 said product, 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 into the purchase of respondent's product in such beliefs. Further, as a direct consequence of the mistaken and erroneous beliefs thus induced by the acts and representations made by the respondent, as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's product, with the result that trade has been and is unfairly diverted to respondent from competitors likewise engaged in the business of distributing and selling like and similar pharmaceutical preparations who truthfully represent the effectiveness of their products and the results to be obtained from their use. As a result, injury has been, and is now being done, by respondent to competition in commerce, as herein set out.

CONCLUSION

The aforesaid acts and practices of the respondent, Joe Anderson, an individual doing business under the trade name of The A & O Company, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the agreed stipulation of facts entered into between Clinton Robb, Esq., attorney for respondent herein, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other inter-

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vening 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, Joe Anderson, an individual doing business under the trade name of The A & O Company, his representatives, agents, and employees, in connection with the advertising, offering for sale, and sale and distribution in interstate commerce, or in the District of Columbia, of a pharmaceutical preparation now known as "A & O," or of said preparation or of any similar preparation containing substantially the same ingredients, sold under the same, or under any other, name or names, cease and desist, directly or indirectly, 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 said product opens the head, lets one breathe freely, heals irritated membranes, clears the nasal passage, checks fever, relieves and cures the most stubborn colds when other treatments fail, protects one from influenza, pneumonia, or serious lung trouble;

2. That said product gives instant, guaranteed, or effective relief, or starts giving relief from the first dose;

3. That said product opens the bowels, clears the digestive tract, restores the system to normal, and is quicker and safer than pills and salve;

4. That said product is a secret combination of ingredients which doctors prescribe for colds, and that it is based on a formula within the exclusive knowledge of respondent, making the product entirely different from any other known preparation;

and from making any other representation 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.

Syllabus

IN THE MATTER OF
LECHLER LABORATORIES, INC.

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

Docket 3115. Complaint, Apr. 26, 1937—Decision, July 27, 1937

Where a corporation engaged in manufacture, sale and distribution of its "569 Instantaneous Hair Lightener," direct to consuming public, in substantial competition with those engaged in manufacture and distribution of like and similar products and sale thereof in commerce among the various States and in the District of Columbia, in advertising its said preparation through media of price lists, advertisements, and other printed matter, published and circulated through the United States mails to customers and prospective customers in the various States and in said District—

- (a) Represented that bleaching agent of said product was not similar to peroxide and that it performed its bleaching action without said substance, and that it did not require or contain the same, and was superior to products which did contain such substance; and
- (b) Represented that said product was beneficial to permanent waves and bleached hair, and was harmless to the hair, and that it was the only preparation that would lighten the scalp, and that through use thereof there would be no more dark roots;

Facts being product in question did require peroxide, bleaching action of said product was not chemically different from those containing such substance of like strength, it did not perform its bleaching action without said substance, was not more beneficial to permanent waves and bleached hair than other similar and like preparations, or not only preparation that would lighten scalp, was not harmless to hair of users in many cases, and would not prevent dark roots, and aforesaid various representations were unfair, false, and misleading;

With effect of misleading substantial portion of consuming public in the several States and in said District, by inducing them mistakenly and erroneously to believe that said preparation required no peroxide, and that other representations with respect thereto, as hereinabove set forth, were true, and with tendency and capacity so to mislead and deceive distributors and purchasing public, and with effect of inducing members thereof to buy its said product on account of such erroneous beliefs, and of thereby unfairly diverting trade to it from competitors who do not make use of same or similar representations, acts or practices; to the substantial injury of competition in commerce:

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

Mr. S. Brogdyne Teu II for the Commission.

Mr. Willis B. Rice, 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 Lechler Laboratories, Inc., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to 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, Lechler Laboratories, Inc., is a corporation organized and doing business under the laws of the State of New York, having its principal place of business at 334 Audubon Avenue, city of New York, State of New York. It is now, and for more than one year last past has been, engaged in the manufacture, sale, and distribution of a certain hair bleaching product designated as "Lechler '569' Instantaneous Hair Lightener" in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When said product is sold, respondent transports or causes the same to be transported from its principal place of business in the city of New York, State of New York, 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 and commerce in said above described product sold by 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 and with individuals, partnerships, and firms likewise engaged in business of distributing and selling hair bleaching and dyeing products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its said business, respondent has caused to be printed and circulated through the United States mails to its customers and prospective customers in the various States of the United States catalogues, price lists and other printed matter. The respondent has also caused and still causes advertisements to be inserted in newspapers and magazines having a general interstate circulation. Each and all of the catalogues, price

lists, and advertisements contain statements which purport to be descriptive of the efficacy, value, and merit of the respondent's product. Among the statements made in the aforesaid catalogue, price list, newspaper and magazine advertisements, the following are representative:

LIGHTEN YOUR HAIR WITHOUT PEROXIDE

* * * to ANY shade you Desire

* * * SAFELY in 5 to 15 minutes

Careful, fastidious women avoid the use of peroxide because peroxide makes hair brittle. LECHLER'S INSTANTANEOUS HAIR LIGHTENER requires NO peroxide. Used as a paste, it can not streak. Eliminates "straw" look. BENEFICIAL TO PERMANENT WAVES AND BLEACHED HAIR. Lightens blonde hair grown dark. This is the only preparation that also lightens the scalp. No more dark roots. Used over 20 years by famous beauties, stage and screen stars and children. Harmless. Guaranteed. Mailed complete with brush for application. \$1.

PAR. 5. Through use of the foregoing statements and others similar thereto, the respondent represents, either directly or by implication, that the said Lechler's Instantaneous Hair Lightener requires no peroxide; that the bleaching agent of its product is not similar to peroxide and performs its bleaching action without peroxide; that its product does not contain peroxide and is superior to products containing peroxide; that it is beneficial to permanent waves and bleached hair; that it is the only preparation that will lighten the scalp; that through its use there will be no more dark roots; that it is harmless to the hair of the user.

PAR. 6. In truth and in fact, the respondent's product is composed of such ingredients that when said product is used its bleaching action is actually accomplished by hydrogen peroxide. Respondent's product does contain peroxide and its bleaching action is not substantially different from other products containing peroxide. Said product is not beneficial to permanent waves and bleached hair and has the same, or similar effect as other products using peroxide. It is not the only preparation that will lighten the scalp and its use will not prevent dark roots. As hair grows out, the new hair showing above the scalp will be the same color as the hair before use of the product. The respondent's product is not harmless to the hair of the user in many cases.

PAR. 7. Each and all of the false and misleading statements and the representations made by the respondent in designating or describing its product and the effectiveness of said product for lightening the hair and treating conditions of the hair and scalp in offering for sale and selling its said product were and are calculated to and had and now have a tendency and capacity to mislead a substantial por-

tion of the purchasing public into the erroneous belief that all of said representations are true and that said product will in truth accomplish the results claimed.

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 product with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling similar products or other products designed and sold for use in the treatment of various conditions of the scalp and hair and other conditions named herein who truthfully represent the effectiveness of their respective products.

PAR. 8. The foregoing false and misleading statements and representations on the part of respondent are inducements for a substantial number of consuming purchasers to form the mistaken and erroneous beliefs above referred to and to buy the product distributed and offered for sale by respondent. And as a result, a substantial volume of trade has been and is now being diverted to respondent from competitors engaged in similar business who truthfully advertise and represent, through their catalogues, prices lists, and advertisements, the nature, merit and value of their products. As a consequence thereof, a substantial injury has been done to substantial 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 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 April 28, 1937, issued and served its complaint in this proceeding upon respondent, Lechler Laboratories, 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,

a stipulation as to the facts was entered into between W. T. Kelley, Chief Counsel of the Commission, and Willis B. Rice, counsel for respondent, which said stipulation was thereafter approved by the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, and answer thereto, and the stipulation as to the facts (respondent 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. Respondent, Lechler Laboratories, Inc., is a New York corporation organized and doing business by virtue of and under the laws of the State of New York.

PAR. 2. Respondent has been for more than one year last past engaged in the business of manufacturing, selling, and distributing "Lechler '569 Instantaneous Hair Lightener'" direct to the consuming public.

PAR. 3. In the sale of said product respondent has transported or caused the same to be transported from its principal place of business in the State of New York to purchasers thereof located in States of the United States other than the State from which shipment originated and in the District of Columbia.

There has been for more than one year last past, and still is, a constant current of trade and commerce in said "Lechler '569 Instantaneous Hair Lightener'" so sold and distributed by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 4. For more than one year last past the respondent has been engaged in substantial competition with individuals, partnerships, firms, and other corporations engaged in the manufacture and distribution of like and similar products, and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business as aforesaid, the respondent, in soliciting the sale of, and in selling, its product, and for the purpose of creating a demand on the part of the consuming public for said product, has for more than one year last past caused the product to be advertised through the media of price lists, advertisements, and other printed matter published, issued, and circulated through the United States mails to its customers and prospective

customers in the various States of the United States and in the District of Columbia. In said ways and by said means respondent has made to the general public many unfair, false, and misleading statements with reference to the commodities offered for sale by it.

PAR. 6. Among the unfair, false, and misleading statements made by the respondent with reference to the commodities offered for sale by it are the following:

That Lechler Instantaneous Hair Lightener requires no peroxide; that the bleaching agent of said product is not similar to peroxide; that the said product performs its bleaching action without peroxide; that said product does not contain peroxide; that said product is superior to products containing peroxide; that said product is beneficial to permanent waves and bleached hair; that said product is the only preparation that will lighten the scalp; that through the use of said product there will be no more dark roots; and that said product is harmless to the hair of the user.

PAR. 7. The aforesaid representations are untrue in that Lechler Instantaneous Hair Lightener does require peroxide, and that the bleaching action of said product is not chemically different from the products containing peroxide of like strength. Said product does not perform its bleaching action without peroxide. Said product does contain peroxide. Said product is not more beneficial to permanent waves and bleached hair than other similar and like preparations. Said product has the same or similar action as other products using peroxide of like strength. Said product is not the only preparation that will lighten the scalp, and its use will not prevent dark roots, and said product is not harmless to the hair of the users in many cases.

PAR. 8. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale the items of merchandise herein described is to mislead a substantial portion of the consuming public in the several States of the United States and in the District of Columbia by inducing them to mistakenly and erroneously believe that:

Lechler Instantaneous Hair Lightener requires no peroxide; the bleaching agent of the Hair Lightener is not similar to peroxide; the Hair Lightener performs its bleaching action without peroxide; its product does not contain peroxide; it is superior to products containing peroxide; it is beneficial to permanent waves and bleached hair; it is the only preparation that will lighten the scalp; through its use there will be no more dark roots; and it is harmless to the hair of the user.

PAR. 9. The use of each and all of the foregoing false and misleading statements and representations as herein set out has had, and now has, a tendency and capacity to mislead and deceive distributors and the purchasing public into the erroneous and mistaken belief that the said statements and representations are true, and has induced and still induces members of the public to purchase the product of said respondent on account of said erroneous beliefs. Said representations have thereby unfairly diverted trade to said respondent from competitors who do not make use of the same or similar representations, acts, or practices, and substantial injury has been done by respondent to competition in commerce among and between the several States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, and a stipulation as to the facts entered into between W. T. Kelley, Chief Counsel of the Commission, and Willis B. Rice, counsel for respondent (respondent having waived the filing of a brief), 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, Lechler Laboratories, Inc., its officers, representatives, agents, and employes, in connection with the advertising, offering for sale, sale, and distribution, in interstate commerce, or in the District of Columbia, of a hair bleaching product now known as Lechler Instantaneous Hair Lightener, or of any similar preparation containing substantially the same ingredients under the same or under any other name or names, do forthwith cease and desist from representing, directly or indirectly, through

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price lists, circulars, labels, or any other form of printed matter, or by radio broadcasting or in any other manner:

1. That the bleaching agent of said product is not similar to peroxide, and that it performs its bleaching action without peroxide;
2. That said product does not require or contain peroxide;
3. That said product is superior to products containing peroxide;
4. That said product is beneficial to permanent waves and bleached hair, and is harmless to the hair of the user; and
5. That said product is the only preparation that will lighten the scalp, and that through the use of said product there will be no more dark roots.

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 herein set forth.

Syllabus

IN THE MATTER OF
NODOZ LABORATORIES, INC.

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

Docket 2840. Complaint, June 10, 1936—Decision, July 28, 1937

Where a corporation engaged in sale and distribution, to wholesale and retail dealers for ultimate resale to public, of "NoDoz Awakeners," vegetable concentrate with caffeine, made for it by the manufacturer in accordance with its formula, and designed to keep users from drowsiness and to keep them awake when sleepy or tired, in general competition with sellers of the class of refreshment and invigorator containing caffeiens, such as coffee, tea, and coca-cola, and with the same general therapeutic effects, and who do not advertise and otherwise represent their said products as having merit and therapeutic value which they do not have; in soliciting sale of and selling said products through advertisements in newspapers and periodicals, and in other forms of printed matter, and through radio broadcasts, circulated among the various States to members of the public—

- (a) Represented that use of said product would counteract or overcome effects of drinking alcoholic beverages, and would have beneficial effect on persons indulging in use of alcoholics, counteracting "alcoholic effects during the party and the 'morning after'", etc.;
- (b) Represented that said "NoDoz Awakeners" were "tablets made of a pure vegetable concentrate under the U. S. Pure Food and Drug Laws"; and
- (c) Represented that more than a million automobile drivers take said preparation to keep awake and alert in long hours of driving, and that said tablets "Keep awake the sleepy motorist, truck driver," etc.;

Facts being said tablets did not overcome or counteract effects of use of alcoholic beverages or have any beneficial effect on indulgers in use thereof, they were not made under formula approved by Pure Food and Drug Administration, number of users and endorsers of said product was greatly exaggerated, and representations aforesaid were grossly exaggerated, false, misleading, and untrue;

With capacity and tendency to mislead a substantial portion of the purchasing public into the erroneous belief that all of its aforesaid representations were true, and with result that number of the consuming public, as a direct consequence of the mistaken and erroneous beliefs induced by its said acts and representations, purchased a substantial volume of its product, and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution of like and similar caffeine-containing preparations, and who truthfully represent the effectiveness of their products and results to be obtained from use 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.

Before *Mr. Charles P. Vicini* and *Mr. Miles J. Furnas*, trial examiners.

Mr. P. C. Kolinski and *Mr. Joseph C. Fehr* for the Commission.

Elliott, Atkinson & Sitton, of Sacramento, 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 NoDoz Laboratories, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, NoDoz Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business located at 307 Mitau Building, in the city of Sacramento, in the State of California. Respondent for more than one year last past has been, and still is, engaged in the manufacture of a pharmaceutical preparation known as "NoDoz Awakeners," made of a mixture of caffeine citrate and sugar of milk, and in offering said product for sale, and selling the same in commerce between the State of California and the several States of the United States and in the District of Columbia. When said product is sold, respondent transports or causes the same to be transported from its place of business in the State of California to the purchasers thereof located in States of the United States other than the State of California 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 corporations and with individuals, partnerships, and firms engaged in the manufacture of like and similar products and in the sale thereof between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as aforesaid, the respondent, in soliciting the sale of and selling "NoDoz Awakeners" 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:

NoDoz Awakeners—Particularly beneficial, when driving at night, when effects of alcohol are to be overcome, when working at night, when mentally depressed, when keen thinking, accurate and rapid work are important and upon hundreds of other daily occasions.

Counteracts alcoholic effects during the party and the "morning after." Restores energy—when tired or sleepy—when working or playing.

NoDoz Awakeners are tablets made of a pure vegetable concentrate under the U. S. Pure Food and Drug Laws.

Keep awake the sleepy motorist, truck driver—overcome alcoholic depression.

There is a marked stimulation of the intellectual functions, especially those of reason, judgment, and self-control. Muscular strength, speed and accuracy are all increased. A sense of energy and vitality add to one's capacity for work or pleasure without apparent fatigue.

When energy is exhausted. When you've taxed your powers to the limit, and yet have long hours of work ahead, take a NoDoz Awakener and feel the steady, natural return of vitality, the "lift" in morale and general sense of well-being which follows.

Taken before or during indulgence, NoDoz Awakeners will preserve a clear head and perfect poise under the most difficult circumstances. Taken afterwards—NoDoz Awakeners will restore sobriety.

More than a million automobile drivers now take a NoDoz Awakener to keep awake and alert in long hours of driving.

If you feel like dozing, but your job won't let you—NoDoz keeps you fit. But NoDoz doesn't get you.

One little NoDoz Awakener'll keep you bright three, four hours, for driving, working, studying, playing nights.

PAR. 3. The statements and representations set forth in paragraph 2 hereof have the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's product into the belief:

(a) That the use of NoDoz Awakeners will keep one equipped for duties, or awake while driving;

(b) That the use of said preparation will—

1. Put one back on his feet;
2. Put bright ideas in the head;
3. "Conquer" mental dullness or fatigue;
4. Enable one to steer clear of accidents while driving;
5. "Overcome" alcoholic depression;

(c) That said preparation restores energy or "counteracts" alcoholic effects;

(d) That by the use of said preparation—

1. There is a stimulation of "intellectual" powers;

2. Muscular strength, speed, accuracy are all increased; or
3. Energy or vitality will be added to one's capacity for work or pleasure without fatigue;

(e) That said preparation taken before or during indulgence will preserve a clear head or perfect poise under the most difficult circumstances;

(f) That by the use of said preparation one may feel the natural return of vitality, the "lift" in morale, or a general sense of well being;

(g) That more than a million automobile drivers, or any other number not established by competent evidence, now take said preparation to keep awake on long hours of driving, or approve the same as the safe, sure way to stay awake while driving;

(h) That said preparation is made under the United States Pure Food and Drug Laws;

(i) That said preparation is a pure vegetable concentrate;

whereas, in truth and in fact, "NoDoz Awakeners" do not keep persons awake when tired or sleepy, or when working or driving automobiles at night; nor do they overcome the effects of the use of alcohol. The number of users and endorsers of this product is greatly exaggerated, and the representation that "NoDoz Awakeners" are manufactured upon a formula conforming to the Pure Food and Drug Law is unauthorized. It is not true, as represented, that a "NoDoz Awakener" is a pure vegetable concentrate. In truth and in fact, the representations made by the respondent with respect to the nature and effect of its 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 interstate commerce 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 sellers and distributors of like and similar products who do not advertise and otherwise represent that such products have the merit or the therapeutic value which they do not have.

PAR. 5. The above alleged acts and practices of respondent have the capacity to mislead and deceive purchasers and prospective purchasers into the erroneous beliefs described in paragraph 3 hereof and into the purchase of respondent's product 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 June 10, 1936, issued and served its complaint in this proceeding upon respondent, NoDoz Laboratories, Inc., a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by Wm. A. Sitton, attorney for the respondent, before Chas. P. Vicini and Miles J. Furnas, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence was duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and evidence, and brief in support of the complaint (respondent having filed no brief and having not requested oral argument), and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, NoDoz Laboratories, Inc., is a California corporation, with its principal office and place of business in Sacramento, Calif. Respondent began doing business as a corporation in the month of August 1934. Respondent is now, and ever since August, 1934, has been, engaged in the sale and distribution of a pharmaceutical preparation known as "NoDoz Awakeners."

Respondent's said product, known as "NoDoz Awakeners," is a vegetable concentrate containing caffeine, which is designed to keep users from drowsiness and to keep them awake when sleepy or tired. Respondent sells and distributes its said product to wholesale and retail dealers for ultimate resale to members of the public, and also sells direct to members of the purchasing public located

in the various States of the United States other than the State of California. In the course and conduct of its business, the respondent causes its said product, when sold by it, to be transported in commerce from its place of business in California to, into and through said other States, and in the District of Columbia, to the purchasers to whom said product was sold by the respondent.

PAR. 2. The respondent herein, in soliciting the sale of and in selling said product known as "NoDoz Awakeners," has made use of advertisements inserted in newspapers and magazines and in other forms of printed matter, and broadcasts by radio, which are circulated in and among the various States of the United States to members of the public. Said advertisements contain many misleading and deceptive statements with reference to the alleged therapeutic value of said "NoDoz Awakeners" and their effect upon the users thereof.

Among such statements so used in advertising said "NoDoz Awakeners" are the following:

NoDoz Awakeners—Particularly beneficial when driving at night, when effects of alcohol are to be overcome, when working at night, when mentally depressed, when keen thinking, accurate and rapid work are important and upon hundreds of other daily occasions.

Counteracts alcoholic effects during the party and the "morning after." Restores energy—when tired or sleepy—when working or playing.

"NoDoz Awakeners" are tablets made of pure vegetable concentrate under the U. S. Pure Food and Drug Laws.

Keep awake the sleepy motorist, truck driver—overcome alcoholic depression.

There is a marked stimulation of the intellectual functions, especially those of reason, judgment and self-control. Muscular strength, speed and accuracy are all increased. A sense of energy and vitality add to one's capacity for work or pleasure without apparent fatigue.

When energy is exhausted. When you've taxed your powers to the limit, and you yet have long hours of work ahead, take a NoDoz Awakener and feel the steady, natural return of vitality, the "lift" in morale and general sense of well-being which follows.

Taken before or during indulgence, NoDoz Awakeners will preserve a clear head and perfect poise under the most difficult circumstances. Taken afterwards—NoDoz Awakeners will restore sobriety.

More than a million automobile drivers now take a NoDoz Awakener to keep awake and alert in long hours of driving.

If you feel like dozing, but your job won't let you—NoDoz keeps you fit. But NoDoz doesn't get you.

One little NoDoz Awakener'll keep you bright three, four hours, for driving, working, studying, playing nights.

PAR. 3. Respondent's "NoDoz Awakeners" are manufactured for it by McKesson-Robbins, of Bridgeport, Conn., and Boericke & Runyan, of San Francisco, Calif., both of which firms are manufacturing

pharmacists. Said product is manufactured according to a formula submitted to said manufacturers by the respondent. The formula consists of a mixture of three and one-half grains of caffeine citrate and one and one-half grains of sugar of milk. When manufactured, said product is shipped in bulk by the aforementioned manufacturing pharmacists to respondent's plant in Sacramento, Calif., where it is packaged in two sizes, one containing two tablets, designed to sell for ten cents (10¢) each (or \$3.20 for thirty-two packages), and the other package containing fifteen tablets, designed to sell for fifty cents (50¢) per package (or \$6.00 per dozen packages). Thus packaged, the product is sold and shipped by respondent to wholesale druggists throughout the country, by whom it is resold to retailers who sell and distribute the product to the consuming public. More than eighty per cent (80%) of respondent's said "NoDoz Awakeners" are sold on the Pacific Coast and in the Rocky Mountain States, where the product is well known and has a ready market.

PAR. 4. Several witnesses, two of them doctors of medicine, testified that they had used "NoDoz Awakeners," and that the preparation counteracted sleepiness and drowsiness, without harmful effect. One doctor of medicine testified that the drug caffeine, used by a human, would tend to increase mental invigoration, to stimulate the motor areas of the brain, to increase the motor activities of the spinal cord, and to stimulate the muscles. He further testified that the drug caffeine, applied to humans in tablet form, as prepared in respondent's "NoDoz Awakeners," was not desirable for use by persons who partake of liquor to the point of intoxication. This witness also testified that said "NoDoz Awakeners" act as a diuretic. All witnesses testified that the use of three and one-half grains of citrate of caffeine would and did stimulate the brain and restore vitality.

There is also undisputed medical testimony of record that the use of citrate of caffeine by way of respondent's product by children of the age of five years or over would have no different effect on them than the use of ordinary coffee. One doctor of medicine stated that three and one-half grains of citrate of caffeine are equivalent to the amount of caffeine in an ordinary cup of coffee represented by a tablespoonful of ground coffee, and that three and one-half grains of caffeine citrate would serve to stimulate the individual taking it by increasing his blood supply to the brain, stimulating the action of the muscles and the cord, thereby increasing the flow of blood to the brain. This witness further stated that such an amount of citrate of caffeine would tend to clarify the individual's thinking apparatus and make it function a little more rapidly, and that it would also stimulate the kidneys.

The evidence, however, establishes the fact that caffeine, which is the active ingredient in respondent's product, will not counteract or overcome the effects of alcoholism, as represented by respondent, nor will caffeine sober an individual who has become intoxicated from the use of alcoholic beverages. The use of said preparation does not have any beneficial effect on those persons who indulge in the use of alcoholic beverages.

The testimony of the several medical witnesses was not contradicted by the testimony of any other witness.

PAR. 5. Many of the statements and representations set forth in paragraph 2 hereof have the capacity and tendency to deceive and mislead purchasers and prospective purchasers of respondent's product into the belief that the use of said product—

(a) Will "counteract" alcoholic effects and overcome alcoholic depression;

(b) That said product is made under a formula approved by the United States Pure Food and Drug Administration;

(c) That more than a million automobile drivers, or any other number not established by competent evidence, now take said preparation to keep awake on long hours of driving, or approve the same as the safe, sure way to stay awake while driving.

In truth and in fact, "NoDoz Awakeners" do not overcome or counteract the effects of the use of beverages containing alcohol, nor do they have any beneficial effect on persons indulging in the use of alcoholic beverages. Further, the number of users and endorsers of said product is greatly exaggerated; nor is it true that "NoDoz Awakeners" are manufactured upon a formula approved by the Pure Food and Drug Administration. Insofar as representations made by respondent in connection with the sale and distribution of its pharmaceutical preparation have the effect of misleading and deceiving users of "NoDoz Awakeners" into the beliefs set out in this paragraph, such representations are grossly exaggerated, false, misleading and untrue, as said preparation will not accomplish such results as represented.

PAR. 6. The evidence does not establish the fact that the respondent has any specific competitors manufacturing, selling or distributing a similar drug or pharmaceutical preparation. However, the record of testimony taken does establish the fact that respondent is in general competition with sellers of the class of refreshment and invigorator containing caffeine, such as coffee, tea and coca-cola, having the same general therapeutic effects that respondent's product has, who do not advertise and otherwise represent that such products have merit and therapeutic value which they do not have.

PAR. 7. 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 its product, had and now have the capacity and tendency to mislead 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 and representations made by the respondent, as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondent's product, with the result that trade has been and is unfairly diverted to respondent from competitors likewise engaged in the business of selling and distributing like and similar caffeine-containing preparations, and who truthfully represent the effectiveness of their products and the results to be obtained from their use. As a result, injury has been and is now being done by respondent to competition in commerce, as herein set out.

CONCLUSION

The aforesaid acts and practices of the respondent, NoDoz Laboratories, Inc., a corporation, are to the prejudice of the public and of 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 Charles P. Vicini and Miles J. Furnas, examiners of the Commission theretofore duly designated by it, in support of the charges of said complaint and in opposition thereto, and brief on behalf of the Commission filed herein (respondent having filed no brief and having not 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 respondent, NoDoz Laboratories, Inc., a corporation, its officers, directors, agents, representatives, servants, and employees, in connection with the offering for sale, sale or distribution in interstate commerce of a pharmaceutical preparation

known as "NoDoz Awakeners," or of said preparation or of any similar preparation containing substantially the same ingredients, sold under the same or under any other name or names, cease and desist, directly or indirectly, from:

Representing in newspapers and magazines, and through circulars, catalogs, or in any other form of printed matter, or by radio broadcasting, or in any other way or manner:

(a) That the use of said product will counteract or overcome the effects of drinking alcoholic beverages, or will have any beneficial effect on persons indulging in the use of alcoholics;

(b) That said product is manufactured under a formula approved by the United States Pure Food and Drug Administration;

(c) That more than a million automobile drivers, or any other number not established by competent evidence, now take said preparation to keep awake on long hours of driving, or approve the same as the safe, sure way to stay awake while driving;

and from making any other representations of similar intent or import.

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

Syllabus

IN THE MATTER OF
SUNNYLAND 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 2479. Complaint, June 28, 1935—Decision, Aug. 2, 1937

Where a corporation engaged as rectifier of distilled spirits, in purchasing, rectifying, and blending whiskies, gins, and other spirituous beverages, and in producing gin with a still used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in the sale of its aforesaid various products to wholesaler purchasers thereof in States other than State of origin of its said shipments, in substantial competition with those engaged in the manufacture by true distillation of whiskies, gins, 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 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 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 "Distilling" in its corporate name, on its stationery, mailing cards, and invoices, and on the labels attached to the bottles in which it sold and shipped its said products, that it was a producer of distilled spirits from raw materials, and so represented to its customers, and furnished same with means of representing to their vendees, both wholesalers and ultimate consuming public, that it was a distiller, and that the whiskies and other spirituous beverages contained in such bottles were by it made through process of distillation, as aforesaid, from mash, wort, or wash, 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 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 and other spirituous beverages sold by it were by it made and distilled from mash, wort, or

Complaint

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wash, and with capacity and tendency to induce dealers and purchasing public, acting in such beliefs, to buy its said whiskies and other spirituous beverages 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 whiskies or other spirituous beverages; 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. L. D. Greene, of Louisville, Ky., 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 Sunnyland Distilling 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, 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 Kentucky, with its office and principal place of business in the city of Louisville, 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 "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 manufac-

tured 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 June 28, 1935, issued, and on July 1, 1935, served its complaint in this proceeding upon respondent Sunnyland Distilling 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 the 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 said testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony or other evidence in opposition to the allegations of the complaint were introduced by R. E. Gordon, president of the Sunnyland Distilling Company, appearing for respondent. 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 (no brief in opposition thereto having been filed and no oral argument 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 Kentucky corporation organized February 7, 1934, and has been engaged since May 1934, in the distilled spirits rectifying business. During said period respondent has operated under a basic rectifier's permit from the Government known as "R-331" a rectifying establishment at 2119 West Main Street, Louisville, Ky., rectifying whiskies, using distilled spirits purchased from Brown-Forman and other distillers. Upon its premises, 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.

Since May 1934, the respondent has been engaged in the business of purchasing, rectifying, and blending whiskies, gins, and other spirituous beverages in its aforesaid plant under its said permit, and in the sale thereof in constant course of trade and commerce between and among the various States of the United States. In the course and conduct of its said business, it caused its said products when sold to be transported from its place of business in Louisville, Ky., into and through various States of the United States to the purchasers thereof, consisting of wholesalers located in States of the United States other than the State of origin of said shipments.

In the course and conduct of its business as aforesaid, respondent has been and is 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 has been and is 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. "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.)

Many distillers operate a separate establishment 500 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 distillers have a tax paid bottling room on the distillery bonded premises wherein their distilled spirits are bottled straight as they come from the still, or in a bonded warehouse after aging, or after reduction of proof. Any rectifying by a distiller, however, must be done in his rectifying plant under his rectifier's permit. On all bottled liquors, whether bottled at the distillery or at any rectifying plant, appear the words "Bottled" or "Blended" (as the case may be) "be the ----- Company." If the distilled spirits therein contained are bottled by a distiller 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 on the bottle "Blended 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, viz, "D" for a distiller and "R" for a rectifier, the number following said letter corresponding with the distiller's or rectifier's permit. Thus, "R-381" 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. This number is placed on the bottle to identify the bottler.

Knowledge of these details is not widespread among the retail trade and is very limited among the general public. All whiskies, whether coming from a distillery or rectifier, are generally conceded to be "distilled" products. Therefore, it is not possible to determine from the presence of the phrase "Blended and Bottled by" alone, or the phrase "Bottled by" alone on the label whether the package was bottled by a rectifier who is a distiller, or by a rectifier who is not a distiller.

This respondent does not now and never has 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 authorizes 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.

PAR. 3. The evidence adduced in this case from approximately eight competitive trade witnesses (both rectifiers and distillers) and nineteen members of the purchasing public shows, and the Commission finds, that for a long period of time the word "distilling," when used in connection with the liquor industry and the products thereof, has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

The rectification of alcoholic spirits by this respondent as aforesaid in the production of its gin, does not make or constitute it a distiller or a distilling company as defined by Sec. 3247 of the Revised Statutes of the United States regulating Internal Revenue.

The testimony of those having long experience in both the distilled spirits rectifying industry, and the distilling industry, established, and the Commission finds 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 or by the general public.

PAR. 4. This respondent, by the use of the word "distilling" in its corporate name on its stationery, mailing cards, invoices, and on the labels attached to the bottles in which it sold and shipped its products in interstate commerce, represented itself as a producer of distilled spirits from raw materials, and was so regarded, by virtue of said representations, by the trade and purchasing public. It thus represented to its customers and furnished them with the means of representing to their vendees, both wholesalers and the ultimate consuming public, that it was a distiller and that the whiskies and other spirituous beverages in said bottles contained were by it manufactured by the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not now and never was a distiller, does not now and never did distill the said whiskies, or other spirituous beverages, by it so bottled, labeled, sold and transported, and does not now and never did own, operate, or control any place or places where such beverages are or 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," "distilling," or "distiller" 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," "distiller" or "distillers" as a part of their corporate or trade names, on their stationery or advertising, or on the labels attached to the bottles in which they sold and shipped their said products.

PAR. 6. Representations by the respondent as hereinabove set forth had the capacity and tendency to and did mislead and deceive dealers and the purchasing public into the belief that respondent was a distiller, and that the whiskies and other spirituous beverages by it sold were manufactured and distilled by it from mash, wort, or wash, and had the capacity and tendency also to induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies 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 whiskies or other spirituous beverages. Thereby respondent did 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 Sunnyland 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 the 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 the said complaint brief filed herein by DeWitt T. Puckett, counsel for the Commission (no testimony or other evidence having been offered on behalf of respondent, and no brief having been filed on behalf of respondent, and no 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, Sunnyland Distilling Company, 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

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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.

Complaint

IN THE MATTER OF

ADOLPH WEIN, TRADING AS AMERICAN TOY WORKS

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

Docket 3117. Complaint, Apr. 26, 1937—Decision, Aug. 2, 1937

Where an individual engaged in sale and distribution, to retailers and direct to consuming public, of toys which were not of domestic origin, but which were made in or imported from Japan and other foreign countries, in substantial competition with those engaged in manufacture and distribution of like and similar products and in sale thereof in commerce among the various States and in the District of Columbia, and including among such competitors those who truthfully advertise and represent their products, and many importers of like and similar products who do not in any manner misrepresent the country of origin thereof—

Placed or caused to be placed upon containers of many of the toys sold and distributed by him, words and letters "Made in U. S. A.," notwithstanding fact many of such toys thus sold and distributed by him were not of domestic origin, but were made in or imported from Japan and other foreign countries, and many of said toys thus containered and labeled had imprinted thereon words "Japan" or "Made in Japan";

With effect of misleading and deceiving a substantial portion of purchasing public in the several States and in said District, and causing them erroneously to believe that toys thus packaged, labeled, sold, and distributed by him were made in the United States, and of causing substantial part of such public, because of such erroneous belief, to buy products offered, sold, and distributed by him, and with result thereby of unfair and substantial diversion of trade to him from his competitors; 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. S. Brogdyne Teu II for the Commission.

Mr. Joseph C. Kadane, 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 Adolph Wein, trading and doing business as American Toy Works, hereinafter designated 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. Respondent, Adolph Wein, is an individual who is now, and has been at all times mentioned herein doing business under the trade name and style of American Toy Works, at 41 East Eleventh Street, city of New York, State of New York.

PAR. 2. Respondent is now and has been engaged in the business of assembling, packing and selling toys to retailers and others for personal use and consumption in commerce as herein set out. Said respondent, being engaged in business as aforesaid, causes said toys when sold to be transported from his principal office and place of business in the State of New York to purchasers thereof located in other States of the United States and in the District of Columbia, and there is now and has been at all times mentioned herein a constant current of trade and commerce in said above described products sold by 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, firms, partnerships, and corporations likewise engaged in the business of selling toys in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The toys manufactured, labeled and sold and distributed by respondent are displayed and have been displayed for sale to and by dealers, jobbers, retailers, and department stores and are sold to purchasers and users thereof in containers bearing the words "Made in U. S. A.," and such containers bear no words, labels, or symbols to indicate that a substantial part of the toys contained therein and so sold and distributed by respondent are not made in the United States.

In truth and in fact, a substantial part of the toys so labeled, advertised, sold, and distributed by respondent are made in Japan and other foreign countries and purchased by respondent from resident manufacturers' agents of the foreign producers.

PAR. 5. For many years a substantial part of the consuming public has had and expressed a marked preference for toys which are manufactured in the United States over toys manufactured in any foreign country. As a result of this said preference of the purchasing public, they have purchased a substantial quantity of toys domestically manufactured and have refrained from purchasing toys manufactured in any country because of the feeling prevailing among a substantial part of Americans towards toys manufactured in foreign countries.

PAR. 6. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale

toys as hereinbefore referred to is to mislead a substantial part of the purchasing and consuming public in the several States of the United States by inducing them to mistakenly and erroneously believe that the toys offered for sale, sold, and distributed by respondent are manufactured in the United States.

PAR. 7. There are among the competitors of the respondent in commerce as herein described, manufacturers and distributors of toys who truthfully advertise and represent the place of origin of their products.

PAR. 8. The foregoing false and misleading representations on the part of the respondent have induced a substantial number of consuming purchasers of said toys to buy the products offered for sale, sold, and distributed by the respondent on account of the aforesaid mistaken belief. As a result thereof, trade has been diverted to respondent from competitors engaged in like and similar businesses. As a consequence thereof, a substantial injury has been and is being done by respondent to competition in commerce between the various States of the United States.

PAR. 9. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said 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 26, 1937, issued and served its complaint in this proceeding upon respondent, Adolph Wein, an individual trading as American Toy Works, 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 filing of respondent's answer thereto, a stipulation as to the facts was entered into between W. T. Kelley, Chief Counsel of the Commission, and Joseph C. Kadane, counsel for respondent. Said stipulation was thereafter approved by the Commission and 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, and the stipulation as to the facts

(respondent having waived the filing of a brief); 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. Respondent Adolph Wein is an individual trading and doing business under the name and style American Toy Works, with his principal place of business in New York, N. Y.

PAR. 2. The respondent is now and has been for more than one year last past engaged in the business of selling and distributing toys to retailers and direct to the consuming public.

PAR. 3. In the sale of said products respondent has transported or caused the same to be transported from his principal place of business in the State of New York to purchasers thereof located in the States of the United States other than the State from which shipment originated, and in the District of Columbia.

There has been for more than one year last past, and still is, a constant current of trade and commerce in said toys so sold and distributed by respondent between and among the various States of the United States, and in the District of Columbia.

PAR. 4. For more than one year last past the respondent has been engaged in substantial competition with other individuals and with partnerships, firms, and corporations, engaged in the manufacture and distribution of like and similar products, and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of his business, as aforesaid, the respondent, in soliciting the sale, and in the selling, of his products, and for the purpose of creating a demand on the part of the consuming public for said products causes, and has for more than one year last past caused, his products to be advertised through the media of labels attached to the containers of said toys or by words and phrases imprinted upon the said toys. In said ways and by said means respondent has made to the general public false and misleading statements with reference to the country of origin of the commodities offered for sale by him.

PAR. 6. Many of the toys sold and distributed by the respondent are sold in containers upon which the respondent places, or causes to be placed, the words and letters "Made in U. S. A.". Many of the toys so sold and distributed by the respondent in the containers bearing the words and letters "Made in U. S. A." are not made in the

United States, and are not of domestic origin, but are made in, or imported from, Japan and other foreign countries. Many of the toys so packaged in containers bearing the words and letters "Made in U. S. A." have imprinted thereon the word "Japan" or the words "Made in Japan" which indicates the country from which they were imported. Said containers bear no words or symbols to indicate that any part of the contents thereof are not made in the United States but in a foreign country.

PAR. 7. For many years a substantial part of the consuming public has had, and has expressed, a marked preference for toys which are manufactured in the United States over toys manufactured in any foreign country. As a result of the said preference of the purchasing public, they have purchased and still purchase a substantial quantity of toys domestically manufactured, and have refrained from purchasing toys manufactured in any foreign country because of the feeling prevailing among a substantial part of Americans toward toys manufactured in foreign countries.

PAR. 8. Among the competitors of the respondent engaged in said commerce mentioned in paragraph 4 hereof are manufacturers and distributors of like and similar products who truthfully advertise and represent their respective products, and among such competitors are many importers of like and similar products who do not in any manner misrepresent the country of the origin of their respective products.

PAR. 9. The use by the respondent of the words "Made in U. S. A." on the containers in which such imported toys are packaged, sold, and distributed misleads and deceives a substantial part of the purchasing public in the several States of the United States and in the District of Columbia, and causes them erroneously to believe that the toys so packaged, labelled, sold, and distributed by the respondent were, and are, manufactured in the United States; and causes a substantial part of the purchasing public, because of such erroneous belief, to purchase the products offered for sale, sold, and distributed by the respondent. As a result of such erroneous belief, there has been and is an unfair and substantial diversion of trade to the respondent from its competitors in said commerce to the injury of said competitors and to the injury of the public.

CONCLUSION

The aforementioned acts and practices of the respondent Adolph Wein are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress,

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, and the stipulation as to the facts entered into between W. T. Kelley, Chief Counsel of the Commission, and Joseph C. Kadane, 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, Adolph Wein, an individual, his representatives, agents, and employes, in connection with the offering for sale, sale, and distribution of toys in commerce among and between the various States of the United States and in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly, through price lists, circulars, labels, containers, or any other form of printed matter, or by radio broadcasting, or in any other manner, that any of said toys made in Japan or any other foreign country are made in the United States.

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
THE AMERICAN DIRIGOLD CORPORATION

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

Docket 2314. Complaint, May 21, 1936—Decision, Aug. 3, 1937

Where a corporation engaged in manufacture and sale of an alloy, containing no gold but composed chiefly of aluminum and copper, and of highly polished flat and hollow tableware and other articles fabricated therefrom, and so finished that they had color, appearance and luster of 14-karat or 18-karat gold, depending upon discernment of particular observer, in direct and substantial competition with those engaged in manufacture, sale and distribution, in commerce among the various States and in the District of Columbia, of similar tableware and other articles of the same general kind and for the same purposes, composed, as case might be, of sterling silverware, silver-plated ware, and other materials—

Included word "Dirigold" in its corporate name, and thus named, designated, and described said alloy and ware made therefrom, and stamped said word on each article made from said alloy and sold by it as aforesaid, and featured same in trade-mark used by it and placed upon its letterheads and other printed matter, and thereby falsely represented that said tableware and other articles contained gold, and through tolerance of use by its retail dealers of predecessor's advertising literature containing many statements, phrases and descriptive terms calculated, in connection with said word "Dirigold," to describe said ware, to create belief that same contained gold, such as "Color and Beauty of Gold," "* * * the alluring golden color and finish," etc., "SOLID not plated," "Golden Anniversaries * * * the ideal gift for such momentous occasions," became responsible for such use and representations made therein, and failed, through such qualifications as "contains no gold" on its price lists and letterheads, and through said phrase on some of aforesaid folders, but not on its address slips and envelopes, nor in connection with reproduction of its aforesaid trade-mark, nor with stamping of its said ware, nor with its corporate name, nor in all instances where said word was used in print, to reach all members of the public, nor all those coming in contact with said name, nor all members of the public shopping for flat and hollow ware, nor all those who actually purchase its said ware;

With result that some members of the public were in fact misled through such inherently misleading designations used as aforesaid, which, together with misleading implications thereof, served to attract prospective customers to ware thus designated and to cause them to look with favor thereon by reason thereof, and with tendency and capacity to lead members of the public, informed by many, but not all, retailers and clerks selling said ware of aforesaid fact, to believe that said ware, thus designated, contained at least some gold, and to induce them to buy same because of erroneous belief engendered as above set forth, and to divert trade to it from competitors engaged in sale in interstate commerce of flat, hollow and other ware adapted to and used for same general purposes, and with effect of

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diverting business to it from competitors who do not misrepresent materials from which their ware is made, but who truthfully and accurately state the facts in such respect, to their substantial injury and prejudice, and with result of placing in the hands of retail dealers an instrument of fraud and deception through which such dealers might mislead purchasing public and promote sale of such ware and cause purchase thereof by members of public because of misleading impressions thereby created:

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. Harry D. Michael for the Commission.

Hood & Hahn, of Indianapolis, Ind., and *Sanborn, Graves, Appel, Andre & Morton*, of St. Paul, Minn., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that The American Dirigold 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:

PARAGRAPHS 1. That said respondent, The American Dirigold Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office, factory, and principal place of business in the city of Kokomo in said State.

PAR. 2. That said respondent is now and has been engaged for more than six months last past in the manufacture of an alloy designated and described as "Dirigold" and of tableware and other articles fabricated therefrom and in the sale of such tableware and other articles made from such alloy in commerce, as herein set out. Said respondent, in the course and conduct of its said business, causes the said tableware and other products manufactured from said alloy to be transported from its said place of business in Indiana to, into and through States of the United States other than Indiana to various and numerous customers in such other States. Respondent's usual course of dealing is to sell said products to department stores, jewelers, or other retail dealers through whom or which they are in turn sold to members of the consuming public.

PAR. 3. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the manufacture, sale, and distribution in commerce of tableware and other articles of the same general kind and for the same purposes of use as those made and sold by respondent as aforesaid, some of which said ware is of sterling silver, some of silver plated ware and some of other materials, and such other individuals, firms and corporations have caused and do now cause their said tableware and other such articles as aforesaid, when sold by them, to be transported from the respective States of the United States where they are located to, into and through States other than the State of origin of the shipment thereof to the purchasers thereof at their respective places of location. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of its said tableware and other articles made from said alloy with such other individuals, firms, and corporations.

PAR. 4. That the respondent, in connection with the sale of its said tableware and other articles made from said alloy, as aforesaid, represents by the means and methods as herein set out that they contain gold. In truth and in fact, there is no gold in such tableware and other articles manufactured from said alloy. Said alloy and the products made therefrom by respondent are composed chiefly of aluminum and copper. The products made therefrom by respondent are highly polished and so finished that they are of the color, appearance and lustre of 14 karat gold. Respondent causes said alloy and the articles made therefrom to be named, designated and described as "Dirigold." Said name "Dirigold" is stamped by respondent on each article made from said alloy and sold by it, as aforesaid. It is the most prominent part of the trade-mark used by respondent in its advertising literature, letterheads and other printed matter. It is used as a part of respondent's corporate name. It has also been adopted by respondent as a descriptive term and is so used by it in its printed matter. It is also used by its representatives and its retail dealers as the term to describe such products in conversation and otherwise.

Said name "Dirigold," so applied to articles containing no gold, is inherently misleading in that it implies and serves as a representation that such products contain at least some gold. The use of said term as a name for such articles and in the connections, as aforesaid, further has the tendency and capacity to lead members of the public to believe that the products so designated contain gold and it has had and does have such effect. Respondent places on some of its printed matter the statement "Dirigold contains no gold" and the

phrase "Contains No Gold" is sometimes used in conjunction with the trade-mark heretofore referred to. Such statements and modifications do not reach all members of the public nor all those who come in contact with the name "Dirigold." Neither do they reach all members of the public who shop for or buy respondent's ware. Not all ultimate buyers or prospective buyers of said products see or have the opportunity to see respondent's printed matter containing such statements and modifications. No such modifications are made by respondent on the stampings on its said ware nor in connection with its corporate name. Nor are they made in every instance where the word "Dirigold" is used in its printed matter. Neither do such printed modifications affect the misleading effect of the word "Dirigold" as applied to respondent's ware when used by word of mouth. Nor do retail dealers make use of such modifications in their advertisements.

PAR. 5. That respondent in its circular advertising matter uses many statements, phrases and descriptive terms that serve to increase the said misleading effect of the word "Dirigold." Among such statements, phrases and descriptive terms are the following:

Color and Beauty of Gold.

* * * the alluring golden color and finish, the marvelous sheen and lustre * * *.

*** the perfect harmony and effect when used with gold-trimmed Haviland! Here, in effect, is the luxury and splendor of solid gold!

Dirigold will always retain its lustrous golden color because it's solid clear through.

SOLID not plated.

*** its rich, warm, lustrous golden color * * *.

Dirigold—The fashionable and exquisite ware that possesses the color and lustrous beauty of gold!

Like the precious metals—Dirigold is solid clear through.

No home need be denied the rare luxury and beauty of gold on the table and in the home.

Dirigold is truly—the ultimate gift of a Golden Age.

Golden Anniversaries—How appropriate that Dirigold be always considered as the ideal gift for such momentous occasions.

PAR. 6. That the representations and practices of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's said ware contains gold when such is not the fact, and to induce them to buy the same because of such erroneous belief engendered as above set forth. Said representations and practices further result in placing in the hands of retail dealers, who handle and sell the same, an instrument of fraud and deception by means of which they may mislead the purchasing public and promote the sale of such ware and cause the purchase thereof by members of the public who are thereby caused to entertain such mistaken belief. Said practices

of respondent also have the tendency and capacity to divert trade to respondent from competitors engaged in the sale in interstate commerce of tableware of various kinds and articles of the same general kind as made and sold by respondent. There are among the competitors of respondent those who do not in any wise misrepresent the material or materials of which their products are made or the composition of the same, but who truthfully and accurately state the facts in such regard without the use of misleading terminology or other misleading representations. As a result of respondent's said practices, as herein set forth, substantial injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States.

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 May 21, 1936, issued and served its complaint in this proceeding upon respondent The American Dirigold 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 Harry D. Michael, 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 Harold B. Hood, representing Hood and Hahn, attorneys for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. On August 24, 1936, during the course of hearings, the Commission received and ordered filed respondent's amended answer. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the amended 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, The American Dirigold Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office, factory, and principal place of business at 1142 S. Main Street, in the city of Kokomo in said State. Said corporation was organized August 13, 1935.

PAR. 2. The respondent is now and has been engaged since on or about the time said corporation was organized, as aforesaid, in the manufacture of an alloy designated and described as "Dirigold" and of tableware, consisting of flatware and hollow ware, and other articles fabricated therefrom, and in the sale of such ware in commerce between and among the various States of the United States and in the District of Columbia. The respondent in the course and conduct of its said business as aforesaid, causes and has caused the said tableware and other articles manufactured from said alloy to be transported from its said place of business in Indiana to, into and through States of the United States other than Indiana to various and numerous customers in such other States to whom such ware is or has been sold. Respondent's usual course of dealing is and has been to sell its said products to department stores, jewelry stores, or other retail stores through which they are in turn sold to members of the consuming public.

PAR. 3. During the time above mentioned other individuals, firms, and corporations in various States of the United States are and have been engaged in the manufacture, sale, and distribution in commerce between and among the various States of the United States and in the District of Columbia of tableware, consisting of flatware and hollow ware, and other articles, of the same general kind as made and sold by respondent, as aforesaid, and for the same purposes of use, some of which is sterling silverware, some of which is silver-plated ware, and some of which is ware of other materials. Such other individuals, firms, and corporations have caused and do now cause their said tableware and other articles, as aforesaid, when sold by them, to be transported from the respective States of the United States where they are located to, into and through States other than the State of origin of the shipment thereof to the purchasers of the same at their respective places of location. Among such competitors are R. Wallace and Sons Manufacturing Co., Wallingford, Conn.; International Silver Company, Meriden, Conn.; Oneida, Ltd.,

New York, N. Y., and Oneida, N. Y., and National Silver Company, New York, N. Y. Respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of its said tableware and other articles made from said alloy with such other individuals, firms, and corporations. Such competition has been direct and substantial.

PAR. 4. The respondent, in connection with the sale of its said tableware and other articles made from said alloy, as aforesaid, has represented by the means and methods as herein set out that such tableware and other articles contain gold when in truth and in fact such is not the fact. Said alloy and the products made therefrom by respondent are composed chiefly of aluminum and copper. Other metals enter into the composition of said alloy but the process is claimed to be a secret one and respondent did not reveal their identities on that account. However, there is no gold in said alloy or the products made therefrom. It was so admitted. The ware made from said alloy by respondent is highly polished and so finished that it is of the color, appearance and luster of gold, such appearance being that of 14-karat gold or 18-karat gold depending upon the discernment of the particular observer. Respondent has caused said alloy and the ware made therefrom to be named, designated, and described as "Dirigold." Said name "Dirigold" is stamped by respondent on each article made from said alloy and sold by it as aforesaid. It is the most prominent part of the trade-mark used by respondent and placed upon its letterheads and other printed matter. Said term is used as a part of respondent's corporate name and appears wherever the corporate name occurs on respondent's printed matter. Said word is also used by respondent as a descriptive term to describe its said ware. It is also used by respondent's representatives in the sale thereof and by the retail dealers who sell it to the public as the term to describe it in conversation and otherwise.

PAR. 5. The predecessor of respondent corporation in the conduct of said business was The Dirigold Corporation, which prior corporation had been in the hands of a receiver for several years before the business was acquired by respondent corporation. The Dirigold Corporation and said receiver had caused to be published and placed in the hands of retail dealers handling said ware considerable quantities of booklets and folders descriptive thereof. Said booklets and folders were generally in use by such dealers from the time respondent corporation took over the business as aforesaid, to, and including the time during which testimony was taken in this case. During such period of time such dealers continued to use said booklets and folders in the sale of the ware manufactured and sold by respondent

and in advertising the same to the purchasing public. Respondent and its officers knew of this practice and took no adequate measures to secure discontinuance thereof. Respondent did not print or publish any additional advertising literature during said period, except price lists, letterheads and the like. Respondent by its tolerance of the use of said advertising literature, by its retail dealers, became responsible for such use and for the representations made therein. In a few instances respondent furnished copies of said booklet to its retail dealers for use in the sale of "Dirigold" ware. Said booklets and folders contained many statements, phrases and descriptive terms that served, when used in connection with the word "Dirigold" to describe said ware, to create the belief that said ware contained gold. Among such statements, phrases and descriptive terms are the following:

Color and Beauty of Gold.

* * * the alluring golden color and finish, the marvelous sheen and lustre * * *

* * * the perfect harmony and effect when used with gold-trimmed Haviland!

Here, in effect, is the luxury and splendor of solid gold!

Dirigold will always retain its lustrous golden color because it's solid clear through.

SOLID not plated.

* * * its rich, warm, lustrous golden color * * *.

Dirigold—The fashionable and exquisite ware that possesses the color and lustrous beauty of gold!

Like the precious metals—Dirigold is solid clear through.

No home need be denied the rare luxury and beauty of gold on the table and in the home.

Dirigold is truly—the ultimate gift of a Golden Age.

Golden Anniversaries. How appropriate that Dirigold be always considered as the ideal gift for such momentous occasions.

PAR. 6. Respondent has been accustomed to place on its price lists and its letterheads, but not on its address slips and envelopes, the phrase "contains no gold" in connection with reproductions of the trade-mark containing the word "Dirigold." Some of the folders previously referred to as having been distributed by the receiver, have printed thereon at the top of each page the phrase "Dirigold contains no gold." Such statements and modifications do not reach all members of the public nor all those who come in contact with the name "Dirigold." Neither do such expressions reach all members of the public who shop for flatware and hollow ware including respondent's said ware, nor do they reach all those who actually buy respondent's said ware. Not all ultimate buyers or prospective buyers of respondent's products see or have the opportunity to see printed matter

containing said statements and modifications above referred to. No such modifications are made by respondent on the stamping on its said ware, nor in connection with its corporate name, nor are they used in all instances where the word "Dirigold" is used in print. Neither are such expressions used by those who sell respondent's ware in every instance where said term "Dirigold" is used when spoken by word of mouth. Many retail dealers and clerks who sell "Dirigold" ware have made it a practice to inform customers and prospective customers that there is no gold in said ware but said information is not given in all such cases.

PAR. 7. Retail stores which handle "Dirigold" ware do their own newspaper advertising of the same. Some stores have used descriptive terms in so advertising "Dirigold" which, by use of the word "gold" or similar terms therein to describe said ware, in connection with the word "Dirigold" have the tendency and capacity to create the belief that the ware so described contains gold.

PAR. 8. The name "Dirigold" applied to ware containing no gold, especially when such ware has the appearance of gold, is inherently misleading in that it implies and serves as a representation that such articles contain at least some gold. The use of said term as a name for flatware, hollow ware, and other ware as made and sold by respondent, has the tendency and capacity to lead members of the public to believe that the ware so designated contains gold. There have been instances where persons have entertained such belief by reason of said term. Said tendency and capacity is increased by the fact that the ware so designated has the appearance of gold. Furthermore, the use of descriptive terms such as those previously referred to emphasizing the word "gold," or like expressions, serves to increase the misleading effect of said term "Dirigold" when used as aforesaid. Said term together with the misleading implication contained therein, as aforesaid, serves to attract prospective customers to the ware so designated and to cause them to look upon it with favor because thereof.

PAR. 9. The representations of respondent as aforesaid have had the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's said ware contains at least some gold when such is not the fact, and to induce them to buy the same because of the erroneous belief engendered as above set forth and to divert trade to respondent from competitors engaged in the sale in interstate commerce of flatware, hollow ware and other ware adapted to and used for the same general purposes for which respondent's ware is used. There were and are among the competitors of respondent those who do not misrepresent the materials

from which their ware is made but who truthfully and accurately state the facts in such respect. Respondent's said acts and practices have tended to and do in fact divert business to respondent from its said competitors to the substantial injury and prejudice of such competitors. Moreover, the use of said term "Dirigold" to describe and designate respondent's said ware and respondent's representations and practices in regard thereto, as herein set out, result in placing in the hands of retail dealers an instrument of fraud and deception by means of which such dealers may mislead the purchasing public and promote the sale of such ware and cause the purchase thereof by members of the public because of misleading impressions thereby created.

CONCLUSION

The aforesaid acts and practices of the respondent, The American Dirigold 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 amended 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, briefs filed herein, and oral arguments by Harry D. Michael, counsel for the Commission, and by Harold B. Hood, representing Hood and Hahn, 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, The American Dirigold Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of tableware, consisting of flatware and hollow ware, and other articles made from an alloy of metals containing no gold, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

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Order

Representing through the use of the word "dirigold" or "gold" or any coined word containing the word "gold," alone or in connection or conjunction with any other word or words, in its corporate name or as descriptive of or as a trade-mark for its products, or in any other manner whatever, or through any other means or device, that such tableware, flatware, hollow ware and other articles contain gold.

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
DIRIGOLD METALS CORPORATION

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

Docket 2815. Complaint, May 21, 1936—Decision, Aug. 3, 1937

Where a corporation engaged in the manufacture and sale of an alloy containing no gold, but composed chiefly of aluminum and copper, and of highly polished flat and hollow tableware and other articles fabricated therefrom, and so finished that they had color, appearance and luster of 14-karat or 18-karat gold, depending upon discernment of particular observer, in direct and substantial competition with those engaged in manufacture, sale, and distribution in commerce among the various States and in the District of Columbia of similar tableware and other articles of same general kind and for the same purposes, composed as case might be, of sterling silverware, silver-plated ware, and other materials—
Included word "Dirigold" in its corporate name, and thus named, designated, and described said alloy and ware made therefrom, and stamped said word on each article made from said alloy, and sold by it as aforesaid, and featured and displayed same in trade-mark used by it and placed upon its printed matter and wherever in such matter its aforesaid corporate name occurred, and thereby falsely represented that said tableware and other articles contained gold, and through use in advertising matter distributed to customers, in connection with word "Dirigold," of many statements, phrases, and descriptive terms, such as "Dirigold * * * possesses the color and lustrous beauty of gold!" "No home need be denied the rare luxury and beauty of gold on the table and in the home," "Golden Anniversaries * * * the ideal gift for such momentous occasions," "SOLID not plated," served to create belief that said ware contained gold;

With result that some members of the public were in fact misled through such inherently misleading designation used as aforesaid, which, together with misleading implications thereof, served to attract prospective customers to ware thus designated and to cause them to look with favor thereon by reason thereof, and with tendency and capacity to confuse, mislead and deceive members of the public into the erroneous belief that its said ware contained at least some gold, and to induce them to buy same because of the erroneous belief thus engendered, and to divert trade to it from competitors engaged in sale in interstate commerce of flat, hollow and other ware adapted to and used for same general purposes, and with effect of diverting business to it from competitors who do not misrepresent materials from which their ware is made, but who truthfully and accurately state the facts in such respects, to their substantial injury and prejudice, and with result of placing in the hands of retail dealers an instrument of fraud and deception through which such dealers might mislead and deceive purchasing public and promote sale of such ware, and cause purchases thereof by members of public because of misleading impression thereby created:

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Complaint

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. Harry D. Michael for the Commission.

McLeod, Fixel & Fixel, 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 Dirigold Metals 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. That said respondent, Dirigold Metals Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office, factory, and principal place of business in the city of Barrington, in the State of Illinois.

PAR. 2. That said respondent is now and has been engaged for more than six months last past in the manufacture of an alloy designated and described as "Dirigold" and of tableware and other articles fabricated therefrom, and in the sale of such tableware and other articles made from such alloy in commerce, as herein set out. Said respondent, in the course and conduct of its said business, causes the said tableware and other products manufactured from said alloy to be transported from its said place of business in Illinois to, into and through States of the United States other than Illinois to various and numerous customers in such other States. Respondent's usual course of dealing is to sell said products to department stores, jewelers, or other retail dealers through whom or which they are in turn sold to members of the consuming public.

PAR. 3. That, during the time above mentioned, other individuals, firms, and corporations in various states of the United States are and have been engaged in the manufacture, sale, and distribution in commerce of tableware and other articles of the same general kind and for the same purposes of use as those made and sold by respondent, as aforesaid, some of which said ware is of sterling silver, some of silver plated ware and some of other materials, and such other

individuals, firms, and corporations have caused and do now cause their said tableware and other such articles, as aforesaid, when sold by them, to be transported from the respective States of the United States where they are located to, into and through States other than the State of origin of the shipment thereof to the purchasers thereof at their respective places of location. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of its said tableware and other articles made from said alloy with such other individuals, firms, and corporations.

PAR. 4. That the respondent, in connection with the sale of its said tableware and other articles made from said alloy, as aforesaid, represents by the means and methods as herein set out that they contain gold. In truth and in fact, there is no gold in such tableware and other articles manufactured from said alloy. Said alloy and the products made therefrom by respondent are composed chiefly of aluminum and copper. The products made from said alloy by respondent are highly polished and so finished that they are of the color, appearance and lustre of 14-karat gold. Respondent causes said alloy and the articles made therefrom to be named, designated and described as "Dirigold." Said name "Dirigold" is stamped by respondent on each article made from said alloy and sold by it, as aforesaid. It is the most prominent part of the trade-mark used by respondent in its advertising literature, letterheads, and other printed matter. It is used as a part of respondent's corporate name. It has also been adopted by respondent as a descriptive term and is so used by it in its printed matter. It is also used by its representatives and its retail dealers as the term to describe such products in conversation and otherwise.

Said name "Dirigold," so applied to articles containing no gold, is inherently misleading in that it implies and serves as a representation that such products contain at least some gold. The use of said term as a name for such articles and in the connections, as aforesaid, further has the tendency and capacity to lead members of the public to believe that the products so designated contain gold and it has had and does have such effect.

PAR. 5. That respondent in its circular advertising matter uses many statements, phrases and descriptive terms that serve to increase the said misleading effect of the word "Dirigold." Among such statements, phrases and descriptive terms are the following:

Dirigold—The fashionable and exquisite ware that possesses the color and lustrous beauty of gold!

Like the precious metals—Dirigold is solid clear through.

No home need be denied the rare luxury and beauty of gold on the table and in the home.

Dirigold is truly—the ultimate gift of a Golden Age.

Golden Anniversaries. How appropriate that Dirigold be always considered as the ideal gift for such momentous occasions.

SOLID not plated.

*** its rich, warm, lustrous golden color ***.

PAR. 6. That the representations and practices of respondent, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent's said ware contains gold, when such is not the fact, and to induce them to buy the same because of such erroneous belief engendered as above set forth. Said representations and practices further result in placing in the hands of retail dealers, who handle and sell the same, an instrument of fraud and deception by means of which they may mislead the purchasing public and promote the sale of such ware and cause the purchase thereof by members of the public who are thereby caused to entertain such mistaken belief. Said practices of respondent also have the tendency and capacity to divert trade to respondent from competitors engaged in the sale in interstate commerce of tableware of various kinds and articles of the same general kind as those made and sold by respondent. There are among the competitors of respondent those who do not in any wise misrepresent the material or materials of which their products are made or the composition of the same, but who truthfully and accurately state the facts in such regard without the use of misleading terminology or other misleading representations. As a result of respondent's said practices, as herein set forth, substantial injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States.

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 May 21, 1936, issued and served its complaint in this proceeding upon respondent Dirigold Metals

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 Harry D. Michael, 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 Rowland W. Fixel, representing McLeod, Fixel and Fixel, 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. The respondent, Dirigold Metals Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office, factory, and principal place of business in the city of Barrington, in the State of Illinois. Said corporation was organized in January 1934.

PAR. 2. The respondent is now and has been engaged since on or about July 3, 1935, in the manufacture of an alloy designated and described as "Dirigold" and of tableware, consisting of flatware and hollow ware, and other articles fabricated therefrom, and in the sale of such ware in commerce between and among the various States of the United States. The respondent, in the course and conduct of said business as aforesaid, causes and has caused the said tableware and other articles manufactured from said alloy to be transported from its said place of business in Illinois to, into, and through States of the United States other than Illinois, to various and numerous customers in such other States to whom such ware is or has been sold. Respondent's usual course of dealing is and has been to sell its said products to distributors or wholesalers and to retail dealers through whom they are in turn sold to members of the consuming public.

PAR. 3. During the time above mentioned other individuals, firms, and corporations in various States of the United States are and have

been engaged in the manufacture, sale, and distribution in commerce between and among the various States of the United States and in the District of Columbia of tableware, consisting of flatware and hollow ware, and other articles of the same general kind as made and sold by respondent, as aforesaid, and for the same purposes of use, some of which is sterling silverware, some of which is silverplated ware and some of which is ware of other materials. Such other individuals, firms, and corporations have caused and do now cause their said tableware and other articles as aforesaid, when sold by them, to be transported from the respective States of the United States where they are located to, into, and through States other than the State of origin of the shipment thereof to the purchasers of the same at their respective places of location. Among such competitors are R. Wallace and Sons Manufacturing Company, Wallingford, Conn.; International Silver Company, Meriden, Conn.; Oneida, Ltd., New York, N. Y., and Oneida, N. Y.; and National Silver Company, New York, N. Y. Respondent was, during the aforesaid time, in competition in interstate commerce in the sale of its said tableware and other articles made from said alloy with such other individuals, firms, and corporations. Such competition has been direct and substantial.

PAR. 4. The respondent, in connection with the sale of its said tableware and other articles made from said alloy, as aforesaid, has represented by the means and methods as herein set out that such tableware and other articles contain gold, when in truth and in fact such is not the fact. Said alloy and the products made therefrom by respondent are composed chiefly of aluminum and copper. Other metals enter into the composition of said alloy but the process is claimed to be a secret one and the respondent did not reveal their identities on that account. However, there is no gold in said alloy or the products made therefrom. It was so admitted. The ware made from said alloy by respondent is highly polished and so finished that it is of the color, appearance and luster of gold, such appearance being that of fourteen-karat gold or eighteen-karat gold depending upon the discernment of the particular observer. Respondent has caused said alloy and the articles made therefrom to be named, designated and described as "Dirigold." Said name "Dirigold" is stamped by respondent on each article made from said alloy and sold by it as aforesaid. It is the most prominent part of the trade-mark used by respondent and placed upon its printed matter. Said term is used as a part of respondent's corporate name and appears wherever the corporate name occurs on respondent's printed matter. Said word is also used by respondent

as a descriptive term to describe its said ware. It is also used by respondent's representatives in the sale of said ware as well as by distributors and wholesalers thereof and also by the retail dealers who sell it to the public as the term to describe it in conversation and otherwise.

PAR. 5. Respondent, in its advertising matter distributed to its customers, used many statements, phrases and descriptive terms which, when used to describe said ware in connection with the word "Dirigold," served to create the belief that said ware contained gold. Among such statements, phrases and descriptive terms are the following:

Dirigold—The fashionable and exquisite ware that possesses the color and lustrous beauty of gold.

Like the precious metals—Dirigold is solid clear through.

No home need be denied the rare luxury and beauty of gold on the table and in the home.

Dirigold is truly—the ultimate gift of a Golden Age.

Golden Anniversaries. How appropriate that Dirigold be always considered as the ideal gift for such momentous occasions.

SOLID not plated.

* * * its rich, warm, lustrous golden color * * *

PAR. 6. Retail stores which handle respondent's said ware do their own newspaper advertising of the same. Some stores have used descriptive terms in so advertising "Dirigold" which, by use of the word "gold" or similar terms therein to describe said ware in connection with the word "Dirigold" have the tendency and capacity to create the belief that the ware so described contains gold.

PAR. 7. The name "Dirigold" applied to ware containing no gold, especially when such ware has the appearance of gold, is inherently misleading in that it implies and serves as a representation that such ware contains at least some gold. The use of said term as a name for flatware, hollow ware, and other ware as made and sold by respondent has the tendency and capacity to lead members of the public to believe that the ware so designated contains gold. Some members of the public have in fact been so misled and have entertained the belief that "Dirigold" ware contains gold, which said belief was engendered by the use of said word "Dirigold" or by a combination of the impression created by said word "Dirigold" and the appearance of the ware to which it was applied. The tendency and capacity to mislead by use of the word "Dirigold" to describe said ware is increased by the fact that the ware so designated has the appearance of gold. Furthermore, the use of descriptive terms such as those previously referred to emphasizing the word "gold" or like expressions, serves to increase the misleading effect of said term

"Dirigold" when used as aforesaid. Said term, together with the misleading implication contained therein, as aforesaid, serves to attract prospective customers to the ware so designated and to cause them to look upon it with favor because thereof.

PAR. 8. The representations of respondent as aforesaid have had the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's said ware contains at least some gold, when such is not the fact, and to induce them to buy the same because of the erroneous belief engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of flatware, hollow ware, and other ware adapted to and used for the same general purposes for which respondent's ware is used. There were and are among the competitors of respondent those who do not misrepresent the materials from which their ware is made but who truthfully and accurately state the facts in such respect. Respondent's said acts and practices have tended to and do in fact divert business to respondent from its said competitors to the substantial injury and prejudice of such competitors. Moreover, the use of the term "Dirigold" to describe and designate respondent's said ware, and respondent's representations and practices in regard thereto, as herein set out, result in placing in the hands of retail dealers an instrument of fraud and deception by means of which such dealers may mislead the purchasing public and promote the sale of such ware and cause the purchase thereof by members of the public because of misleading impressions thereby created.

CONCLUSION

The aforesaid acts and practices of the respondent, Dirigold Metals Corporations 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, briefs filed herein, and oral arguments by Harry D. Michael, counsel

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for the Commission, and by Rowland W. Fixel, representing McLeod, Fixel and Fixel, 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, Dirigold Metals Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of tableware, consisting of flatware and hollow ware, and other articles made from an alloy of metals containing no gold, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the word "dirigold" or "gold" or any coined word containing the word "gold," alone or in connection or conjunction with any other word or words, in its corporate name or as descriptive of or as a trade-mark for its products, or in any other manner whatever, or through any other means or device, that such tableware, flatware, hollow ware and other articles contain gold.

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
DIRIGOLD DISTRIBUTORS, INC.

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

Docket 2816. Complaint, May 21, 1936—Decision, Aug. 3, 1937

Where a corporation engaged in sale at retail, chiefly, of highly polished, flat and hollow tableware and other articles made of alloy containing no gold, but composed chiefly of aluminum and copper, and so finished that they had the color, appearance and luster of 14-karat or 18-karat gold, depending upon the discernment of the particular observer, in direct and substantial competition with those engaged in sale and distribution, in commerce among the various States and in the District of Columbia, of similar tableware and other articles of the same general kind and for the same purposes, composed, as case might be, of sterling silver, silver-plated ware, and other materials—

Included word "Dirigold" in its corporate name and thus made use thereof in its printed matter and otherwise, and sold said ware under said name and as a descriptive term thereof, and with each piece thereof thus stamped, and made use of printed matter in its business in promoting sale of said ware, in which said word was most prominent part of trade mark thereon depicted, and thereby falsely represented that said ware contained gold, and through use in circular advertising matter, in connection with word "Dirigold," of many statements, phrases and descriptive terms, such as " * * * a wonderful merchandise with the color of fine gold * * *," " * * * the homogeneity of structure, the fine texture, and the lustrous brilliance of gold, * * *," " * * * may be quite truthfully described as **BETTER THAN GOLD**," "Beautiful as Gold," "Here, in effect, is the luxury and splendor of solid gold," "SOLID not plated," " * * * the ultimate gift of a Golden Age," and "Golden Anniversaries * * * ideal for such momentous occasions," served to create impression that said ware contained gold, and failed, through such qualifications as "Contains no gold" on some of its printed matter and in connection with aforesaid trade mark on some of such matter, but not in connection with stampings thereof nor with its said corporate name in all instances where word was used in print, nor in every instance by those making oral use of word in selling such ware, to reach all members of the public, or all those coming in contact with said name, or all members of the public shopping for flat and hollow ware including that sold by it, or all those actually buying such ware;

With result that some members of the public were in fact misled through such inherently misleading designation, used as aforesaid, which, together with misleading implications thereof, served to attract prospective customers to ware thus designated and cause them to look with favor thereon by reason thereof, and with tendency and capacity to confuse, mislead, and deceive members of the public, notwithstanding practice of its representatives of informing customers there was no gold in such ware, into erroneous belief that its said products contained at least some gold, and to induce them to buy same because of erroneous belief thus engen-

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dered, and to divert trade to it from competitors engaged in sale in interstate commerce of flat, hollow and other ware adapted to and used for same general purposes, and with effect of diverting business to it from competitors who do not misrepresent the materials from which their ware is made, but who truthfully and accurately state the facts in such respect; 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. Addison*, trial examiner.

Mr. Harry D. Michael for the Commission.

Hood & Hahn, of Indianapolis, Ind., and *Sanborn, Graves, Appel, Andre & Morton*, of St. Paul, Minn., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Dirigold Distributors, Inc., hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. That respondent, Dirigold Distributors, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the city of Chicago in said State.

PAR. 2. That said respondent is now and has been engaged for more than two years last past in the sale in commerce of tableware and other articles designated and described as "Dirigold," as herein set out. Said respondent sells said products at retail to members of the consuming public and acts as a retail outlet for the manufacturer thereof. Said respondent, in the course and conduct of its said business, causes said products, when sold by it, to be transported from its said place of business in Illinois to, into and through States of the United States other than Illinois to customers in such other States to whom such products are or have been sold.

PAR. 3. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in commerce of tableware and other articles of the same general kind and for the same purposes of use as those sold by respondent, as aforesaid, some of

which said ware is of sterling silver, some of silver plated ware, and some of other materials, and such other individuals, firms, and corporations have caused and do now cause their said tableware and other such articles, as aforesaid, when sold by them, to be transported from the respective States of the United States where they are located to, into and through States other than the State of origin of the shipment thereof to the purchasers thereof at their respective places of location. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of its said tableware and other articles designated and described as aforesaid with such other individuals, firms, and corporations. Some of such competitors sell their products directly to the purchasing public while others sell to dealers through whom or which they are in turn sold to members of the public.

PAR. 4. That the respondent, in connection with the sale of its said tableware and other articles, as aforesaid, represents by the means and methods as herein set out that such products contain gold. In truth and in fact, said products do not contain any gold but are made from an alloy consisting of other metals, the chief of which are aluminum and copper. Said products made from such alloy are highly polished and so finished that they are of the color, appearance and lustre of 14-carat gold.

Said name "Dirigold" is stamped on each article made from said alloy so sold by respondent. It is the most prominent part of the trade-mark used by respondent in its advertising literature, letter-heads and other printed matter. It is used as a part of respondent's corporate name. It has been adopted by respondent as a descriptive term and is so used by it in its printed matter. It is also used by respondent's representatives as the term to describe such products in conversation and otherwise.

Said name "Dirigold," so applied to articles containing no gold, is inherently misleading in that it implies and serves as a representation that such products contain at least some gold. The use of said term as a name for such articles further has the tendency and capacity to lead members of the public to believe that the products so designated contain gold and it has had and does have such effect. Respondent places on some of its printed matter the statement "Dirigold contains no gold" and the phrase "Contains No Gold" is sometimes used in conjunction with the trade-mark heretofore referred to. Such statements and modifications do not reach all members of the public nor all those who come in contact with the name "Dirigold." Neither do they reach all members of the public who shop for

or buy said ware. Not all ultimate buyers or prospective buyers of said products see or have the opportunity to see respondent's printed matter containing such statements and modifications. No such modifications occur in connection with the stampings on said ware nor in connection with respondent's corporate name. Nor are they made in every instance when the word "Dirigold" is used in its printed matter. Neither do such printed modifications affect the misleading effect of the word "Dirigold" as applied to respondent's ware when used by word of mouth. Formerly, respondent made no such modifications or explanatory statements in its printed matter as above described.

PAR. 5. That respondent in its circular advertising matter uses many statements, phrases and descriptive terms that serve to increase the said misleading effect of the word "Dirigold." Among such statements, phrases and descriptive terms are the following:

Dirigold is a wonderful merchandise with the color of fine gold * * *.

It has the homogeneity of structure, the fine texture, and the lustrous brilliances of gold, * * *.

Dirigold may be quite truthfully described as BETTER THAN GOLD.

The Beauty and Color of Gold with Dirigold.

* * * Dirigold—with its irresistible golden beauty.

Beautiful as Gold.

Color and Beauty of Gold.

* * * the alluring golden color and finish, the marvelous sheen and lustre * * *.

Here, in effect, is the luxury and splendor of solid gold!

* * * the perfect harmony and effect when used with gold-trimmed Haviland!

Dirigold will always retain its lustrous golden color because it's solid clear through.

SOLID not plated.

* * * its rich, warm, lustrous golden color * * *.

Dirigold—The fashionable and exquisite ware that possesses the color and lustrous beauty of gold!

Like the precious metals—Dirigold is solid clear through.

No home need be denied the rare luxury and beauty of gold on the table and in the home.

Dirigold is truly—the ultimate gift of a Golden Age.

Golden Anniversaries. How appropriate that Dirigold be always considered as the ideal gift for such momentous occasions.

PAR. 6. That the representations and practices 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 said ware so sold by respondent contains gold when such is not the fact, and to induce them to buy the same because of such erroneous belief engendered as above set forth. Said practices of respondent

also have the tendency and capacity to divert trade to respondent from competitors engaged in the sale in interstate commerce of tableware of various kinds and articles of the same general kind as those sold by respondent. There are among the competitors of respondent those who do not in any wise misrepresent the material or materials of which their products are made or the composition of the same, but who truthfully and accurately state the facts in such regard without the use of misleading terminology or other misleading representations. As a result of respondent's said practices, as herein set forth, substantial injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States.

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 May 21, 1936, issued and served its complaint in this proceeding upon respondent Dirigold Distributors, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Harry D. Michael, attorney for the Commission, before John W. Addison, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Harold B. Hood, representing Hood and Hahn, attorneys for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. On August 24, 1936, during the course of hearings, the Commission received and ordered filed respondent's amended answer. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the amended 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, Dirigold Distributors, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 70 East Jackson Boulevard, in the city of Chicago, in said State. Said corporation was organized on October 29, 1930.

PAR. 2. The respondent is now and has been engaged since said date of organization in the sale in commerce between and among the various States of the United States of tableware, consisting of flatware and hollow ware, and other articles designated and described as "Dirigold." Respondent sells said ware generally at retail direct to members of the consuming public. Said business is confined largely to the city of Chicago and vicinity. Sales are made and have been made, however, to members of the public located in States other than Illinois. In a few instances, during the year 1934, respondent sold said ware at wholesale to retail dealers located in States other than Illinois. The respondent, in the course and conduct of its said business as aforesaid, causes and has caused said ware to be transported from its said place of business in Illinois to, into and through States of the United States other than Illinois to various and numerous customers in such other States, to whom said ware is or has been sold.

PAR. 3. During the time above mentioned other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of tableware, consisting of flatware and hollow ware, and other articles, of the same general kind and for the same purposes of use as the ware sold by respondent as aforesaid, some of which said ware is of sterling silver, some of silver-plate, and some of other materials. Such other individuals, firms, and corporations have caused and do now cause their said tableware and other articles, as aforesaid, when sold by them, to be transported from the respective States of the United States where they are located to, into and through States other than the State of origin of the shipment thereof to the purchasers of the same at their respective places of location. Respondent has been, during the aforesaid time, in competition in

interstate commerce in the sale of its said tableware and other articles made from said alloy, with such other individuals, firms, and corporations. Such competition has been direct and substantial.

PAR. 4. The respondent in connection with the sale of said ware, as aforesaid, has represented by the means and methods herein set out, that such ware contains gold when in truth and in fact such is not the fact. The ware so sold by respondent and described and designated as "Dirigold" is composed of an alloy consisting chiefly of aluminum and copper. Other metals enter into the composition of said alloy, but the process is claimed to be a secret one, and their identities were not revealed. It was admitted, however, that there is no gold in said alloy or the products made therefrom. Said ware is highly polished and so finished that it is of the color, appearance and luster of gold, such appearance being that of 14-karat gold or 18-karat gold depending upon the discernment of the particular observer. The name "Dirigold" is stamped upon each piece of said ware sold by respondent. It is the most prominent part of the trade-mark depicted on the printed matter used by respondent in its business and in promoting the sale of said ware. Said term is also used as a part of respondent's corporate name and appears wherever the corporate name occurs on respondent's printed matter. Said word is also used by respondent as a descriptive term to describe said ware. It is also used by respondent's representatives in the sale thereof as the term to describe it in conversation and otherwise.

PAR. 5. Respondent, in its circular advertising matter, has used many statements, phrases and descriptive terms in describing said ware that served to create the impression, when used in connection with said word "Dirigold," that said ware contains gold. Among such statements, phrases, and descriptive terms so used are the following:

Dirigold is a wonderful merchandise with the color of fine gold * * *.

It has the homogeneity of structure, the fine texture, and the lustrous brilliance of gold, * * *.

Dirigold may be quite truthfully described as BETTER THAN GOLD.

The Beauty and Color of Gold with Dirigold.

* * * Dirigold—with its irresistible golden beauty.

Beautiful as Gold.

Color and Beauty of Gold.

* * * the alluring golden color and finish, the marvelous sheen and lustre * * *.

Here, in effect, is the luxury and splendor of solid gold!

* * * the perfect harmony and effect when used with gold-trimmed Haviland!

Dirigold will always retain its lustrous golden color because it's solid clear through.

SOLID not plated.

* * * its rich, warm, lustrous golden color * * *.

Dirigold—The fashionable and exquisite ware that possesses the color and lustrous beauty of gold!

Like the precious metals—Dirigold is solid clear through.

No home need be denied the rare luxury and beauty of gold on the table and in the home.

Dirigold is truly—the ultimate gift of a Golden Age.

Golden Anniversaries. How appropriate that Dirigold be always considered as the ideal gift for such momentous occasions.

PAR. 6. On some of the printed matter used by respondent the statement "Dirigold contains no gold" has been used. Also the phrase "contains no gold" has been used on some of such printed matter in connection with the trade-mark containing the word "Dirigold." Such statements and modifications do not reach all members of the public nor all those who come in contact with the name "Dirigold." Neither do such expressions reach all members of the public who shop for flatware and hollow ware including the said ware sold by respondent. Nor do they reach all those who actually buy said ware. Not all buyers or prospective buyers of said ware see or have the opportunity to see printed matter containing said statements and modifications above referred to. No such modifications are made on the stampings on said ware, nor in connection with respondent's corporate name, nor are they used in all instances where the word "Dirigold" is used in print. Neither are such expressions used by those who sell said ware in every instance where said term "Dirigold" is used when spoken by word of mouth. Representatives of respondent have made it a practice to inform customers that there is no gold in "Dirigold" ware but there is no certainty that such information is given or will be given in all cases.

PAR. 7. The name "Dirigold" applied to ware containing no gold, especially when such ware has the appearance of gold, is inherently misleading in that it implies and serves as a representation that such ware contains at least some gold. The use of said term as a name for flatware, hollow ware, and other ware such as that sold by respondent, has the tendency and capacity to lead members of the public to believe that the ware so designated contains gold. Some members of the public have in fact been so misled and have entertained the belief that "Dirigold" ware contains gold, which said belief was engendered by the use of said word "Dirigold" or by a combination of the impression created by said word "Dirigold" and the appearance of the ware to which it was applied. The tendency and capacity to mislead by use of the word "Dirigold" to

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describe said ware is increased by the fact that the ware so designated has the appearance of gold. Furthermore, the use of descriptive terms such as those previously referred to emphasizing the word "gold," or like expressions, serves to increase the misleading effect of said term "Dirigold" when used as aforesaid. Said term serves as a means to attract members of the public to the ware so designated and causes them to look upon it with favor because of the misleading implication contained therein, as aforesaid.

PAR. 8. The representations of respondent as aforesaid have had the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that the ware sold by respondent as aforesaid contains at least some gold, when such is not the fact, and to induce them to buy the same because of the erroneous belief engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale in interstate commerce of flatware, hollow ware and other ware adapted to and used for the same general purposes for which the ware so sold by respondent is used. There were and are among the competitors of respondent those who do not misrepresent the materials from which their ware is made but who truthfully and accurately state the facts in such respect. Respondent's said acts and practices have tended to and do in fact 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, Dirigold Distributors, 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 amended 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, briefs filed herein, and oral arguments by Harry D. Michael, counsel for the Commission, and by Harold B. Hood, representing Hood and Hahn, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion

Order

25 F. T. C.

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, Dirigold Distributors, Inc., its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of tableware, consisting of flatware and hollow ware, and other articles made from an alloy of metals containing no gold, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the word "dirigold" or "gold" or any coined word containing the word "gold," alone or in connection or conjunction with any other word or words, in its corporate name or as descriptive of or as a trade-mark for its products, or in any other manner whatever, or through any other means or device, that such tableware, flatware, hollow ware, and other articles contain gold.

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

SILVER ROD STORES SUPPLY COMPANY, INC., AND
DALE DRUG 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 2955. Complaint, Oct. 22, 1936—Decision, Aug. 4, 1937

Where a corporation and its subsidiary engaged in distribution and sale, from the warehouse of the former, of aspirin to group of drug and cigar stores in certain other States, as requisitioned from time to time by such stores under arrangement set up and established between them—

(a) Represented that they were the first or original manufacturers or dealers in aspirin, through stamping word "ORIGINAL" in large red letters on all cartons, bottles, and tin containers of their said product, and through such statements, in advertising matter and pamphlets and containers of their tablets, as "Insist upon the Original 'Dale's Aspirin'," "Look for the 'D' on each tablet which is the Original 'Dale's Aspirin'," and "Original 'Dale's Aspirin' is packaged in convenient tins," etc., facts being they were not the first or original manufacturers of or dealers in said product, manufacture of which was begun under patent and continued for many years thereafter by the predecessor of a corporation other than that from which they purchased their said product, thus described and referred to; and

(b) Represented that their said product had a retail value in excess of the actual selling price and in excess of the actual value thereof, through stamping on 100-tablet containers of said "Dale's Aspirin," "Price \$1.00," and on 50-tablet containers, "Price \$.50," notwithstanding fact retail price at which they sold their said product fluctuated between 39¢ and 49¢ for the 100-tablet quantities and was about 23¢ during said period for the 50-tablet units, and said tablets in such quantities at no time sold for \$1.00 or 50¢, as case might be, and prices in question, thus appearing as selling prices thereof, were not those at which tablets were actually sold or intended to be sold, but were greatly in excess of such prices in usual course of trade;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that all said representations were true, and with result that a substantial number of consuming public, as a consequence of erroneous beliefs induced by such false and misleading statements, purchased substantial volume of its said tablets and trade was unfairly diverted to them from those likewise engaged in distribution and sale of such tablets 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.

Complaint

25 F. T. C.

Mr. Matthew Swerling and Mr. J. E. Weiner, 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 the Silver Rod Stores Supply Co., Inc., a corporation, and Dale Drug Company, Inc., 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 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. Respondent, Silver Rod Stores Supply Co., Inc., is a corporation existing and doing business under the laws of the State of New York, with its principal office and place of business located at 60 Broadway, Brooklyn, N. Y.

Respondent Dale Drug Company, Inc., is a subsidiary of respondent Silver Rod Stores Supply Co., Inc., and is a corporation existing and doing business under the laws of the State of New York, with its principal office and place of business located at 60 Broadway, Brooklyn, N. Y.

Respondent Silver Rod Stores Supply Co., Inc., and respondent Dale Drug Company, Inc., are now and have been for some time engaged in the business of distributing and selling in commerce, as herein set out, a certain pharmaceutical preparation commonly called "aspirin."

PAR. 2. Said respondents, Silver Rod Stores Supply Co., Inc., and Dale Drug Company, Inc., being engaged in business as aforesaid, cause and have caused said aspirin, when sold, to be transported from their respective offices and places of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Both respondents have maintained and now maintain a constant current of trade and commerce in said aspirin distributed and sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their respective businesses, both respondents are now, and have been, in substantial competition with other corporations and with individuals and firms likewise engaged in the business of selling and distributing aspirin in com-

merce among and between the various States of the United States and in the District of Columbia. In the course and conduct of their respective businesses, said respondents sell aspirin under the name "Dale Drug Company, Inc.," and represents said aspirin as "Dale's Aspirin."

By statements and representations in advertising matter, pamphlets and on containers of aspirin tablets, said respondents represent that they are, or either of them was, the first, or original manufacturers of, or dealers in, aspirin. Such advertisements and statements are as follows:

Insist upon the original "Dale's Aspirin."

Look for the "D" on each tablet, which is the "Original Dale's Aspirin."

Original Dale Aspirin is packed in convenient tins of 12s for the pocket or purse.

On each bottle containing said aspirin tablets is stamped the word "original" in red letters.

In truth and in fact, said representations of both respondents that they are, or either of them was the first or original manufacturer of or dealer in aspirin, are false, misleading, and untrue. In truth and in fact, Dale's Aspirin is not the original aspirin, and the respondents are not the original manufacturers of or dealers in aspirin.

PAR. 4. By markings and statements on cartons containing aspirin respondents represent to customers and prospective customers that Dale's Aspirin has a retail value in excess of the actual selling price and in excess of the actual value thereof.

The retail prices stamped on said cartons, as aforesaid, are in excess of the actual selling prices of Dale's Aspirin by the respondents to the consuming public, and are in excess of the true and actual value of said aspirin.

The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or true selling price of the aspirin so price marked.

Such statements and representations made by the respondents regarding the selling prices and value of Dale's Aspirin are as follows:

100 Dale's Aspirin Tablets, price \$1

50 Dale's Aspirin Tablets, price 50¢

The prices appearing on said cartons as to the value of said aspirin were not and are not the prices at which the same were or are expected or intended to be sold, but were and are greatly in excess of the prices at which the same were sold or intended to be sold in the usual course of trade.

PAR. 5. Each and all false and misleading representations made by both respondents, as hereinabove set forth, in their advertising matter, in offering for sale and selling "Dale's Aspirin," had and now has the tendency and capacity to mislead and deceive a large portion of the purchasing public into the erroneous belief that all said representations are true. Further, as a direct consequence of these false, misleading and erroneous beliefs induced by advertisements and statements of both respondents, as hereinabove enumerated, a number of the purchasing public purchased a substantial volume of respondents' aspirin with a result that trade has been unfairly diverted to respondents from individuals, firms, and corporations likewise engaged in the business of selling aspirin, who truthfully advertise their products. As a result thereof, substantial injury has been done and is being done by both respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

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 22, 1936, issued and served its complaint in this proceeding upon respondents, Silver Rod Stores Supply Company, Inc., a corporation, and Dale Drug Company, 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' 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 J. E. Weiner, 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; 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 Silver Rod Stores Supply Co., Inc., is a corporation organized in the year 1919 under the laws of the State of New York and existing and doing business under said laws with its principal office and place of business located at 60 Broadway, Brooklyn, N. Y.

Respondent Dale Drug Company, Inc. is likewise a New York corporation and the subsidiary of respondent Silver Rod Stores Supply Co., Inc., with its office and principal place of business located at 60 Broadway, Brooklyn, N. Y.

Both respondents Silver Rod Stores Supply Co., Inc., and Dale Drug Company, Inc., are now, and have been for more than one year last past, engaged in the business of distributing and selling in interstate commerce a certain pharmaceutical preparation, commonly called "aspirin."

PAR. 2. Both respondents have maintained, and now maintain, a constant current of trade in commerce in said aspirin between and among the various States of the United States.

Respondent Silver Rod Stores Supply Co., Inc., maintains a warehouse in the State of New York from which it distributes products and supplies to a group of drug and cigar stores located in the State of New York and in the State of New Jersey.

Among said stores is a group operated by the Silver Rod Stores, Inc. of New Jersey, which is a corporation organized under the laws of New Jersey, and is a wholly owned subsidiary of the respondent Silver Rod Stores Supply Co., Inc. of New York.

All of the stores including the New Jersey stores requisition whatever merchandise they require from the warehouse maintained by Silver Rod Stores Supply Co., Inc., in the State of New York which thereupon ships the merchandise to Silver Rod Stores, Inc. of New Jersey and charges each store for the merchandise it receives.

Each store of the Silver Rod Stores, Inc. of New Jersey and the Silver Rod Stores of New York makes daily deposits in separate banks, and sends duplicate slips to the respondent Silver Rod Stores Supply Co., Inc.

Respondent Silver Rod Stores Supply Co., Inc. thereupon makes withdrawals from said bank by checks drawn against accounts of Silver Rod Stores, Inc. in payment of the merchandise requisitioned by said stores and shipped to them as aforesaid by respondent Silver Rod Stores Supply Co., Inc.

Said respondents Silver Rod Stores Supply Co., Inc., and Dale Drug Company, Inc., by engaging in business as aforesaid, cause and have caused aspirin, when sold, to be transported from their respective offices and places of business in the State of New York to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made.

PAR. 3. In the course of the operation of their respective businesses, both respondents are now, and have been, in substantial competition with other corporations and with individuals and firms likewise engaged in selling and distributing aspirin in commerce among and between the various States of the United States.

Respondents market their aspirin product under the name of "Dale's Aspirin."

Respondents' "Dale's Aspirin Tablets" are sold in small bottles which are packaged in cardboard containers. Respondents also sell aspirin in small tin cartons.

In each cardboard carton containing a bottle of "Dale's Aspirin Tablets" is enclosed a small leaflet upon which certain statements are made relative to the quality of respondents' aspirin.

In all of the containers of respondents' "Dale's Aspirin," and in all of respondents' literature about said aspirin tablets is featured the word "ORIGINAL."

On all cartons, bottles, and tin boxes containing respondents' aspirin, the word "ORIGINAL" is stamped in large red letters. By statements and representations in advertising matter, pamphlets and on containers of aspirin tablets as aforesaid said respondents represent that they are the first or original manufacturers or dealers in aspirin. Such advertisements and statements are as follows:

Insist upon the Original "Dale's Aspirin";

Look for the "D" on each tablet which is the Original "Dale's Aspirin";

Original "Dale's Aspirin" is packaged in convenient tins of 12s for the pocket purse.

Respondents do not manufacture the aspirin which they sell, but purchase the same from the Norwich Drug Company of Norwich, N. Y.

The respondents are not the first or original manufacturers of or dealers in aspirin.

The drug which is today commonly known as aspirin and chemically known as acetylsalicylic acid was first introduced in the United States in 1899 by a company named Farben Fabriken.

The Farben Fabriken Company obtained a patent for the manufacture of the drug in 1900, which patent expired in 1917.

The Farben Fabriken Company was the predecessor of the present Bayer Company, a New York corporation engaged in the manufacture and interstate sale of aspirin, and throughout the period of the patent, the Bayer Company and its predecessors were the exclusive manufacturers of the substance today commonly known as aspirin.

PAR. 4. On the cartons containing respondents' "Dale's Aspirin" are markings and statements by which respondents represent to customers and prospective customers that "Dale's Aspirin" has a retail value in excess of the actual selling price and in excess of the actual value thereof.

On the carton containing 100 tablets of "Dale's Aspirin," respondents represent the retail price to be \$1.00, and on the cardboard carton containing 50 tablets of "Dale's Aspirin," respondents represent the retail price to be 50¢.

Said representations are made in the following manner:

Price \$1.00

Price \$.50

Respondents have at no time sold 100 aspirin tablets for \$1.00, or 50 aspirin tablets for 50¢.

The retail price at which respondents sold said aspirin during the last two or three years has fluctuated between 39¢ and 49¢ for 100 tablets and around 23¢ for 50 tablets of aspirin.

The prices appearing on said cartons as the selling price of said aspirin tablets were not and are not the prices at which the same were and are actually sold or intended to be sold but were, and are, greatly in excess of the prices at which the same are sold or are intended to be sold in the usual course of trade.

PAR. 5. Each and all of the false and misleading statements made by respondents as hereinabove set forth, in offering for sale and selling their aspirin tablets, had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true.

As a consequence of the erroneous beliefs induced by the false and misleading statements of respondents as hereinabove set out, a substantial number of the consuming public has purchased a substantial volume of respondents' aspirin tablets, with the result that trade

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has been unfairly diverted to respondents from corporations, firms, and individuals likewise engaged in the business of distributing and selling aspirin tablets, and who truthfully advertise their aspirin tablets.

As a result thereof, substantial injury has been done, and is now being done, by respondents to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents Silver Rod Stores Supply Co., Inc., a corporation, and Dale Drug Company, Inc., a corporation, are to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, 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, by George Foulkes, counsel for the Commission, and by J. E. Weiner, counsel for the respondents, and brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondents, Silver Rod Stores Supply Co., Inc., a corporation, and Dale Drug Company, Inc., a corporation, their respective officers, agents, and employees in connection with the offering for sale, sale and distribution of a pharmaceutical preparation, commonly known as aspirin, and chemically designated acetylsalicylic acid, do forthwith cease and desist from representing:

1. That they are, or either of them was, the first or original manufacturers of or dealers in aspirin.
2. That the prices marked or stamped on or affixed to said product, or on the containers thereof, are the regular or customary retail prices for such products, when said price marks are fictitious and

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greatly in excess of the regular and customary prices at which said products are sold or offered for sale at retail.

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

IN THE MATTER OF

H. E. WAGLEY, INDIVIDUALLY AND TRADING AS
NATIONAL SALES AND PARAMOUNT SALES

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

Docket 3147. Complaint, June 5, 1937—Decision, Aug. 4, 1937

Where an individual engaged in the sale and distribution of clocks and other articles of merchandise to purchasers in the various States, in competition with those engaged in manufacture of clocks and other merchandise and sale and distribution thereof in commerce between and among the various States—

- (a) Furnished devices and plans of merchandising, together with descriptive literature and instructions, which involved operation of games of chance, gift enterprises, or lotteries in distribution to ultimate consumers, wholly by lot or chance, or his said products, and consisted of push cards, through use of which, and under scheme or plan followed, substantially, purchasers paid for right to select one of names of girls set forth on card, in accordance with number pushed by chance, and received article of merchandise involved, of a value exceeding amount paid for chance, or nothing other than right to make a selection, in accordance with their success in selecting name corresponding to that concealed under card's master seal; in violation of public policy long recognized in the common law and criminal statutes, and contrary to an established public policy of the United States Government, and in competition with many who make and sell merchandise and are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win by chance, or any other method contrary to public policy, and refrain therefrom;

With result that many dealers in and ultimate purchasers of his said merchandise were attracted by said method and element of chance involved in sale thereof as above set forth, and were thereby induced to buy and sell or distribute his said products in preference to those offered and sold by said competitors who do not use same or equivalent method, and trade was thereby diverted to him from them, and with capacity and tendency so to divert trade and custom, because of said game of chance, to him from his said competitors who do not use such or an equivalent method;

- (b) Caused representation to be made to his customers and prospective customers, through use of words "factory representative," that he was a direct purchaser from, or a direct distributor of, the manufacturer of the merchandise sold and distributed, notwithstanding fact he was not such representative, but purchased merchandise sold in open market from middlemen, jobbers, or wholesalers;

With effect of misleading and deceiving many of his said customers into the erroneous belief that he was such a direct representative, and that persons dealing with him were buying such merchandise from such direct representative and thereby eliminating profits of middleman and obtaining various advantages not to be had by those buying goods from middlemen, such as, as considered by substantial portion of purchasing public, who

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prefer direct dealing with manufacturer or his representative, lower prices, superior quality, and other advantages not had, in their opinion, through purchase from jobbers or middlemen, and with effect of unfairly diverting trade to him from many competitors who do not falsely represent themselves as representatives of the manufacturer of their merchandise; and

- (c) Represented, and caused representation to be made, to customers and prospective customers, that certain rotary clocks sold had retail value of \$5.00, notwithstanding fact said clocks did not have such a retail value, but amount was grossly exaggerated and purely fictitious;

With result that substantial portion of purchasing public, relying on and believing said representation, was induced to buy said clocks by reason thereof, and many of his customers were misled and deceived into believing that said clocks had retail value of \$5.00, and trade was unfairly diverted to him from many competitors who do not falsely represent value of merchandise sold by them:

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

Pursuant to the provisions of an Act of Congress, approved September 26, 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. Wagley, individually and trading as National Sales and Paramount Sales, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual with his principal office and place of business located at 508 South Dearborn Street, in the city of Chicago, State of Illinois. Respondent, in carrying on his business, has used the trade names and titles of National Sales and Paramount Sales. Respondent is now, and for some time last past has been, engaged in the sale and distribution of clocks and other articles of merchandise to purchasers thereof located at points in the various States of the United States. He causes and has caused said merchandise when sold to be transported from his principal place of business in Chicago, Ill., to purchasers thereof in the State of Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States. In the course and conduct of said business, respondent is in competi-

tion with other individuals and with partnerships and corporations engaged in the manufacture of clocks and other merchandise and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the sale and distribution of his said merchandise, respondent has furnished devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise is distributed to the ultimate consumers wholly by lot or chance. Said devices and plans of merchandising consist of push cards, the use of which by retail dealers or individuals, in connection with the sale and delivery to the purchasing public of respondent's said merchandise, was and is substantially as follows: The pushcards have a number of partially perforated disks, and when a push is made and the disk is separated from the card a number is disclosed. There are as many separate numbers as there are disks on the card, but the numbers are varied or assorted and are not arranged in numerical sequence. The numbers on said disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The price of sales varies, depending upon the number obtained. Numbers from 1 to 29 pay the amount of the number in cents. Numbers over 29 pay 29¢. Directly below each disk there is printed a girl's name, and the card has a space prepared for recording the name of each purchaser of a disk opposite the corresponding girl's name. The card also has a master seal which, when removed, exposes a girl's name corresponding to one of those appearing under said disks. The purchaser who pushed the disk corresponding to the name under the master seal is entitled to a specified article of merchandise. The name under the master seal is effectively concealed from purchasers and prospective purchasers until all sales have been made and the master seal removed. Purchasers who select names other than the name appearing under the master seal do not receive anything for their money other than the privilege of pushing a disk from said card. The said articles of merchandise are of a greater value than the cost of a single push from this said card. The fact as to whether a purchaser receives a specified article of merchandise or nothing for his money is thus determined wholly by lot or chance.

PAR. 3. Respondent forwards his pushcards, together with various descriptive literature and with instructions as to how to operate said pushcards or explaining what to do in order to obtain said articles of merchandise, to various members of the public, and a substantial amount of such merchandise is sold or distributed by such persons

by means of said pushcards and in accordance with the instructions furnished by respondent. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth.

PAR. 4. The sale of merchandise 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 at a price much less than the normal retail price thereof. The use by respondent of said method in the sale of his merchandise, and the sale of his merchandise 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. Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above alleged, 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, and such competitors refrain therefrom. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. Many dealers in and ultimate purchasers of respondent's merchandise are attracted by respondent's said method and by the element of chance involved in the sale of said merchandise in the manner above described, and are thereby induced to buy and sell or distribute respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method, and trade is thereby diverted to respondent from his said competitors.

PAR. 6. In the course and conduct of his said business, respondent has caused and causes the representation to be made to his customers and prospective customers, by the use of the words "factory representative," that he is a direct purchaser from or a direct distributor of the manufacturer of the merchandise which he sells and distributes. A substantial portion of the purchasing public have expressed and have a preference for dealing direct with the manufacturer or his representative of products being purchased, such purchasers believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from jobbers or middlemen. The use by respondent of said representation that he is a factory representative has the capacity and tendency to

and does mislead and deceive many of respondent's said customers into the erroneous belief that respondent is a direct representative of the manufacturer of the merchandise sold by respondent, and that persons dealing with respondent are buying said merchandise from the direct representative of the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent is not the direct representative of the manufacturer but purchases the merchandise which he sells in the open market from middlemen, jobbers, or wholesale dealers. There are many competitors of respondent who do not falsely represent that they are the representatives of the manufacturer of the merchandise sold by them. The use of said representation by respondent has the tendency and capacity to and does unfairly divert trade to respondent from his said competitors.

PAR. 7. In the course and conduct of his said business, respondent, in the sale of certain rotary clocks, has caused and causes the representation to be made to his customers and prospective customers that said clocks have a retail value of \$5.00. A substantial portion of the purchasing public, relying on and believing the said representation, are induced and have been induced to purchase said clocks because of said representation. The use by respondent of said representation has the capacity and tendency to and does mislead and deceive many of respondent's customers into the erroneous belief that said clocks have a retail value of \$5.00. The truth and fact is that said clocks do not have a reasonable retail value of \$5.00 but said amount is grossly exaggerated and purely fictitious. There are many competitors of respondent who do not falsely represent the value of the merchandise sold by them. The use of said representation by respondent has the tendency and capacity to and does unfairly divert trade to respondent from his said competitors.

PAR. 8. The aforesaid method, acts and practices of 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 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, 1937, issued and on June 7, 1937, served its complaint in this proceeding upon respondent, H. E. Wagley, individually and trading as National Sales and Paramount Sales, 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, the Commission, by order entered herein, granted respondent's request 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 argument of counsel having been waived; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is an individual with his principal office and place of business located at 508 South Dearborn Street, in the city of Chicago, State of Illinois. Respondent, in carrying on his business, has used the trade names and titles of National Sales and Paramount Sales. Respondent is now, and for some time last past has been, engaged in the sale and distribution of clocks and other articles of merchandise to purchasers thereof located at points in the various States of the United States. He causes and has caused said merchandise when sold to be transported from his principal place of business in Chicago, Ill., to purchasers thereof in the State of Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the various States of the United States. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations engaged in the manufacture of clocks and other merchandise and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the sale and distribution of his said merchandise, respondent has furnished devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise is distributed to the ultimate consumers

wholly by lot or chance. Said devices and plans of merchandising consist of pushcards, the use of which by retail dealers or individuals, in connection with the sale and delivery to the purchasing public of respondent's said merchandise, was and is substantially as follows: The pushcards have a number of partially perforated disks, and when a push is made and the disk is separated from the card a number is disclosed. There are as many separate numbers as there are disks on the card, but the numbers are varied or assorted and are not arranged in numerical sequence. The numbers on said disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The price of the sales varies, depending upon the number obtained. Numbers from 1 to 29 pay the amount of the number in cents. Numbers over 29 pay 29¢. Directly below each disk there is printed a girl's name, and the card has a space prepared for recording the name of each purchaser of a disk opposite the corresponding girl's name. The card also has a master seal which, when removed, exposes a girl's name corresponding to one of those appearing under said disks. The purchaser who pushed the disk corresponding to the name under the master seal is entitled to a specified article of merchandise. The name under the master seal is effectively concealed from purchasers and prospective purchasers until all sales have been made and the master seal removed. Purchasers who select names other than the name appearing under the master seal do not receive anything for their money other than the privilege of pushing a disk from said card. The said articles of merchandise are of a greater value than the cost of a single push from said card. The fact as to whether a purchaser receives a specified article of merchandise or nothing for his money is thus determined wholly by lot or chance.

PAR. 3. Respondent forwards his pushcards, together with various descriptive literature and with instructions as to how to operate said pushcards or explaining what to do in order to obtain said articles of merchandise, to various members of the public, and a substantial amount of such merchandise is sold or distributed by such persons by means of said pushcards and in accordance with the instructions furnished by respondent. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure articles of merchandise at a price much less than

the normal retail price thereof. The use by respondent of said method in the sale of his merchandise, and the sale of his merchandise 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. Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above described, 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, and such competitors refrain therefrom. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert trade and custom to respondent from his said competitors who do not use the same or an equivalent method.

PAR. 5. Many dealers in and ultimate purchasers of respondent's merchandise are attracted by respondent's said method and by the element of chance involved in the sale of said merchandise in the manner above described, and are thereby induced to buy and sell or distribute respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method, and trade is thereby diverted to respondent from said competitors.

PAR. 6. In the course and conduct of his said business, respondent has caused and causes the representation to be made to his customers and prospective customers, by the use of the words "factory representative," that he is a direct purchaser from or a direct distributor of the manufacturer of the merchandise which he sells and distributes. A substantial portion of the purchasing public have expressed and have a preference for dealing direct with the manufacturer or his representative of products being purchased, such purchasers believing that they secure lower prices, superior quality, and other advantages that are not obtained when they purchase from jobbers or middlemen. The use by respondent of said representation that he is a factory representative has the capacity and tendency to, and does, mislead and deceive many of respondent's said customers into the erroneous belief that respondent is a direct representative of the manufacturer of the merchandise sold by respondent, and that persons dealing with respondent are buying said merchandise from the direct representative of the manufacturer thereof, thereby eliminating the profits of middlemen and obtaining various advantages that are not obtained by persons purchasing goods from middlemen. The truth and fact is that respondent is

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not the direct representative of the manufacturer but purchases the merchandise which he sells in the open market from middlemen, jobbers, or wholesale dealers. There are many competitors of respondent who do not falsely represent that they are the representatives of the manufacturer of the merchandise sold by them. The use of said representation by respondent has the tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors.

PAR. 7. In the course and conduct of his said business, respondent, in the sale of certain rotary clocks, has caused and causes the representation to be made to his customers and prospective customers that said clocks have a retail value of \$5.00. A substantial portion of the purchasing public, relying on and believing the said representation, are induced and have been induced to purchase said clocks because of said representation. The use by respondent of said representation has the capacity and tendency to, and does, mislead and deceive many of respondent's customers into the erroneous belief that said clocks have a retail value of \$5.00. The truth and fact is that said clocks do not have a reasonable retail value of \$5.00, but said amount is grossly exaggerated and purely fictitious. There are many competitors of respondent who do not falsely represent the value of the merchandise sold by them. The use of said representation by respondent has the tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, H. E. Wagley, individually and trading as National Sales and Paramount Sales, are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent dated July 12, 1937, admitting all of the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress, ap-

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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 ordered, That the respondent, H. E. Wagley, individually and trading as National Sales and Paramount Sales and trading under any other name, his agents, representatives and employees, in connection with the offering for sale, sale and distribution of clocks and other merchandise in interstate commerce, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pushcards or similar devices for the purpose of enabling such persons to dispose of or sell, by the use thereof, clocks or other articles of merchandise.

2. Mailing, shipping or transporting to members of the public pushcards or similar devices so prepared or printed as to enable said persons, by the use thereof, to sell or distribute clocks or other merchandise.

3. Selling or otherwise disposing of clocks or other merchandise by the use of pushcards or similar devices.

4. Representing directly or indirectly that the respondent is a "factory representative" or a direct purchaser from or a direct distributor of the manufacturer of the merchandise which he sells and distributes.

5. Representing or advertising, directly or indirectly, that the rotary clocks which respondent sells and distributes have a retail value or price of \$5.00 or any value or price in excess of the actual or usual selling price at which said rotary clocks are sold by retailers to the consuming public, or have a retail value or price in excess of the normal or usual retail value or price of similar articles selling at wholesale for prices comparable to the wholesale price of said rotary clocks.

It is further ordered, That the respondent, H. E. Wagley, individually and trading as National Sales and Paramount Sales, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
W. H. BONIFIELD, TRADING AS CHICOPEE MEDICINE
COMPANY

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

Docket 2740. Complaint, Mar. 10, 1936—Decision, Aug. 5, 1937

Where an individual engaged in sale of so-called "Chicopee Native Indian Herbs" medicinal preparation, either direct to members of the purchasing public or through druggists for resale thereto, in substantial competition in interstate commerce with those engaged in sale and distribution, in commerce among the States and in the District of Columbia, of similar medicines or those intended for and adapted to treatment of various bodily ailments for which his said preparation was adapted or recommended—

- (a) Made use of printed coupons or circulars in offer and sale of his said product, and caused said medicine to be placed in cartons, upon which coupons and cartons there were depicted representation of generally accepted idea of an "Indian Medicine Man" preparing concoction over a fire with a wigwam as a background, along with various statements in regard thereto which, together with aforesaid name "Chicopee Native Indian Herbs," used to designate said medicine, represented that such product was composed of native Indian herbs;
- (b) Represented, through many statements on said coupons or circulars, that said medicine was a cure, remedy or competent and adequate treatment for diseases of the kidneys, liver, bowels, or stomach, and for constipation, biliousness, colds, pain in the neck, sick headache, rheumatism, similar complaints, and other ailments and conditions, and that it would give relief therein and would relieve any ailment or abnormal bodily condition, and that it would relieve "pain in the neck, shoulders, side, back, or hips in one day," and la grippe and colds, and certain other specified ailments in the same period of time;
- (c) Represented that it was a wonderful remedy of nature and was effective from the very first dose and did its work surely, safely, and quickly, and brought health and happiness, and was the oldest and most reliable medicine known which would improve health 100%, and that it was a medicine that nature grows and a general tonic, and that it relieved bilious or sick headache, in two hours, and heartburn and palpitation of the heart and other conditions at once; and
- (d) Caused to be printed on aforesaid coupons or circulars "YOUR FUTURE HOROSCOPE FREE! TEN PAGES! BUY A PACKAGE OF CHICOPEE TODAY. AND GET THIS VALUABLE HELP";

Facts being said horoscope was not the individual horoscope of the purchaser, but a mimeographed form printed and distributed in large quantities, medicine in question was not composed of native Indian herbs, nor a cure, remedy, or competent and adequate treatment for diseases of the kidneys, liver, etc., as above set forth, statements that such medicine would relieve such diseases and conditions as above were not warranted, and were inac-

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curate and misleading, it was not a wonderful remedy of nature, and aforesaid statements and representations in other respects were misleading in that they were inaccurate, exaggerated or entirely erroneous;

With tendency and capacity to confuse, mislead and deceive members of the public into erroneous belief that its said medicine was composed of native Indian herbs, and was a cure, remedy, or competent and adequate treatment for aforesaid various diseases and conditions, and that it would relieve the same as above set forth, and that it was a wonderful remedy of nature, effective from the very first dose, and that the aforesaid various other statements and representations as to nature, working, history, and effects thereof were true, and that such horoscope was the individual one of the person to whom furnished, and to induce members of the public to purchase his said medicine because of erroneous beliefs thus engendered, and to divert trade to him from competitors engaged as above set forth in sale of medicines of same general kind, etc., and with effect of diverting business to him from competitors who do not misrepresent therapeutic value of medicines sold by them or other facts in addition to and in connection therewith, but truthfully and accurately state therapeutic effects thereof, as well as other facts and matters connected therewith; 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. W. W. Sheppard*, trial examiner.

Mr. Harry D. Michael for the Commission.

Mr. Justin C. Burns, of Columbus, 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 W. H. Bonifield, trading as Chicopee Medicine Company of Warren, Indiana 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondent W. H. Bonifield is an individual doing business under the trade name and style of Chicopee Medicine Company with his principal office and place of business in Warren, Ind. Respondent is now and for several years last past has been engaged in the sale and distribution of a product called "Chicopee Native Indian Herbs" to members of the public, either directly to the purchasing public or indirectly through druggists. Said respondent in the course and conduct of his business ships or causes to be shipped or transported, his products, when sold by him from the State of

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Indiana or the State of origin of the shipment to the purchasers thereof located at points in various States of the United States other than in the State of Indiana or in the State of origin of the shipment. There is now and has been during all the times hereinbefore mentioned a constant current of trade in commerce in the product sold by the respondent between and among various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business respondent is now, and has been during all the times hereinabove mentioned, engaged in substantial competition with various other individuals, firms, and corporations selling or offering for sale medicines to members of the general public in the manner set out in paragraph 1 hereof 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 his business, in soliciting the sale of and in selling the said "Chicopee Native Indian Herbs" respondent makes use of and has made use of certain printed coupons or circulars which respondent causes to be transported from his place of business in Indiana to points in various other States of the United States where said medicine is offered for sale and where said coupons or circulars are distributed to and among the purchasing public. Respondent causes said medicine to be placed in cartons in which it is displayed for sale and sold to the public. Said coupons or circulars and the said cartons have printed thereon for the sole purpose of conveying the idea that said product is composed of Native Indian Herbs a pictorial representation of the generally accepted idea of an "Indian Medicine Man" preparing a concoction over a fire with the background of a wigwam; in addition to various statements and representations as to the contents of said medicine and its therapeutic value or effect. Many of said representations and statements are misleading and deceptive in that they do not truthfully and accurately state all the contents of said medicine, nor do they truthfully and accurately state the therapeutic value thereof or greatly exaggerate the same. Among such statements and representations on said coupons or circulars are the following:

Chicopee Indian Herbs for kidneys, liver, bowels, stomach and run down condition—a real Indian tonic.

Relieves constipation, piles, billousness, La Grippe and colds in one day.

Relieves weakness and tired out feeling, bladder and kidney trouble.

Relieves pain in the neck, shoulders, side, back or hips in one day.

Relieves billous or sick headache in two hours; heartburn and palpitation of heart at once; sick stomach, belching, gas on stomach at once.

Relieves lumbago and rheumatism, giving relief from pain; all female complaint.

Do you get up in the morning feeling worse than when you went to bed? Blue? Look on the dark side of everything? Worry about trifles? Tired? Lazy? Mouth taste bad? Take "Chicopee Indian Herbs" and see how quickly you will lose all those unpleasant symptoms.

This wonderful remedy of nature starts with the very first dose and does its work surely, safely and quickly.

THE MEDICINE THAT NATURE GROWS. Chicopee Native Indian Herbs is a medicine gathered from nature's fields, and is a combination of roots, herbs, barks, berries and flowers. They have brought health and happiness to thousands.

THE OLDEST AND MOST RELIABLE MEDICINE KNOWN. Will improve your health 100% in a few weeks time.

Among such statements and representations on said cartons containing the medicine are the following:

Acts as a * * * tonic. *

For Acid stomach, Biliousness * * *

* * * Rheumatic Pains and Aches.

In truth and in fact said medicine is not a remedy for the ailments set forth in the above quotations from respondent's coupons or circulars and cartons nor does its therapeutic value warrant statements or representations "that it will give relief in such ailments." "Chicopee Native Indian Herbs" is not a wonderful remedy of nature, "that starts with the very first dose and does its work surely, safely and quickly;" "Chicopee Native Indian Herbs" is more than a combination of roots, herbs, barks, berries, and flowers in that it also contains drugs; "Chicopee Native Indian Herbs" is not the oldest and most reliable medicine known; will not improve your health 100 percent in a few weeks' time. It is not "the medicine that nature grows"; and it has no value as a tonic. The herbs, barks, berries, and flowers in Chicopee Native Indian Herbs are not "Native Indian Herbs."

PAR. 4. In the course and conduct of his business and in the manner described in paragraph 3 hereof, respondent caused to be printed on said coupons and circulars referred to in paragraph 3 hereof, the following false and misleading representation:

YOUR FUTURE HOROSCOPE FREE! TEN PAGES! BUY A PACKAGE OF CHICOPEE TODAY. AND GET THIS VALUABLE HELP

In truth and in fact the "horoscope" offered by respondent is not the individual horoscope of the purchaser, but a mimeographed form that is printed and distributed in large quantities.

PAR. 5. The above and foregoing representations as to therapeutic value and effects of his medicine and as to the contents thereof, as set forth in paragraph 3 hereof, and the representations as to the "horoscope" offered to purchasers of said medicine, as set forth

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in paragraph 4 hereof, in the course of his advertising, offering for sale and selling his medicine 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 said medicine has general curative properties in restoring health without regard to the particular ailment; that it is a remedy for the diseases and ailments set out in said statements and representations quoted in paragraph 3 or that its use will give relief in such cases; that said medicine is composed only of herbs, barks, flowers, and roots, and that said roots are "Native Indian"; that said "horoscope" offered by the respondent to purchasers of his medicine is the individual "horoscope" of the purchaser; and thereby induce the said purchasing public to purchase a substantial quantity of the product of the respondent in reliance upon such erroneous beliefs. Thereby trade is diverted to the respondent from other competitors who do not make such representations and thereby substantial injury is done by the respondent to substantial competition in commerce as aforesaid.

There are dealers and distributors of products similar in kind who sell and offer for sale their products and who do not in any way misrepresent the therapeutic value or curative properties of their product. There are dealers and distributors of products that are proper and have curative properties for the ailments set forth in paragraph 3 hereof, who do not in any way misrepresent their products.

PAR. 6. 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 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 10, 1936, issued and served its complaint in this proceeding upon respondent, W. H. Bonifield, trading as Chicopee Medicine 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 hearing on the charges set forth in said complaint, which substitute answer was duly filed in the office of the Commission. Prior to the filing of said substitute answer, said respondent had appeared at a hearing set for the taking of testimony and other evidence in said case, and had entered upon the record of such hearing his consent that the Commission, without further intervening procedure, might find the facts and issue its order to cease and desist based on the material allegations of the complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, the substitute answer and respondent's agreement entered of record, briefs and oral argument of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, W. H. Bonifield, is an individual doing business under the trade name and style of Chicopee Medicine Company, with his principal office and place of business in the town of Warren in the State of Indiana. Respondent was for several years prior to the issuance of the complaint herein engaged in the sale and distribution in commerce between and among the various States of the United States of a certain medicinal preparation known and described as "Chicopee Native Indian Herbs." Respondent's method of business was to sell said preparation either directly to members of the purchasing public or through druggists through whom it was sold to members of the public. Respondent, in the course and conduct of his said business, caused his said medicine, when sold by him, to be transported in commerce from his said place of business in Indiana, or the State of origin of the shipment thereof, to, into and through States of the United States other than Indiana, or other State of origin of shipment, to the purchasers thereof in such other States to whom it had been sold.

PAR. 2. During the time respondent conducted his said business, as aforesaid, 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 medicines of the same kind or similar to that sold by respondent, or intended for and adapted to the treatment of various bodily ailments for which respondent's said medicine is adapted, or for which it is recommended by respondent, as herein set out. Such other individuals, firms, and corporations have caused and do now cause their said medicines, 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 to the purchasers of the same in such other States. Said respondent was, during the time of the conduct of his business, as aforesaid, in substantial competition in interstate commerce in the sale of his said medicine with such other individuals, firms, and corporations.

PAR. 3. In the course and conduct of his business, respondent, in soliciting the sale of and in selling the said "Chicopee Native Indian Herbs," made use of certain printed coupons or circulars which he caused to be transported from his place of business in Indiana to points in various other States of the United States where said medicine was offered for sale and where said coupons or circulars were distributed to and among the purchasing public. Respondent caused said medicine to be placed in cartons in which it was displayed for sale and sold to the public. Said coupons or circulars and the said cartons had printed thereon a pictorial representation of the generally accepted idea of an "Indian Medicine Man" preparing a concoction over a fire with a wigwam as a background, together with various statements and representations in regard thereto, all of which, together with the name used to designate said medicine, represented that said medicine was composed of native Indian herbs. Respondent also made many statements on said coupons or circulars which were misleading in that they did not accurately state the therapeutic effects of said medicine, but greatly exaggerated the same, or represented it as having therapeutic effects which it did not in fact have, or otherwise misrepresented the same. Among such statements on said coupons or circulars were the following:

Chicopee Indian Herbs for kidneys, liver, bowels, stomach and run down condition—a real Indian tonic.

Relieves constipation, piles, billousness, La Grippe and colds in one day.

Relieves weakness and tired out feeling, bladder and kidney trouble.

Relieves pain in the neck, shoulders, side, back or hips in one day.

Relieves bilious or sick headache in two hours; heartburn and palpitation of heart at once; sick stomach, belching, gas on stomach at once.

Relieves lumbago and rheumatism, giving relief from pain; all female complaint.

Do you get up in the morning feeling worse than when you went to bed? Blue? Look on the dark side of everything? Worry about trifles? Tired? Lazy? Mouth taste bad? * * * Take Chicopee Indian Herbs * * * and see how quickly you will lose all those unpleasant symptoms.

This wonderful remedy of nature starts with the very first dose and does its work surely, safely and quickly * * *

THE MEDICINE THAT NATURE GROWS. Chicopee Native Indian Herbs is a medicine gathered from nature's forests and fields, a combination of roots, herbs, barks, berries and flowers, * * *

They have brought health and happiness to thousands.

THE OLDEST AND MOST RELIABLE MEDICINE KNOWN. Will improve your health 100% in a few weeks' time.

Among such statements and representations on said cartons containing the medicine, were the following:

Acts as a * * * tonic

For Acid stomach, Biliousness * * * Rheumatic Pains and Aches.

In truth and in fact said medicine is not composed of native Indian herbs. It is not a cure, remedy or competent and adequate treatment for diseases of the kidneys, liver, bowels, and stomach or for run-down condition, constipation, piles, biliousness, la grippe, colds, weakness, tired-out feeling, bladder trouble, kidney trouble, pain in the neck, pain in the shoulders, pain in the side, pain in the back, pain in the hips, bilious headache, sick headache, palpitation of the heart, lumbago, rheumatism, or female complaints. General statements that said medicine will relieve such diseases and conditions, as above stated, are not warranted, and are inaccurate and misleading. Neither is it true or correct to say that said medicine is a wonderful remedy of nature; that it is effective from the very first dose, that it does its work surely, safely and quickly; that it is composed wholly of roots, herbs, barks, berries, and flowers; that it brings health and happiness; that it is the oldest and most reliable medicine known; that it will improve health 100%; that it is the medicine that nature grows; that it is a tonic in a general sense; or that it will cure, remedy or relieve any ailment at once or in any stated time. Such representations are misleading in that they are inaccurate, exaggerated or entirely erroneous.

PAR. 4. In the course and conduct of his business, as aforesaid, respondent caused to be printed on said coupons or circulars previously referred to, the following misleading representation:

YOUR FUTURE HOROSCOPE FREE! TEN PAGES! BUY A PACKAGE OF CHICOPEE TODAY. AND GET THIS VALUABLE HELP

In truth and in fact the "horoscope" offered by respondent was not the individual horoscope of the purchaser, but a mimeographed form that was printed and distributed in large quantities.

PAR. 5. The representations of respondent, as aforesaid, have had the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent's said medicine is composed of native Indian herbs; that it is a cure, remedy or competent and adequate treatment for diseases of the kidneys, liver, bowels, and stomach, and also for run-down condition, constipation, piles, biliousness, la grippe, colds, weakness, tired-out feeling, bladder trouble, kidney trouble, pain in the neck, pain in shoulders, pain in the side, pain in the back, pain in the hips, bilious headache, sick headache, palpitation of the heart, lumbago, rheumatism, and female complaints; and that it will relieve such diseases and conditions as above stated; when, in truth and in fact, such are not the facts. Such representations further had the tendency and capacity to confuse, mislead and deceive members of the public into the belief that said medicine is a wonderful remedy of nature; that it is effective from the very first dose; that it does its work surely, safely and quickly; that it is composed wholly of roots, herbs, barks, berries and flowers; that it brings health and happiness; that it is the oldest and most reliable medicine known; that it will improve health 100%; that it is the medicine that nature grows; that it is a general tonic; that it will cure, remedy or relieve bodily ailments at once or in a specified time; and that the horoscope offered, as aforesaid, was the individual horoscope of the person to whom it was furnished; when, in truth and in fact, such were not and are not the facts. Said representations of respondent had the tendency and capacity to induce members of the public to purchase respondent's said medicine because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondent from competitors engaged in the sale, in interstate commerce, of medicines of the same general kind as that sold by respondent, as well as those so engaged in such sale of medicines adapted to and used for the treatment of the various ailments and conditions for which respondent's said medicine is adapted or for which he recommends his said medicine as aforesaid. There were and are, among the competitors of respondent, those who do not misrepresent the therapeutic properties and effects of the medicines sold by them or other facts and conditions in connection therewith, but who truthfully and accurately state the therapeutic effects of the same as well as other facts and matters connected therewith. 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 the respondent, W. H. Bonifield, trading as Chicopee Medicine 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 by the respondent, dated May 12, 1937, admitting all the material allegations of the complaint to be true and waiving hearing on the charges set forth in said complaint, and also on said respondent's consent, entered of record, that the Commission, without further intervening procedure, might find the facts and issue its order to cease and desist based on the material 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 approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, W. H. Bonifield, trading as Chicopee Medicine Company, or trading under any other trade name or under his own name, his representatives, agents, and employees, in connection with the offering for sale, sale and distribution of "Chicopee Native Indian Herbs," or of a medicine of the same or substantially the same formula under any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That said medicine is composed of native Indian herbs, or that it is composed entirely of herbs or other vegetable products.
2. That it is a cure, remedy, or competent and adequate treatment for diseases of the kidneys, liver, bowels, or stomach; or for constipation, piles, biliousness, la grippe, colds, weakness, run-down condition, tired-out feeling, bladder trouble, kidney trouble, pain in the neck, pain in the shoulders, pain in the side, pain in the back, pain in the hips, bilious headache, sick headache, palpitation of the heart, lumbago, rheumatism; or for female complaints or diseases; or that it will give relief in said diseases and conditions

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above named; or that it will relieve any ailment or abnormal bodily condition in one day or in any definite time.

3. That it is a wonderful remedy of nature; or that it is effective from the very first dose; or that it does its work surely, safely, and quickly; or that it brings health and happiness; or that it is the oldest and most reliable medicine known; or that it will improve health 100 percent; or that it is a medicine that nature grows; or that it is a general tonic; or that it will relieve any ailment at once.

4. That printed horoscopes, made out in advance in large numbers, are the individual horoscopes of persons to whom they are sent.

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
 RELIABLE TYPEWRITER AND ADDING MACHINE
 COMPANY

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

Docket 3110. Complaint, Apr. 23, 1937—Decision, Aug. 6, 1937

Where a corporation engaged in sale and distribution, to retailers and direct to consuming public, of its "VE-PO-AD," so-called vest-pocket type of adding machine, in substantial competition with others engaged in manufacture, sale, and distribution of like and similar products in commerce and in the District of Columbia; in advertising its said product through newspaper and magazine advertising and other trade literature—

- (a) Made such statements as "If there is a Ve-Po-Ad on every desk, no one ever need worry about using the big machine and Ve-Po-Ad is every bit as fast and as capable as any adding machine you ever saw," and "Store-keepers cannot always afford a large adding machine. Ve-Po-Ad will take its place," and "Does exactly the same work as that done by big, expensive machine," etc., facts being such representations were deceptive and misleading in that said machine would not do the work of making permanent records or giving sub-totals as would certain types of much more costly or substantially more costly machines, and its said product did not possess many of the features of the more expensive adding machines, such as permanent records, sub-totals, or release features for correction of errors, and would not, therefore, accomplish certain of the work done by the more costly products, and also was not, in respect to certain features such as permanent records, sub-totals and release features, the equal of such more costly machines in performance or any other characteristic;
- (b) Misrepresented its business status through use of words "Manufactured by Reliable Typewriter and Adding Machine Company" upon its finished product, facts being it did not manufacture same, but said machine actually was made by others for it; and
- (c) Misrepresented, in advertisements and sales literature, wholesale price of its said machine, which it, in fact, had sold in wholesale quantities for sum substantially less than usual purported wholesale price thereof;
- With effect of misleading customers and prospective customers into erroneous and mistaken belief that said product would take place of, or do same work as, large and expensive adding machine, and that it was the equal of products having such features as permanent records, sub-totals, and release features, and that it was the manufacturer thereof, and that its purported wholesale price was the actual and true price, and of inducing substantial numbers of retailers, as well as consumer-purchasers of said product, to buy the same on account of aforesaid erroneous and mistaken beliefs, and of unfairly diverting trade to it from competitors engaged in similar businesses, who do not misrepresent the character and nature of their respective products or their business status; to the substantial injury of competitors 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.

Mr. S. Brogdyne Teu II, for the Commission.

Wetten, Pegler & Dale, 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 Reliable Typewriter and Adding Machine Company, a corporation, hereafter 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 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, Reliable Typewriter and Adding Machine Company, is a corporation organized and doing business under the laws of the State of Illinois, having its principal place of business at 303 W. Monroe Street, in the city of Chicago, State of Illinois. It is now, and for more than one year last past has been, engaged in the sale and distribution of adding machines, typewriters, and other business machines in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When said products are sold, respondent transports or causes the same to be transported from its principal place of business in the State of Illinois to purchasers thereof located in States of the United States other than the State of Illinois and in the District of Columbia. There is now, and has been for more than one year last past, a constant current of trade and commerce in said products so sold and distributed by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now, and has been for more than one year last past, engaged in substantial competition with other individuals, partnerships, firms and corporations engaged in the manufacture and in the sale and distribution of adding machines, typewriters, and other business machines in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, the respondent has caused and still causes to be inserted in newspapers and magazines having a general interstate circulation and in its other advertising literature statements purporting to be descriptive of its prod-

ucts. The following is representative of such statements appearing in advertisements inserted by respondent in newspapers and magazines and in the advertising literature published and distributed by respondents:

Just look at the number of people right in your own locality and neighboring communities who need just this kind of a handy machine. Store-keepers, housewives, doctors, dentists, every office, every place where business is transacted
* * *

Think of a small adding machine that adds with the accuracy of a machine costing \$100.00 to \$300.00 * * * .

If there is a Ve-Po-Ad on every desk, no one ever need worry about using the big machine and Ve-Po-Ad is every bit as fast and as capable as any adding machine you ever saw.

Store-keepers cannot always afford a large adding machine. Ve-Po-Ad will take its place.

Does exactly the same work as that done by big, expensive machine. And you can depend upon its accuracy—every time!

It's so simple to operate—anybody can master it in a jiffy. Pick out your figures as you would on any adding machine, glide into position and zip!—there's the sum total as sure and accurate as a bank statement.

PAR. 5. Through use of the foregoing statements and others similar thereto, the respondent represents that said adding machine is comparable to and equivalent to adding machines costing greatly in excess of or substantially more than respondent's and will always accomplish the same work as done by such other machines with equal speed and accuracy; that there is a substantial demand among storekeepers, housewives, doctors, dentists, and offices generally for respondent's machine; and that everyone can easily learn how to accurately operate said machine.

PAR. 6. In truth and in fact, the respondent's machine will not do the work of adding machines costing greatly in excess or substantially more than respondent's. It will not accomplish the same work as done by machines costing greatly in excess of or substantially more than respondent's with equal speed and accuracy. There is not a substantial demand among storekeepers, housewives, doctors, dentists, and offices generally for the respondent's machine. Not all persons can easily learn how to operate said machine. Respondent's machine does not possess many of the features of more expensive adding machines; such as, permanent records, totals, subtotals, or release features for the correction of errors, and is therefore not to be considered the equal of such machines in performance or any other characteristic.

PAR. 7. In the course and conduct of its business as described in paragraph 1 hereof, respondent represents by use of the words "Manufactured by Reliable Typewriter and Adding Machine Com-

pany" and in its advertisements, sales literature and upon its finished product, that it is a manufacturer of the products which it sells.

In truth and in fact, the respondent does not own, operate, or directly control a manufacturing establishment wherein it manufactures the products sold and distributed by it in any manner or form whatsoever. In fact, the respondent has the Ve-Po-Ad manufactured by an independent manufacturing establishment.

PAR. 8. In the course and conduct of its business, respondent through its advertisements and sales literature, represents that the wholesale price of the Ve-Po-Ad is \$1.95 per unit.

In truth and in fact, \$1.95 is not the wholesale price of the Ve-Po-Ad. Said machine is generally sold in wholesale quantities for sums substantially lower than \$1.95 per unit. The respondent has on numerous and divers occasions quoted a wholesale price lower than the amount of \$1.95.

PAR. 9. For many years a substantial part of the consuming public has expressed and has had a marked preference for products sold and distributed to the public by the manufacturer of the same. A substantial part of the consuming public is aware of the prevailing economies that are reflected in the price to the ultimate consumer when as many middle men's profits as is possible are eliminated. The public generally understands how these economies are brought about. It places confidence in the manufacturers of such products and as a result of such knowledge, purchases a substantial volume of merchandise in reliance upon this aforesaid practice.

PAR. 10. The above statements made by the respondent in its advertising literature and advertisements and upon its finished products have the capacity and tendency to and do mislead customers and prospective customers into the erroneous and mistaken beliefs that the product of the respondents will take the place of the large and expensive adding machine; that it is accurate; that the operation of same is easy to master; that it is simple to operate; and that anybody can operate it; that the sum total of the machine's work is accurate; that the respondent is a manufacturer of said product; that there is a great demand for said product among storekeepers, housewives, doctors, dentists, and office workers; and that the wholesale price of the respondent's product is \$1.95; and into the purchase of respondent's product on account of such beliefs.

PAR. 11. As a result of the use of the aforesaid advertising and the claims made therein, trade has been unfairly diverted to the respondent from its competitors who sell and distribute adding machines, typewriters, and other business machines to the buying public and who truthfully represent, advertise and sell their products, who

correctly represent the wholesale price of their products and who further truthfully represent to the purchasing public their business status.

PAR. 12. The above acts and practices of the respondent are all to the prejudice of the public and the respondent's competitors and constitute unfair methods of competition in commerce with 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 26, 1937 issued and served its complaint in this proceeding upon respondent, Reliable Typewriter and Adding Machine 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 entered into between Richard P. Whiteley, Acting Chief Counsel of the Commission, and Wetten, Pegler & Dale, counsel for respondent. Said stipulation was thereafter approved by the Commission and 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 and the stipulation as to the facts (the filing of 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 AS TO THE FACTS

PARAGRAPH 1. Respondent, Reliable Typewriter and Adding Machine Company, is a corporation with its principal place of business at 303 West Monroe Street, in the city of Chicago, State of Illinois.

PAR. 2. The respondent is now, and has been for more than one year last past, engaged in the business of selling and distributing a small so-called vest pocket type of adding machine, under the trade name of VE-PO-AD, to retailers and direct to the consuming public.

PAR. 3. In the sale of said product respondent has transported or caused the same to be transported from its principal place of business

in the State of Illinois to purchasers thereof located in the States of the United States other than the State from which shipment originated and in the District of Columbia.

There has been for more than one year last past, and still is, a constant current of trade and commerce in said product so sold and distributed by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 4. For more than one year last past the respondent has been engaged in substantial competition with other individuals, and with partnerships, firms, and corporations engaged in the manufacture, sale, and distribution of like and similar products and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of its business as aforesaid respondent, in soliciting the sale, and in the selling, of its product, and for the purpose of creating a demand on the part of the consuming public for said product, causes, and for more than one year last past has caused, its product to be advertised through the media of newspaper and magazine advertisements and other advertising literature. In said ways and by said means respondent has made to the general public false and misleading statements with reference to the commodity offered for sale by it.

PAR. 6. The following statements are representative of the statements and claims made by respondent in its advertisements and advertising literature:

Just look at the number of people right in your own locality and neighboring communities who need just this kind of a handy machine. Store-keepers, housewives, doctors, dentists, every office, every place where business is transacted * * *.

Think of a small adding machine that adds with the accuracy of a machine costing \$100.00 to \$300.00 * * *.

If there is a Ve-Po-Ad on every desk, no one ever need worry about using the big machine and Ve-Po-Ad is every bit as fast and as capable as any adding machine you ever saw.

Store-keepers cannot always afford a large adding machine. Ve-Po-Ad will take its place.

Does exactly the same work as that done by big, expensive machine. And you can depend upon its accuracy—every time!

It's so simple to operate—anybody can master it in a jiffy. Pick out your figures as you would on any adding machine, glide into position and zip!—there's the sum total as sure and accurate as a bank statement.

PAR. 7. The statements and representations made by respondent with respect to the commodity described in the above quoted excerpts from advertisements and sold by it were, and are, deceptive and misleading in the following respects:

The respondent's machine will not do the work of making permanent records or giving subtotals as will certain types of adding machines costing greatly in excess of or substantially more than respondent's.

The respondent's machine does not possess many of the features of more expensive adding machines such as permanent records, subtotals, or release features for the correction of errors, and therefore will not accomplish certain of the work done by adding machines costing greatly in excess of or more than respondent's, and is not in respect to certain features such as permanent records, subtotals, and release features to be considered the equal of such machines in performance or any other characteristic.

PAR. 8. In the course and conduct of its business the respondent has misrepresented its business status by the use of the words "Manufactured by Reliable Typewriter and Adding Machine Company" upon its finished product. The respondent does not manufacture the machine sold by it, said machine actually being manufactured by others for the respondent.

PAR. 9. The respondent in the course and conduct of its business has, through its advertisements and sales literature, misrepresented the wholesale price of the VE-PO-AD machine. In fact, the respondent has sold the VE-PO-AD machine in wholesale quantities for a sum substantially lower than the usual purported wholesale price of the machine.

PAR. 10. For many years a substantial part of the consuming public has had, and has so expressed, a marked preference for the products sold and distributed to the public by the manufacturer of the same. A substantial part of the consuming public is aware of the prevailing economies that are reflected in the price to the ultimate consumer when as many middlemen's profits as possible are eliminated. The public generally understands how these economies are brought about and places its confidence in the manufacturer of said products, and as a result of such knowledge purchases a substantial volume of merchandise in reliance upon this aforesaid practice.

PAR. 11. The statements made by respondent in its advertising literature and advertisements, and upon its finished product known as the VE-PO-AD, have the capacity and tendency to and do mislead customers and prospective customers into the erroneous and mistaken belief that the product of the respondent will take the place of, or do the same work as, a large and expensive adding machine; that the product of respondent is the equal of machines having such features as permanent records, subtotals, and release features; that

the respondent is the manufacturer of said product; that the purported wholesale price of respondent's product is the actual and true wholesale price.

PAR. 12. The foregoing false and misleading statements and representations have induced and still induce a substantial number of retailers as well as consumer purchasers of said product to buy the product offered for sale, sold, and distributed by the respondent on account of the aforesaid erroneous and mistaken beliefs.

PAR. 13. As a result thereof trade has been unfairly diverted to respondent from those competitors of respondent engaged in similar businesses who do not misrepresent the character and nature of their respective products or their business status. As a consequence thereof substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforementioned acts and practices of the respondent, Reliable Typewriter and Adding Machine 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 stipulation as to the facts entered into between Richard P. Whiteley, Acting Chief Counsel of the Commission, and Wetten, Pegler & Dale, 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, Reliable Typewriter and Adding Machine Company, a corporation, its representatives, agents, and employes, in connection with the offering for sale, sale, and distribution of a small size vest pocket adding machine now known as the Ve-Po-Ad Adding Machine in commerce among and between the various States of the United States and in the District of Columbia,

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do forthwith cease and desist from representing, directly or indirectly, through advertisements, price lists, circulars, labels, containers, or any other form of printed matter, or by radio broadcasting, or in any other manner:

(1) That its said adding machines will do the same work as adding machines possessing features which its machines do not possess; (2) that said adding machines possess many features of more expensive adding machines, such as permanent records, subtotals, or release features for correction of errors, or are to be considered the equal of machines having such features; (3) that it is a manufacturer of adding machines; (4) that the wholesale price of its adding machines is other than the true wholesale price at which said machines are sold in the regular course of trade.

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

J. K. LEVY, ALIAS J. K. LEE, AND DAVID LEVY, CO-PARTNERS, TRADING AS LEVORE COMPANY, AND J. K. LEVY, ALIAS J. K. LEE, INDIVIDUALLY

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

Docket 2607. Complaint, Oct. 31, 1935—Decision, Aug. 9, 1937

Where certain individuals engaged in sale and distribution of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities, directly to purchasers and through sales distributors or agents for resale direct to consumers on time payments, and also for resale under their so-called "give away" plan, in competition with those engaged in sale and distribution of such products in commerce among the various States—

- (a) Sold, under latter plan, to their distributor-agents, their aforesaid so-called premium goods, together with push cards or punch boards termed "sales booklets," for disposition to sub-agents and distribution to consuming public under a plan by which final purchasers or customers selected from card one of a number of feminine names displayed thereon and paid for chance, subject to certain limitations, in accordance with number and name selected and punched, and received article being disposed of, or nothing other than privilege of making selection, for money paid, in accordance with his success or failure in selecting name corresponding to that concealed on card, as revealed after sale of all chances thereon, and under which plan, and after which time, distributor agent or sub-agent was likewise entitled to a radio or some other article of so-called "free" merchandise, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of their said products as a means of inducing purchase thereof in preference to similar articles offered and sold by competitors, and in competition with many who are unwilling to adopt and use such methods of sale, or any method involving scheme of chance, as contrary to public policy and good morals, not in accordance with business ethics, a detriment to legitimate business, and as gambling;
- (b) Represented to prospective distributor-agents that they could make big money "giving away these wonderful radios," and described their said plan as the "give away" plan, and referred, as above set forth, to the premiums or articles secured by the holder of the winning name and the distributor-agent or sub-agent as "free" merchandise, facts being those receiving same through such selection paid therefor amount determined, as indicated, wholly by lot or chance, and they did not give away any merchandise, but sold same and received value therefor; and
- (c) Represented themselves as manufacturers, through use of words "Successors to Beco Mfg. Company," placed upon their advertisements and advertising matter distributed in interstate commerce, facts being, notwithstanding their ownership of stock of licensed radio manufacturing

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concern and their building of coils and assembling of radios, they did not and had not themselves made any such products;

With result that many purchasers of such products, attracted by element of chance involved in their aforesaid sales methods, were thereby induced to buy same in preference to those of competitors who do not use same or equivalent methods, and with tendency and capacity unfairly, and because of element of chance, to divert to them trade and custom from their said competitors who do not use such or equivalent method, and exclude all competitors who are unwilling to and do not do so, and with further tendency and capacity, through aforesaid manufacturing misrepresentations, to divert trade from and otherwise injure their competitors substantially 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. Morton Nesmith for the Commission.

Nash & Donnelly, 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 J. K. Levy, alias J. K. Lee, and David Levy, copartners, trading as Levore Company, and J. K. Levy, alias J. K. Lee, individually, 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. The respondent, Levore Company, is a partnership composed of J. K. Levy, alias J. K. Lee, and David Levy, and the principal place of business of said partnership is located at 130 North Wells Street in the city of Chicago, State of Illinois. Said respondent J. K. Levy, alias J. K. Lee, is an individual, with his principal place of business at 130 North Wells Street in the city of Chicago, State of Illinois. Said respondents are now and for several years last past have been engaged in the sale and distribution of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities directly to purchasers, and also through sales distributors or agents located at points in the various States of the United States other than the State of Illinois, and cause said products, when so sold, to be transported from their principal place of business in the city of Chicago, State of Illinois,

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into and through other States of the United States to purchasers at their respective points of location. In the course and conduct of their business as aforesaid, respondents are now and have been in competition with other individuals, partnerships, and corporations engaged in the sale and distribution of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and other similar commodities, in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business as aforesaid, respondents pursued the following methods and practices:

(a) Advertised in periodicals having a wide interstate circulation, and by means of circulars and form letters, the following and other similar matters:

GIVE RADIOS AWAY and earn up to \$100.00 a week. New money making plan for agents, salesmen, district managers. No experience, Profits Start Immediately.

BEST RADIO—Amazing little 7 lb. portable AC & DC radio for home, office, auto, farm, etc. Wonderful tone. Gets police calls. \$30 value. Licensed by R. C. A. and associated companies. Write at once. We will show you how to make **BIG MONEY** giving away these wonderful radios * * *

PLAN NO. 1

This "give away" plan is one which involves the distribution of high quality merchandise, many articles known through national advertising. It is a plan that has proved to be very popular with Levore dealers. You will see a picture of a Levore Sales Card on the back of this letter. On this card are printed 120 names of girls. As a distributor, you will employ agents to dispose of these cards. For their efforts in disposing of this card, you will give each agent one of the gifts of his or her choice. The person selecting the same name which appears under the seal also receives a gift * * *

To be more specific, the Best Radios, both Standard and Dual-Wave Models, the Log Cabin Radio and the Dohrmeyer Electric Mixer and Wahl Eversharp Pencils are used in connection with the R-120 Sales Card. Your agent receives their choice of one of these four gifts. The person selecting the lucky name also receives the gift of their choice, and in addition five people receive Wahl Everysharp Pencils. You buy the required merchandise from us at the confidential price shown in the distributor's price list. The difference between the cash you receive from your agent for the sale of the complete card and the cost of the merchandise represents your profit which as stated before runs from \$11.75 to \$15.25 per card, depending upon the gift items selected.

You will note that we have other books, which are disposed of in the same manner as the one described above, each card being used in connection with certain gift items.

HOW TO PUT THIS PLAN IN OPERATION

The more agents you get to work for you the bigger your profits will be. Among your relatives and friends are any number who would gladly work for one of these free gifts. Everybody wants another radio, especially the

portable kind, like Best Radios. Then there is a big demand right now for World-Wide Radios and Automobile Radios. So many people want them but cannot afford to buy them outright. These people will be tickled to death with an opportunity to get a radio of their choice absolutely free * * *

\$100 to \$150 Weekly Easy to Earn

This clock has a retail value of \$15.00 and give them away in connection with our M-100 Sales Books.

REMEMBER GIFTS ARE GIVEN AWAY

That's the important thing to always keep in mind and to impress upon those whom you employ to work for you. They buy nothing. All they have to do is to get their friends to pull the names on the card. Everyone has an equal chance to earn the gift of his or her choice. The agent selling the card gets one of the gifts and the winner gets another. You donate these gifts and earn a big profit in the process of doing it.

* * * this marvelous little radio set that is keeping our factory humming to supply the demand * * * Remember, we are in the business of manufacturing BEST radios, and we will sell them to you at any time at the wholesale price * * * You can purchase any number of radios from us at any time at the factory wholesale price of \$9.00 each.

These two high class guaranteed radios are given away in connection with the R-170 sales booklet.

The BEST radio is not a "fly-by-night" affair—here today and gone tomorrow. We make this radio on a large scale production basis in our own modern plant. Expert radio engineers supervise every phase of its manufacture * * *

PLAN NO. 2

Direct to consumers on time payments.

Respondents sell to their distributors-agents their so-called premium goods, with which are included what are described as sales booklets, but which are in reality push cards or punchboards. The agents in turn dispose of these commodities, including the push cards or punchboards, to subagents. The cards or boards are made up with a certain number of names, usually the names of girls or women, under each of which is concealed a number; such numbers run from 1 to 100 or more, corresponding with the number of names on the card. The customer selects a name which he punches out, thereby disclosing a concealed number, and pays a premium equal to the number disclosed, but in no case more than thirty-five cents. The winning name is concealed on the card and the seal is not removed from it until the last chance has been sold, and thereupon the holder of the winning name and the distributor-agent are each entitled to a radio or some other article of the "free" merchandise. Persons who received the so-called "free" merchandise paid for the same in an amount determined as indicated, wholly by lot or chance.

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PAR. 3. The respondent Levore Company, in the course and conduct of its business as aforesaid, in its advertising to induce prospective distributors-agents to dispose of its merchandise, represented to them that they could make big money "giving away these wonderful radios," and their plan as the "give away plan."

PAR. 4. The respondent Levore Company, in the course and conduct of its business as aforesaid, in its advertising caused and still causes the words "Successors to Beco Mfg. Company" to appear upon its advertisements and advertising matter distributed in interstate commerce.

PAR. 5. The aforesaid distributors-agents and sub-agents dispose of the aforesaid "free" merchandise to the purchasing public in accordance with the aforesaid sales plans. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their products, in accordance with the respondents' sales plans hereinabove set forth, as a means of inducing purchasers thereof to purchase respondents' said products in preference to similar articles offered for sale and sold by their competitors.

PAR. 6. The respondent Levore Company, in the course and conduct of its business as aforesaid, in their advertising represented that their agents earn \$100 and \$150 per week under their sales plan No. 1.

In truth and in fact, neither the Beco Manufacturing Company nor the respondent Levore Company, the latter either in its own right or as successor of said Beco Manufacturing Company, are manufacturers, nor does the respondent Levore Company own, operate, or control any factory wherein its products are made, manufactured or fabricated. Said representation made by the respondent Levore Company in its advertising matter that it is a manufacturer, or successor to the Beco Manufacturing Company, is false and misleading, and has the tendency and capacity to mislead and deceive purchasers of respondents' products into the belief that when purchasing from the respondent they are dealing with a manufacturer, thereby gaining an advantage and saving the middleman's profit.

In truth and in fact, the respondent Levore Company did and does not give away radios, nor does respondent give away any merchandise free or as a gratuity.

In truth and in fact, the usual and ordinary earnings of respondents' agents is not either \$100 or \$150 per week.

PAR. 7. The use of said methods by respondent, as described in paragraph 2, has the tendency and capacity unfairly, and because of said game of chance and of said free goods, to divert to respondents trade and custom from their said competitors who do not use

the same or equivalent methods, and to exclude all competitors who are unwilling to and who do not use the same or equivalent methods. Many of respondents' competitors are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance, to win something by chance, because such methods are contrary to public policy or to the criminal statutes of certain of the States of the United States, or because they are of the opinion that such methods are detrimental to the morals of the public, or because of any or all of such reasons.

PAR. 8. There are, among the competitors of the respondents, many persons, firms, corporations, and associations who sell and distribute radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras and other similar commodities, in interstate commerce. There are also among the competitors of the respondents, many persons, firms, corporations, and associations who manufacture similar commodities and sell the same in interstate commerce, and the sales plan No. 1 employed by respondent, and the use of the phrase "Successors to Beco Mfg. Company," when the Levore Company is not a manufacturer, has the capacity and tendency to unfairly divert trade from and otherwise injure and prejudice respondents' competitors in interstate commerce.

PAR. 9. The above alleged acts and things done by the respondents are all to the injury and prejudice of the public and of the competitors of respondents in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 31st day of October 1935, issued, and on the 4th day of November 1935, served its complaint upon respondents J. K. Levy, alias J. K. Lee, and David Levy, 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 and the filing of respondents' answer thereto, 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 in opposition to the

allegations of the complaint by John A. Nash, attorney for the respondents; and said testimony and other 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 conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents J. K. Levy, alias J. K. Lee, and David Levy, are co-partners trading as Levore Company, and the principal place of business of this partnership is located at 130 North Wells Street, in the city of Chicago, State of Illinois. The respondent J. K. Levy, alias J. K. Lee, is an individual, with his principal place of business at the same address.

The respondents are now, and for several years last past have been, engaged in the sale and distribution of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities directly to purchasers and also through sales-distributors or agents located at points in the various States of the United States other than the State of Illinois, and respondents have caused their products, when so sold, to be transported from their principal place of business in the city of Chicago, State of Illinois, into and through other States of the United States to purchasers at their respective points of location.

In the course and conduct of their business, the respondents are now, and have been, in competition with individuals, partnerships, and corporations engaged in the sale and distribution of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and other similar commodities in commerce between and among the various States of the United States.

PAR. 2. In the course and operation of their business and for the purpose of inducing the purchase of their products, the respondents advertised in periodicals having wide interstate circulation and by means of circulars and form letters, the following and other similar statements:

GIVE RADIOS AWAY and earn up to \$100.00 a week. New money making plan for agents, salesmen, district managers. No experience, Profits Start Immediately.

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BEST RADIO—Amazing little 7 lb. portable AC & DC radio for home, office, auto, farm, etc. Wonderful tone. Gets police calls. \$30 value. Licensed by R. C. A. and associated companies. Write at once. We will show you how to make **BIG MONEY** giving away these wonderful radios * * *.

PLAN NO. 1

This "give away" plan is one which involves the distribution of high quality merchandise, many articles known through national advertising. It is a plan that has proved to be very popular with Levore dealers. You will see a picture of a Levore Sales Card on the back of this letter. On this card are printed 120 names of girls. As a distributor, you will employ agents to dispose of these cards. For their efforts in disposing of this card, you will give each agent one of the gifts of his or her choice. The person selecting the same name which appears under the seal also receives a gift * * *

To be more specific, the Best Radios, both Standard and Dual-Wave Models, the Log Cabin Radio and the Dohrmeyer Electric Mixer and Wahl Eversharp Pencils are used in connection with the R-120 Sales Card. Your agent receives their choice of one of these four gifts. The person selecting the lucky name also receives the gift of their choice, and in addition five people receive Wahl Eversharp Pencils. You buy the required merchandise from us at the confidential price difference between the cash you receive from your agent for the sale of the complete card and the cost of the merchandise represents your profit which as stated before runs from \$11.75 to \$15.25 per card, depending upon the gift items selected.

You will note that we have other books, which are disposed of in the same manner as the one described above, each card being used in connection with certain gift items.

HOW TO PUT THIS PLAN IN OPERATION

The more agents you get to work for you the bigger your profits will be. Among your relatives and friends are any number who would gladly work for one of these free gifts. Everybody wants another radio, especially the portable kind, like Best Radios. Then there is a big demand right now for World-Wide Radios and Automobile Radios. So many people want them but cannot afford to buy them out-right. These people will be tickled to death with an opportunity to get a radio of their choice absolutely free * * *.

\$100 to \$150 Weekly Easy to Earn

This clock has a retail value of \$15.00 and give them away in connection with our M-100 Sales Books.

REMEMBER GIFTS ARE GIVEN AWAY

That's the important thing to always keep in mind and to impress upon those whom you employ to work for you. They buy nothing. All they have to do is to get their friends to pull the names on the card. Everyone has an equal chance to earn the gift of his or her choice. The agent selling the card gets one of the gifts and the winner gets another. You donate these gifts and earn a big profit in the process of doing it.

* * * this marvelous little radio set that is keeping our factory humming to supply the demand * * * Remember, we are in the business of manu-

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facturing BEST radios, and we will sell them to you at any time at the wholesale price * * * You can purchase any number of radios from us at any time at the factory wholesale price of \$9.00 each.

These two high class guaranteed radios are given away in connection with the R-170 sales booklet.

The BEST radio is not a "fly-by-night" affair—here today and gone tomorrow. We make this radio on a large scale production basis in our own modern plant. Expert radio engineers supervise every phase of its manufacture * * *.

Direct to consumers on time payments.

Respondents sell to their distributors-agents their so-called premium goods, with which are included what are described as sales booklets, but which are in reality push cards or punchboards. The agents in turn dispose of these commodities, including the push cards or punchboards, to sub-agents. The cards or boards are made up of a certain number of names, usually the names of girls or women, under each of which is a concealed number; such numbers run from 1 to 100 or more, corresponding with the number of names on the card. The customer selects a name which he punches out, thereby disclosing a concealed number, and pays a premium or price equal to the number disclosed in cents, but in no case more than thirty-five cents. The winning name is concealed on the card and the seal is not removed from it until the last chance has been sold, and thereupon the holder of the winning name and the distributor-agent or the sub-agent are each entitled to a radio or some other article of the "free" merchandise. Persons who receive the so-called "free" merchandise paid for the same an amount determined as indicated wholly by lot or chance; the respondents, therefore, do not give away any merchandise but sell the same and receive value therefor.

PAR. 3. The respondents, J. K. Levy, alias J. K. Lee, and David Levy, in the course and conduct of their business and in their advertising, to induce prospective distributors-agents to dispose of their merchandise, represented to them that they could make big money "giving away these wonderful radios" and their plan as the "give away plan." The distributors-agents and sub-agents dispose of this "free" merchandise described in respondents' advertising to the purchasing public in accordance with the respondents' sales plans as herein outlined, namely, 1 and 2. The respondents supply to and place in the hands of others the means of conducting lotteries in the sale of their products, and in accordance with respondents' sales plans hereinbefore described as a means of inducing purchasers thereof to purchase respondents' products in preference to similar articles offered for sale and sold by competitors of respondent. A substantial part of respondents' business in the sale of their mer-

chandise is effectuated by the use of the push, pull, or punch card system.

PAR. 4. In the course and conduct of their business the respondents, J. K. Levy and David Levy, advertise and represent that the Levore Company is a manufacturer through the use of the words "Successors to Beco Mfg. Company," which is placed upon Levore Company advertisements and advertising matter distributed in interstate commerce. The Beco Mfg. Company is a trade name for The Best Company and was the predecessor of the Levore Company. Respondents J. K. Levy and David Levy, trading as the Levore Company, own the stock of the LeWahl Mfg. Company, which was a licensed radio manufacturing concern, and licensed by the R.C.A. Company. They build coils and also assemble radios, but do not, and have not, manufactured any radios themselves.

PAR. 5. The respondents, J. K. Levy and David Levy, in disposing of their radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and other products in accordance with the sales plan No. 1, hereinabove described, which involves the use of the aforesaid push or punch cards, conduct lotteries or games of chance in the disposition of their merchandise. Many purchasers of these products are attracted by the element of chance involved in the respondents' sales method before described and are thereby induced to purchase respondents' products in preference to the same or similar products or merchandise of respondents' competitors who do not use the same or equivalent methods.

PAR. 6. The use of the sales plan No. 1 by the respondents, namely, by the push and pull card method, has the tendency and capacity unfairly and because of the element of chance to divert to respondents trade and custom from their said competitors who do not use the same or equivalent methods, and exclude all competitors who are unwilling to and who do not use the same or equivalent methods. Many of respondents' competitors are unwilling to adopt and use these methods of sale or any method involving a scheme of chance because such methods are contrary to public policy and good morals, do not comply with business ethics, are a detriment to legitimate business, and constitute gambling. In truth and in fact, the respondents, J. K. Levy and David Levy, trading as the Levore Company, are not manufacturers and do not own or control or operate a factory wherein their radios, fountain pen and pencil sets, cocktail sets, cameras, and similar merchandise are manufactured or fabricated, all of which has the further capacity and tendency to divert trade from and otherwise injure respondents' competitors substantially in interstate commerce.

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CONCLUSION

The aforesaid acts and practices of the respondents, J. K. Levy, alias J. K. Lee, and David Levy, are 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."

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 support of the allegations of said complaint and in opposition thereto, and briefs filed herein by Morton Nesmith, counsel for the Commission, and by John A. Nash, 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, J. K. Levy, alias J. K. Lee, and David Levy, individually or trading as Levore Company or under any other trade name, their servants, representatives, and employees in connection with the offering for sale, sale, and distribution in interstate commerce or in the District of Columbia of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities, do forthwith cease and desist:

1. From supplying to or placing in the hands of others punch cards, pull cards or push cards for the purpose of enabling such persons to dispose of or sell by the use thereof, said or similar products.

2. From mailing, shipping or transporting to their agents or distributors or to members of the public, punch, push or pull cards so prepared or printed as to enable said persons by the use thereof to sell or distribute said or similar products.

3. From selling or otherwise disposing of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities by the use of punch, push or pull cards.

4. From in any manner selling or otherwise disposing of radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras,

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and similar commodities by the use of devices depending upon lot or chance.

5. From directly or indirectly representing that they are manufacturers unless and until they own, operate or control a factory wherein their products are made or manufactured; or

6. From representing in any manner that their radio receiving sets, fountain pen and pencil sets, cocktail sets, cameras, and similar commodities are free or given away, when such is not the fact.

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

IN THE MATTER OF
MELSTER 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 3045. Complaint, Jan. 30, 1937—Decision, Aug. 9, 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, a number of loaf candies and a box of candy, together with push card, for sale and distribution to purchasing public under a plan, and in accordance with said card's explanatory legend, by which purchaser received, for five cents paid, and in accordance with number pushed by chance, one or two bars of candy, or package of loaf candy, and purchaser of last push on card was entitled to receive, free of charge, in addition to one of said bars, aforesaid box of candy—

Sold, to wholesalers and jobbers, 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 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 said method or any method involving 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 such or an equivalent method, and with tendency and capacity, because of said game of chance, to divert to it trade from its aforesaid competitors who do not use such or equivalent method, exclude from such trade all competitors who are unwilling to and do not use any such method as unlawful, lessen competition in said trade and tend to create a monopoly thereof in it and such other distributors as do use same or equivalent practice or method, and 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 equivalent method;

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

Pursuant to the provisions of an Act of Congress, approved September 26, 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 Melster 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, Melster Candy Company, is a corporation organized and operating under the laws of the State of Wisconsin, with its principal office and place of business located at Cambridge, Wis. Respondent is now, and for more than one year last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers 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 Cambridge, Wis., to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for 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 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, a number of loaf candies, 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, and that certain other specified numbers entitle the customer to a package of loaf 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 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 an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do not adopt and use said method or an equivalent method.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

PAR. 7. The aforementioned method, acts, and practices of the respondent are all to the prejudice of the public and of respondent's competitors, as hereinabove alleged. Said method, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on January 30, 1937, issued and on February 3, 1937, served its complaint in this proceeding upon the respondent, Melster Candy 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

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complaint, respondent filed answer thereto admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, briefs and oral argument of counsel having been waived; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Melster Candy Company, is a corporation organized and operating under the laws of the State of Wisconsin, with its principal office and place of business located at Cambridge, Wis. Respondent is now, and for more than one year last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers located at points in the various States of the United States. It causes and has caused its said products when sold to be transported from its principal place of business in Cambridge, Wis., to purchasers thereof in other States of the United States at their respective places of business. 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 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, a number of loaf candies, and a box of candy, 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 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 cus-

tomers to two bars of candy, and that certain other specified numbers entitle the customer to a package of loaf 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 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 its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above found 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 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 are unwilling to offer for sale or sell candy so packed and assembled as above described, 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

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offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. 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 in such other distributors of candy as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent dated June 4, 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, Melster Candy Company, a corporation, its officers, representatives, agents, and employees, in con-

nection with the offering for sale, sale and distribution of candy in interstate commerce, do forthwith 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 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. Packing or assembling in the same package or assortment of candy, for sale to the public at retail, bars of candy, together with a device commonly called a "push card," which push card is for use, or which is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to wholesale dealers and jobbers, for distribution to retail dealers, a device commonly called a "push card," either with packages or assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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, Melster Candy Company, a corporation, shall, within 30 days after service upon it or this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

IN THE MATTER OF
**ISRAEL ZAVELOFF AND HARRY BERNSTEIN, TRADING
 AS EVERLAST SUIT CASE & BAG COMPANY**

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

Docket 2887. Complaint, Aug. 4, 1936—Decision, Aug. 11, 1937

Where two partners engaged in manufacture of leather luggage, and in use in such manufacture of all four general types of leather employed in making leather luggage, namely, solid, top grain, and split leathers and buffin, and in sale and distribution of such leather luggage in commerce among the various States and in the District of Columbia, in substantial competition with those engaged in manufacture, sale, and distribution of leather goods in commerce, as above set forth, and including many competitors who sell leather luggage made from top grain, and also that made from split leather and properly describe former, as variously known by manufacturers, dealers, and purchasing public, as "cowhide," "genuine cowhide," "leather," "genuine leather," "warranted leather," and "top grain," and properly describe latter, as similarly generally known, as "split leather" luggage—

Labeled and branded their goods of split leather "WARRANTED GENUINE LEATHIER" or "WARRANTED LEATHIER," notwithstanding fact luggage in question, thus branded, was not made from outside or top side hide, or from top grain, as understood in trade and by purchasing public, but was made from split leather, i. e., lower portion of the hide from which top grain portion has been cut away;

With capacity and tendency to mislead and deceive purchasing public and substantial portion of trade into erroneous belief that their said luggage, thus branded and labeled, was made from top grain leather, for goods of which purchasing public has generally pronounced and distinct preference, and with result of placing in hands of wholesalers and retailers means whereby said luggage, made of split leather as above set forth, goods of which can be made to resemble those of the other in appearance, is passed off to purchasing public as top grain leather luggage, and consuming public purchased substantial volume of their aforesaid product, and trade was unfairly diverted to them from their competitors, likewise engaged in manufacture, sale and distribution of leather luggage, and who truthfully brand and represent kind of leather used in 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.

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

Mr. DeWitt T. Puckett for the Commission.

Mr. Joseph D. Tarlowe, 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 Israel Zaveloff and Harry Bernstein, copartners, trading and doing business under the firm name and style of Everlast Suit Case & Bag 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 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, Israel Zaveloff and Harry Bernstein, are copartners, trading and doing business under the firm name and style of Everlast Suit Case & Bag Company, and have their office and principal place of business at 130 Bleecker Street, in the 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 manufacture of leather luggage and in the sale and distribution of the same, 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 manufacturing and selling leather luggage 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, respondents manufactured certain of their luggage from split cowhide leather, also described as the under or flesh side of the hide. Respondents place upon such luggage, and have done so during the period aforesaid, a conspicuous stamp or label reading "Warranted Genuine Leather." Said stamp or label represents and implies to the purchasing public that the material with which such luggage is covered is top grain leather, or as otherwise described, the outside or surface layer of the hide. Further, retailers are enabled by reason of said stamp or label, to mislead, deceive, and defraud the purchasing public as to the quality of the material with which such luggage is covered. Top grain leather is superior in quality, durability, and

price to the split leather. The public generally believes the word leather to mean the top or hairy side of the hide.

There are among the competitors of respondents, as mentioned in paragraph 1 hereof, manufacturers of leather luggage who do not in any way misrepresent or falsely label their said merchandise.

PAR. 4. The above and foregoing representations, as shown by the label 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 luggage so labeled is manufactured from, or covered with, genuine top grain cowhide, 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 product, 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 August 4, 1936, issued and served its complaint in this proceeding upon respondents Israel Zaveloff and Harry Bernstein, copartners, doing business under the firm name of Everlast Suit Case & Bag 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 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 D. Tarlowe, 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 (no 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 respondents, Israel Zaveloff and Harry Bernstein, are copartners, trading as Everlast Suit Case & Bag Company at 130 West Bleeker Street, New York, N. Y.

For several years last past they have been engaged in the manufacture, sale and distribution of leather luggage in commerce between and among the various States of the United States and in the District of Columbia. Respondents' customers are located at points in the various States of the United States and in the District of Columbia, and respondents cause their said merchandise, when sold, to be transported from their place of business in New York, N. Y. to purchasers thereof in other States of the United States and in the District of Columbia, at their respective places of business.

At all times since respondents have been in said business, they have been in substantial competition with other individuals and partnerships, and with corporations likewise engaged in the manufacture, sale, and distribution, or in the sale and distribution of leather goods, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 2. Four general types of leather employed in the manufacture of leather luggage are: solid leather, top grain leather, split leather, and buffin. Solid leather is the entire hide after it has been properly processed and made ready for use. Top grain leather is the top portion of the hide from which the hair has been removed and the under portion or that lying next to the flesh of the animal has been cut away. Buffin is a very thin lightweight leather which is removed from the very top or outside portion of the hide. Split leather is the lower portion of the hide which lies next to the flesh of the animal and from which the top grain portion has been cut away. The respondents use all four types of said leather in the manufacture of their luggage.

Respondents' split leather goods offered for sale and sold in interstate commerce are labeled and branded "WARRANTED GENU-

INE LEATHER" or "WARRANTED LEATHER." Respondents label and brand their top grain leather goods "TOP GRAIN."

The purchasing public generally and the trade understands the words "warranted leather," "genuine leather," or the word "leather," when used to describe luggage, to mean luggage manufactured from top grain leather.

PAR. 3. Many of respondents' competitors sell leather luggage manufactured from top grain leather and also from split leather. Said top grain leather is properly described by said competitors, and is variously known by manufacturers, dealers, and the purchasing public as "cowhide," "genuine cowhide," "leather," "genuine leather," "warranted leather," and "top grain." Said split leather luggage is properly described by said competitors, and is generally known by manufacturers, dealers, and the purchasing public, as "split leather" luggage.

The purchasing public generally has a pronounced and distinct preference for leather goods that are manufactured from top grain leather. Split leather goods can be made to resemble top grain leather in appearance and the purchasing public generally and a substantial portion of the trade cannot distinguish between split leather goods and top grain leather goods. As a result thereof, split leather goods are thus passed off as top grain leather goods.

PAR. 4. The descriptions, representations, stamps, and brands used by respondents in describing their split leather luggage are false and misleading in that said luggage branded as "WARRANTED GENUINE LEATHER" and "WARRANTED LEATHIER" is not made from the outside or top side of the hide, or what is understood in the trade and by the purchasing public as top grain, but are manufactured from split leather.

PAR. 5. The use by respondents of the descriptions, marks, and brands, set out in paragraph 2 hereof, to describe their split leather luggage, offered for sale and sold in interstate commerce, has had and does have the capacity and tendency to mislead and deceive the purchasing public and a substantial portion of the trade into the erroneous belief that the luggage so branded and labeled was made from top grain leather. By said practices, respondents also place in the hands of wholesalers and retailers the means whereby said luggage is passed off to the purchasing public as top grain leather luggage. As a direct consequence of the mistaken and erroneous beliefs induced by the false and misleading representations above referred to, the consuming public has purchased a substantial volume of respondents' luggage with the result that trade has been unfairly

diverted to the respondents from their competitors likewise engaged in the manufacture, sale, and distribution of leather luggage, who truthfully brand and represent the kind of leather used in the manufacture of their products. As a result thereof, substantial injury has been and is now being done by respondents to competition, in commerce, among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, Israel Zaveloff and Harry Bernstein, trading as Everlast Suit Case & Bag Company, are to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, 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, and briefs filed herein (no 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 respondents, Israel Zaveloff and Harry Bernstein, individually or trading as Everlast Suit Case & Bag Company, or under any other trade name, their representatives, agents, servants, and employees, in connection with the offering for sale, sale, and distribution of luggage in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the words "genuine leather" or "leather" or any other word or words of similar import and effect, alone or in conjunction with other words, stamped or imprinted on labels or on the luggage itself, or in any other manner, that luggage manufactured in whole or in part from the underlayers or flesh side of hides, known as split leather, is made from the outside layer of the hide.

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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

E. I. DONAHUE, INDIVIDUALLY AND TRADING AS
DONAHUE ADVERTISING COMPANY

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

Docket 3180. Complaint, July 21, 1937—Decision, Aug. 11, 1937

Where an individual engaged in sale and distribution of various articles of merchandise, including, among others, electric clocks, kitchen cutlery sets, tableware sets, hostess tray sets and grill, vacuum coffee sets, and other articles, in commerce among the various States—

Furnished various devices and plans of merchandising which involved operation of gift enterprises or lottery schemes and distribution of his said merchandise to ultimate consumers wholly by lot or chance, and consisted of variety of push cards for sale and distribution, substantially, under a plan or method, and in accordance with said cards' explanatory legends, by which prospective purchasers selecting one of a variety of girls' names displayed on card paid up to certain maximum amount in accordance with number disclosed under name selected, and received article of merchandise being thus disposed of, or nothing other than privilege of undertaking such chance selection, in accordance with their success or failure in selecting name corresponding to that concealed under card's master seal, and under which person, salesman, agent or representative soliciting purchases of chances was similarly compensated, after completing sales thereof, by receipt of article of merchandise without further charge or additional service, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of his merchandise, in accordance with such sales plan as hereinabove set forth, in violation of public policy long recognized in the common law and criminal statutes and contrary to an established public policy of the United States Government, and in competition with many who make or sell merchandise as above described but are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by his said methods and element of chance involved in sale in manner above described, and were thereby induced to buy and sell his said merchandise in preference to that offered and sold by said competitors who do not use same or equivalent methods, and with effect, by reason of said game of chance, of diverting trade and custom to him from his said competitors who do not use same 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

Pursuant to the provisions of an Act of Congress, approved September 26, 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. I. Donahue, individually and trading as Donahue Advertising Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual doing business under the trade name and style of Donahue Advertising Company, with his principal office and place of business located at 407 South Dearborn Street, Chicago, Ill. He is now, and for some time last past has been, engaged in the sale and distribution of various articles of merchandise, including, among others, electric clocks, kitchen cutlery sets, tableware sets, hostess tray sets and grill, vacuum coffee sets, roaster sets, smoking stands, ashtray combinations, and pen and pencil sets, in commerce between and among the various States of the United States. He causes and has caused said products when sold to be transported from his principal place of business in the State of Illinois to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise as he is selling or distributing 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 similar or like articles of merchandise 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, the respondent, in soliciting the sale of and in selling and distributing the said merchandise, has furnished various devices and plans of merchandising which involve the operation of gift enterprises or lottery schemes and a distribution of such merchandise to the ultimate consumers thereof wholly by lot or chance. Said devices or plans of merchandising consist of a variety of push cards, the use of which, in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent, was and is substantially as follows:

The said push cards bear a number of girls' names. Concealed under each name is a number. Also, under a master seal there is a name corresponding to one of the names on the card. Prospective purchasers select one of the names and remove the same disclosing the number thereunder. Persons selecting numbers from 1 to 29 pay in cents the amount of such number, and persons selecting numbers over 29 pay 29¢ for the privilege of selecting one of the names. The push cards bear various legends informing purchasers and prospective purchasers of the plan or method by which said push card is operated and by which the merchandise described thereon is to be distributed. When all the names have been purchased the master seal is removed, and the person who has selected the name corresponding to the name under the master seal receives the article of merchandise described without further charge, and the person, salesman, agent, or representative soliciting purchases of chances, as above described, also receives an article of merchandise without further charge or additional service. The numbers under the names are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting one of the names until the selection has been made and the name removed. The name under the master seal is concealed from purchasers and prospective purchasers until all the names have been selected. Those customers selecting names which do not correspond to the name under the master seal receive nothing but the privilege of making a selection for the money which they pay. The said articles of merchandise vary in value, but each of said articles of merchandise is of a greater value than the cost of a single push from said push card. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customers pay for a chance is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes said devices use the same in purchasing, selling, and distributing respondent's merchandise 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 merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise, and the sale of such merchandise 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.

PAR. 4. The sale of merchandise 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 at a price much less than the normal retail price thereof. Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above alleged, 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, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise 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, because of said game of chance, has the tendency and capacity to, and does, divert trade and custom to respondent from his said competitors who do not use the same or equivalent methods.

PAR. 5. The aforesaid 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, 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 21, 1937, issued and on July 22, 1937, served its complaint in this proceeding upon respondent, E. I. Donahue, individually and trading as Donahue Advertising Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, respondent filed answer thereto, dated July 28, 1937, admitting the facts as alleged in the said complaint to be true. Thereafter, this 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 is an individual doing business under the trade name and style of Donahue Advertising Company, with his principal office and place of business located at 407 South Dearborn Street, Chicago, Ill. He is now, and for some time last past has been engaged in the sale and distribution of various articles of merchandise including, among others, electric clocks, kitchen cutlery sets, tableware sets, hostess tray sets and grill, vacuum coffee sets, roaster sets, smoking stands, ashtray combinations, and pen and pencil sets, in commerce between and among the various States of the United States. He causes and has caused said products when sold to be transported from his principal place of business in the State of Illinois to purchasers thereof in Illinois and in other States of the United States at their respective points of location. There is now, and has been for some time last past a course of trade and commerce by said respondent in such merchandise as he is selling or distributing 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 similar or like articles of merchandise 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, the respondent in soliciting the sale of and in selling and distributing the said merchandise, has furnished various devices and plans of merchandising which involve the operation of gift enterprises or lottery schemes and a distribution of such merchandise to the ultimate consumers thereof wholly by lot or chance. Said devices or plans of merchandising consist of a variety of push-cards, the use of which, in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent, was and is substantially as follows:

The said push cards bear a number of girls' names. Concealed under each name is a number. Also, under a master seal there is a name corresponding to one of the names on the card. Prospective purchasers select one of the names and remove the same disclosing the number thereunder. Persons selecting numbers from 1 to 29 pay in cents the amount of such number, and persons selecting numbers over 29 pay 29¢ for the privilege of selecting one of the names. The push cards bear various legends informing purchasers and prospective purchasers of the plan or method by which said push card is operated and by which the merchandise described thereon is to be

distributed. When all the names have been purchased the master seal is removed, and the person who has selected the name corresponding to the name under the master seal receives the article of merchandise described without further charge, and the person, salesman, agent, or representative soliciting purchases of chances, as above described, also receives an article of merchandise without further charge or additional service. The numbers under the names are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for the privilege of selecting one of the names until the selection has been made and the name removed. The name under the master seal is concealed from purchasers and prospective purchasers until all the names have been selected. Those customers selecting names which do not correspond to the name under the master seal receive nothing but the privilege of making a selection for the money which they pay. The said articles of merchandise vary in value, but each of said articles of merchandise is of a greater value than the cost of a single push from said push card. The various articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customers pay for a chance is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes said devices use the same in purchasing, selling, and distributing respondent's merchandise 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 merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise and the sale of such merchandise 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.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who make or sell merchandise in competition with the respondent, as above described, 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, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale thereof in the manner above described,

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and are thereby induced to buy and sell respondent's merchandise in preference to merchandise 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, because of said game of chance, has the tendency and capacity to, and does, divert trade and custom to respondent from his said competitors who do not use the same or equivalent methods.

CONCLUSION

The aforesaid acts and practices of the respondent, E. I. Donahue, individually and trading as Donahue Advertising 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 on the complaint of the Commission and the answer of the respondent dated July 28, 1937, admitting the facts as set forth in the complaint to be true, 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 E. I. Donahue, individually and trading as Donahue Advertising Company, his agents, representatives, and employees, in connection with the offering for sale, sale and distribution of merchandise in interstate commerce, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push cards or similar devices for the purpose of enabling such persons to dispose of or sell such merchandise by the use thereof.

2. Mailing, shipping or transporting to members of the public push cards or similar devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof.

3. Selling or otherwise disposing of merchandise by the use of push cards or similar devices.

4. In any manner, selling or otherwise disposing of merchandise, free of charge, or at varying prices, depending upon lot or chance.

Order

25 F. T. C.

It is further ordered, That the respondent E. I. Donahue, individually and trading as Donahue Advertising 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

CARLTON, INC., IN ITS OWN NAME AND RIGHT AND
TRADING AS CARLTON SALES COMPANY

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

Docket 3181. Complaint, July 21, 1937—Decision, Aug. 11, 1937

Where a corporation engaged in offer and sale of various articles of men's and ladies' wear, including men's shirts, pajamas, neckties, and hosiery, and ladies' dresses, lingerie, and hosiery, to purchasers in the various States; in soliciting sale of and in selling and distributing its merchandise in interstate commerce—

Furnished various devices and plans of merchandising involving operation of games of chance, gift enterprises, or lottery schemes under which said merchandise was distributed to ultimate consumers thereof wholly by lot or chance, and distribution to public by it, through the mails and in interstate commerce, of certain literature, instructions, and sales outfits, including paper push cards, order blanks and advertisements depicting its said merchandise, and circulars explaining its plan of selling same and of allotting it as premiums or prizes to operators of push cards in question, and under which plans or methods, and in accordance with explanatory legends contained on said cards, customer making selection of one of a number of feminine names thereon contained paid up to certain specified maximum amount for a chance or received chance free, in accordance with particular number pushed from disc opposite name selected, and card's aforesaid legend, and under which customer received, for his free or paid-for chance as above explained, one of articles being thus disposed of, in accordance with his success or failure in selecting name corresponding to that concealed under master disc, and last punch also received one of articles being thus disposed of, value of which, in any case, was in excess of cost of chance or push, and thereby conducted lotteries, or placed in hands of others means of conducting lotteries, in sale of its merchandise in accordance with such sales plan involving game of chance or sale of a chance to procure its merchandise free or at a price much less than normal retail price thereof, in violation of public policy long recognized in the common law and criminal statutes and contrary to an established public policy of the United States Government, and in competition with many who sell and distribute merchandise but are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by said method and by element of chance involved in sale as above set forth, and were thereby induced to buy and sell its merchandise in preference to that offered and sold by said competitors who do not use same or equivalent method, and with effect, by reason of said game of chance, of diverting trade and custom to it from its said competitors who do not use such or equivalent method:

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25 F. T. C.

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

Pursuant to the provisions of an Act of Congress, approved September 26, 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 Carlton, Inc., a corporation, in its own name and right and trading as Carlton Sales 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 a corporation organized under the laws of the State of Illinois, with its principal office and place of business located at 17 North Wabash Avenue, Chicago, Ill. Respondent advertises, offers for sale, and sells its merchandise, hereinafter referred to, under its own corporate name, and also advertises, offers for sale, and sells its merchandise under the trade name of Carlton Sales Company. Respondent is now, and for some time last past has been, engaged in offering for sale and selling various articles of men's and ladies' wear, including men's shirts, pajamas, neckties, and hosiery, and ladies' dresses, lingerie, and hosiery, to purchasers thereof located in various States of the United States. It causes said merchandise when sold to be shipped or transported from its principal place of business in the State of Illinois into and through other States of the United States to the purchasers thereof at their respective points of location. There is now, and has been for some time last past, a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of its business, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar articles of merchandise 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, in soliciting the sale of and in selling and distributing its merchandise in interstate commerce, has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes

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by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The methods and practices adopted and used by respondent are substantially as follows:

Respondent distributes and has distributed to the public through the United States mails in interstate commerce certain literature, instructions, and sales outfits, including paper push cards, order blanks, and advertisements containing illustrations of its merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of the push cards. Said push cards bear a number of feminine names with a blank space opposite each for writing in the name of the customer. Said push cards have a corresponding number of partially perforated discs marked "PUSH," below each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disc is a number which is disclosed when the disc is pushed or separated from the cards. The push cards have a master disc, concealed within which is one of the feminine names appearing elsewhere on the said cards. The push cards bear printed legends or instructions, one of which is as follows:

(MASTER DISC)

2-3-10-20-30-35-40-50

Are Free Numbers

and

Have Equal Chance

Lucky Name Under Seal

and

Last Name Punched

Each Receives Choice

of

One of the Following Items

LADIES

Item A is 1 Lovely Dress

Item B is 1 Pure Silk Slip

Item C is 3 Pair French Panties

Item D is 2 Pair Pure Silk Ringless Full Fashioned Hose

MEN

Item F is 1 Broadcloth Shirt

Item G is 1 Fine Pajamas

Item H is 2 Fine Silk Ties

Item K is 4 Pair Silk Sox

Pay What You Draw 1¢ to 15¢

Numbers Over 15 Pay Only 15¢

Write Your Name Opposite Name You Select on Reverse Side.

Complaint

25 F. T. C.

The other push cards bear similar legends, but vary in detail. Such variations cover the merchandise to be distributed, the quantity thereof, the price to be paid therefor, and the number of pushes which are free. Said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of a greater value than the cost of a single push from said push cards. Sales of merchandise by means of said push cards are made in accordance with the specified legends or instructions. The fact as to whether a customer receives a specified article of merchandise or nothing for the amount paid is thus determined wholly by lot or chance, and the fact as to whether a customer receives his "PUSH" free, or pays an amount from 1¢ to 15¢ therefor, is also determined wholly by lot or chance.

PAR. 3. Respondent, in selling its said merchandise in connection with the aforesaid push cards, conducts lotteries or places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The sale of respondent's merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's merchandise free or at a price much less than the normal retail price thereof. The use by respondent of said method in the sale of its merchandise, and the sale of its merchandise 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.

PAR. 4. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, 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, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to and does divert trade and custom to respondent from its said competitors who do not use the same or an equivalent method.

PAR. 5. The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and respondent's competitors, as hereinabove alleged. Said acts and practices 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 July 21, 1937, issued and on July 22, 1937, served its complaint in this proceeding upon the respondent, Carlton, Inc., a corporation, in its own name and right and trading as Carlton Sales 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, respondent filed answer thereto dated July 23, 1937, admitting the statements and allegations of the complaint to be true. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer 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. Respondent is a corporation organized under the laws of the State of Illinois, with its principal office and place of business located at 17 North Wabash Avenue, Chicago, Ill. Respondent advertises, offers for sale, and sells its merchandise, hereinafter referred to, under its own corporate name, and also advertises, offers for sale, and sells its merchandise under the trade name of Carlton Sales Company. Respondent is now, and for some time last past has been, engaged in offering for sale and selling various articles of men's and ladies' wear, including men's shirts, pajamas, neckties, and hosiery, and ladies' dresses, lingerie, and hosiery, to purchasers thereof located in various States of the United States. It causes said merchandise when sold to be shipped or transported from its principal place of business in the State of Illinois into and through other States of the United States to the purchasers thereof at their respective points of location. There is now, and has been for some

time last past, a course of trade and commerce by said respondent in such merchandise between and among the States of the United States. In the course and conduct of its business, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of similar articles of merchandise 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, in soliciting the sale of and in selling and distributing its merchandise in interstate commerce, has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is distributed to the ultimate consumers thereof wholly by lot or chance. The methods and practices adopted and used by respondent are substantially as follows:

Respondent distributes and has distributed to the public through the United States mails in interstate commerce certain literature, instructions, and sales outfits, including paper push cards, order blanks, and advertisements containing illustrations of its merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of the push cards. Said push cards bear a number of feminine names with a blank space opposite each for writing in the name of the customer. Said push cards have a corresponding number of partially perforated discs marked "PUSH," below each of which is printed one of the feminine names printed alphabetically elsewhere on the cards. Concealed within each disc is a number which is disclosed when the disc is pushed or separated from the cards. The push cards have a master disc, concealed within which is one of the feminine names appearing elsewhere on the said cards. The push cards bear printed legends or instructions, one of which is as follows:

(MASTER DISC)

2-3-10-20-30-35-40-50
Are Free Numbers
and
Have Equal Chance

Lucky Name Under Seal
and
Last Name Punched
Each Receives Choice
of
One of the Following Items

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Findings

LADIES

- Item A is 1 Lovely Dress
- Item B is 1 Pure Silk Slip
- Item C is 3 Pair French Panties
- Item D is 2 Pair Pure Silk Ringless Full Fashioned Hose

MEN

- Item F is 1 Broadcloth Shirt
- Item G is 1 Fine Pajamas
- Item H is 2 Fine Silk Ties
- Item K is 4 Pair Silk Sox

Pay What You Draw 1¢ to 15¢
 Numbers Over 15 Pay Only 15¢

Write Your Name Opposite Name You Select On Reverse Side

The other push cards bear similar legends, but vary in detail. Such variations cover the merchandise to be distributed, the quantity thereof, the price to be paid therefor, and the number of pushes which are free. Said articles of merchandise sold and distributed by respondent vary in value, but each of said articles of merchandise is of a greater value than the cost of a single push from said push cards. Sales of merchandise by means of said push cards are made in accordance with the specified legends or instructions. The fact as to whether a customer receives a specified article of merchandise or nothing for the amount paid is thus determined wholly by lot or chance, and the fact as to whether a customer receives his "PUSH" free, or pays an amount from 1¢ to 15¢ therefor, is also determined wholly by lot or chance.

PAR. 3. Respondent, in selling its said merchandise in connection with the aforesaid push cards, conducts lotteries or places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The sale of respondent's merchandise to the purchasing public, as hereinabove alleged, involves a game of chance or the sale of a chance to procure respondent's merchandise free or at a price much less than the normal retail price thereof. The use by respondent of said method in the sale of its merchandise, and the sale of its merchandise 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.

PAR. 4. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above

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found, 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, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to, and does, divert trade and custom to respondent from its said competitors who do not use the same or an equivalent method.

CONCLUSION

The aforesaid acts and practices of the respondent, Carlton, Inc., a corporation, in its own name and right and trading as Carlton Sales 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 on the complaint of the Commission and the answer of respondent dated July 28, 1937, admitting the statements and allegations of the complaint to be true, 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, Carlton, Inc., a corporation, in its own name and right and trading as Carlton Sales Company, its officers, agents, representatives, and employees, in connection with the offering for sale, sale and distribution of merchandise in interstate commerce, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others pushcards or similar devices for the purpose of enabling such persons to dispose of or sell such merchandise by the use thereof.

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2. Mailing, shipping, or transporting to members of the public pushcards or similar devices so prepared or printed as to enable said persons to sell or distribute such merchandise by the use thereof.

3. Selling or otherwise disposing of merchandise by the use of pushcards or similar devices.

4. In any manner selling, or otherwise disposing of merchandise, free of charge, or at varying prices, depending upon lot or chance.

It is further ordered, That the respondent, Carlton, Inc., a corporation, in its own name and right and trading as Carlton Sales Company, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
LIONEL DISTILLED PRODUCTS, 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 2417. Complaint, May 27, 1935—Decision, Aug. 12, 1937

Where a corporation engaged, as rectifier and wholesaler of liquors, in purchasing and bottling whiskies, gins, and other spirituous beverages, and in making (1) gin, with a still which it used therefor, by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and (2) cordials of various kinds by processes of distillation, percolation, and maceration, and compounding, and in using small still in connection with some of aforesaid, and in selling its aforesaid various products to wholesaler and retailer purchasers in various States and in the District of Columbia, in substantial competition with those engaged in manufacture by distillation of whiskies, gins, and other spirituous beverages and in sale of 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 from mash, wort, or wash of whiskies, gins, and other spirituous beverages sold by them, truthfully use words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names and on their stationery and advertising and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in purchasing, rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth—

- (a) Represented, through use of words "Distilled Products" 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, and through such statements on its stationery as "Ask for Lionel Products" and through labels reading "Bottled by Lionel Distilled Products, Inc.," or "Made by" or "Prepared by" Lionel Distilled Products, to its customers, and furnished them with a 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 distill said various beverages, thus bottled, labeled, sold, and transported by it, through process of original and continuous distillation from mash, wort, or wash and through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from words "Distilled Products" 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

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

Complaint

purchase of the bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public; and

- (b) Advertised "The world's largest independent producers of distilled spirits. Daily capacity 10,000 cases * * * Now join hands with Lionel Distilled Products. Middleman's profit smashed. Direct distillery * * * Retailer contract now insures sensationally low prices," and thereby represented to ultimate consumer, and as an inducement to buy its said products, that a saving had been effected by reason of its being a distiller of such products thus offered, and that middleman's profit or mark-up had thus been eliminated, facts being it was at all times itself a middleman, and no such saving had been effected or was passed on to ultimate purchaser, but profit to distiller on sale of latter's distilled products to it, its own profit and those of wholesaler and retailer were included in those States and territories in which its products were distributed;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that it was a distiller or distilling company in the ordinarily accepted sense of the terms, and that the whiskies, gins, and other spirituous beverages sold by it were by it made or distilled from mash, wort, or wash by one continuous process, and that, by purchasing its said products they were effecting the saving of a middleman's profit, and of inducing dealers and purchasing public, acting in such beliefs, to buy its said whiskies, and other beverages, rectified and bottled by it, and with distinct tendency to give it an unfair competitive advantage over those of its competitors who did not, through 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, was 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 an unfair method of competition.

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

Mr. PGad B. Morehouse for the Commission.

Mr. Stanford Clinton of Pritzker & Pritzker, 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 Lionel Distilled Products, 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:

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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 for more than one year last past has been, engaged in the business of a rectifier and wholesaler of liquors, purchasing and bottling whiskies, gins, and other spirituous beverages and selling the same at wholesale in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers, some located within the State of 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.

PAR. 2. For a long period of time the words "Distilled Products" when used in connection with the liquor industry have had and still have a definite significance and meaning in the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, spirituous beverages prepared and bottled at a distillery by the distillers thereof, who have manufactured such beverages 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; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by the actual distillers and manufacturers thereof.

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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 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. In the course and conduct of its business as aforesaid respondent has advertised to assist its customers in disposing to the ultimate consumer of the whiskies, gins, and other spirituous beverages by it so sold as aforesaid, as follows:

The world's largest independent producers of distilled spirits. Daily capacity ten thousand cases * * * Now join hands with Lionel Distilled Products. Middleman's profit smashed. Direct distillery * * * Retailer contract now insures sensationally low prices.

thereby representing to the ultimate consumer as an inducement to buy respondent's product that a saving has been effected by reason of respondent's being a distiller of products so offered for sale, and that a middleman's profit or mark up has thus been eliminated, when as a matter of fact respondent is itself a middleman and no such saving has been effected or is passed on to the ultimate purchaser, and the ultimate purchaser believing and relying upon the truth of the aforesaid representations is induced to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the 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, as aforesaid, whiskies, gins, and other spirituous beverages 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, 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," "distillers," or "distilled products" 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, and who do not misrepresent that a saving of a middleman's profit is being passed on to the consumer.

PAR 6. Representations by respondent, as set forth in paragraphs 3 and 4 hereof, are calculated to and have the capacity and tendency to and do mislead and deceive dealers and the purchasing public in the erroneous beliefs 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 that in purchasing respondent's products the purchasers are effecting a saving of a middleman's profit; 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 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. 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.

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 Chicago, 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 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

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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.

PARS. 2, 3, 4, 5, and 6. 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, 5, and 6 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, 5, and 6 of count 1 of this complaint are incorporated herein by reference and adopted as the allegations of paragraphs 2, 3, 4, 5, and 6, 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. 7. 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 1 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 provisions 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 advertising 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. 8. The use by respondent of the words "Distilled Products" 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 various other misrepresentations hereinbefore set out, constitute false advertising within the meaning of the aforesaid provision of Article V and tend to and do create the misleading impressions 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. 9. 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 6 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 on May 28, 1935 served its complaint in this proceeding upon the respondent, Lionel Distilled Products, 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. Moorehouse, attorney for the Commission, before John L. Hornor, 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. Stanford Clinton, Esq., of the firm of Pritzker & Pritzker, appeared as counsel for the respondent but no testimony or other evidence was introduced on behalf of respondent in opposition to the allegation of the complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint—no brief in opposition thereto having been filed and no oral arguments 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, Lionel Distilled Products, Inc., is a corporation incorporated in January 1934, existing and doing business under the laws of the State of Illinois, with its office and principal place of business at 1919-1927 West Pershing Road, Chicago, Ill. Shortly after its incorporation and organization it 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, from the date of its organization aforesaid up until about December 1936, it caused its said products, when sold, to be transported from its place of business aforesaid into and through various States of the United States, principally Minnesota, Wisconsin, Texas, Louisiana, Missouri, Nebraska, Colorado, Illinois, Kentucky, and Indiana 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 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. Upon the premises of respondent's place of business aforesaid, there was a 200-gallon gin still for use in the production of gins by a process of rectification whereby tax-paid alcohol, purchased but not produced by respondent, was redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits by respondent did not make or constitute it a distillery or a distiller, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue.

Respondent distilled an average of 300 gallons of such gin a week and this did not constitute over 5 percent of respondent's total business.

Respondent also produced cordials of various kinds by processes of distillation, percolation, and maceration, plus compounding, in connection with some of which a small still was used. Prior to August 15, 1936, at which time the existing regulations of the Federal Alcohol Administration Division of the Treasury Department became effective, it was permissible thereunder for respondent to term and designate such cordials as "distilled." Subsequently thereto such cordials were not allowed to be labeled or advertised as a distilled product although they might be made by the same method. These cordials constituted approximately 30 percent of respondent's business volume and the remaining 65 percent was divided as follows: Straight whiskies purchased in bulk by respondent from other distillers and bottled and sold by it—60 percent; and whiskies purchased in bulk from other distillers and rectified and bottled by respondent—5 percent.

PAR. 3. Rectifying, in the distilled spirits rectifying industry, means the mixing of whiskies of different ages or types or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits, (grain alcohol).

All distillers may and many of them do operate an establishment separate from their distillery, usually 600 feet or more away, known as a distillery rectifying plant, in which they carry on the same processes as are carried on by rectifiers who are not distillers and who do not own, control or operate any distillery. However, in such event, the distillers must apply for and obtain a separate and additional permit known as a rectifier's permit, which is the same kind of permit as obtained by any rectifier.

Some distilleries have a tax-paid bottling room on the distillery bonded premises wherein the 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.

If the spirits bottled by the distiller, either at his distillery, in bond after aging, or in his tax-paid bottling room, or in his rectifying plant, are spirits of his own distillation, he may and usually does use his "D" symbol, which is the letter "D" followed by a number, and usually blown into the bottom of the bottle in which said spirits are bottled.

A distiller often does purchase distilled spirits of others and bottle them in his rectifying plant, or blend them with spirits of his own distillation, or with neutral spirits, in which event he uses his "R" symbol which is an "R" followed by the number of his rectifier's permit. The rectifier uses his "R" number on his bottles exclusively, this respondent's symbol number being "R-49."

If the distilled spirits bottled by a distiller are spirits other than of his own distillation, he is required to and does put "Bottled by ----- Company" or "Blended and Bottled by ----- Company" as the case may be, and, if they are spirits of his own distillation, he must put "Distilled and Bottled by ----- Company."

The rectifier, on the other hand, when he bottles his product, is required to and does put "Bottled by ----- Company" or "Bottled and Blended by ----- Company," as the case may be.

Generally speaking the purchasing public is not familiar with all of these details, and many people in the trade are not familiar with them, although the wholesalers and retailers, after the first two years following the repeal of the prohibition amendment became a great deal more familiar with them than they were at the outset, until at the present time the liquor trade generally has come to know who are the rectifiers and who are the distillers and in a general way is more familiar with the nature of these respective businesses.

Respondent, during its conduct of its business as aforesaid, conformed to the provisions and requirements of the Federal Alcohol Administration Act and the regulations from time to time promulgated thereunder as to its labeling and advertising which, like the distiller-bottler's labeling and advertising, must conform to the standards of identity prescribed by the Federal Alcohol Administration. This means that in the case of two bottles of blended whiskey, labeled exactly alike and carrying on their respective labels the identical specifications as to contents, age and kind of spirits—but one bottle emanated from and was bottled by a distiller and the other emanated from and was bottled by a rectifier—the contents of the two bottles would be identical to all practical intents and purposes. Likewise, if a rectifier buys a certain type and age of straight whiskey from a distiller and bottles it without rectification and the same distiller has bottled some of that same whiskey straight, there would be no difference in fact between the two bottles of whiskey by reason of the fact that a rectifier had bottled one and a distiller had bottled the other. It is not possible, however, to determine from the presence of the aforementioned phrases, "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.

With reference to the gin produced by respondent by the redistillation of purchased alcohol over juniper berries and other aromatics, existing regulations promulgated pursuant to the Federal Alcohol Administration Act, approved August 29, 1935 (49 Stat. 977), provide that rectifiers who redistill purchased alcohol over juniper berries and other aromatics must call such resulting product "distilled gin," and require that the labels state who distilled it. This serves to distinguish between gin produced by such method and "cold" or compound gin prepared by mixing neutral spirits with essential flavoring oils.

PAR. 4. In the course and conduct of its business as aforesaid, by use of the words "Distilled Products" in its corporate name, printed on its stationery and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, respondent represented to its customers and furnished them with a 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 was not a distiller and did not distill the said whiskies, gins, or other spirituous beverages by it so bottled, labeled, sold, and transported, and does not now and never did own, operate, or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

The words "Distilled Products" of and in themselves might not constitute a misrepresentation inasmuch as this respondent was engaged in the business of handling distilled products, namely alcoholic beverages which originated in a distillery and in some cases were not rectified or blended. However, this respondent used its full name "Lionel Distilled Products, Inc." on said labels. On its stationery it advertised "Ask for Lionel Products," plainly indicating and expressing that the distilled products were "Lionel distilled." Some of the labels read "Bottled by Lionel Distilled Products, Inc." Some of the other labels contained the legend "Made by Lionel Distilled Products" and formerly one label on a brand of straight whiskey read "Prepared by Lionel Distilled Products." From these facts the Commission infers a distinct tendency, if not an intention, to mislead and deceive the public, a substantial portion of which prefers to buy spirituous liquors prepared and bottled by distillers.

Further, in the course and conduct of its business as aforesaid, respondent advertised to assist its customers in disposing to the ultimate consumer of the whiskies, gins, and other spirituous beverages by it so sold as aforesaid:

The world's largest independent producers of distilled spirits. Daily capacity 10,000 cases * * * Now join hands with Lionel Distilled Products. Middleman's profit smashed. Direct distillery * * * Retailer contract now insures sensationally low prices.

thereby representing to the ultimate consumer as an inducement to buy respondent's products that a saving had been effected by reason of respondent's being a distiller of the products so offered for sale, and that a middleman's profit or mark-up had thus been eliminated, when as a matter of fact respondent was at all times itself a middleman and no such saving had been effected or was passed on to the ultimate purchaser.

At one time during the above-described period of its operations respondent distributed its products in Washington, D. C., through a wholesale subsidiary and had warehousing arrangements in the State of New York and in the State of Texas which were in substance its own subsidiaries, but in each of those three instances the local distributor placed a mark-up on respondent's goods over and above its cost price before selling to the retailer. So that at all times, in all the States and territories where respondent's products were distributed, there was first, a profit to the distiller on the sale of the distilled spirits to respondent; second, respondent's profit; third, the wholesaler's profit; and fourth, the retailer's profit; and no middleman's profit was eliminated as represented by respondent.

PAR. 5. Respondent admitted, the testimony of those having long experience in both the distilled spirits rectifying industry and the distilling industry established, and the Commission finds, that the foregoing rectification of alcoholic spirits by redistillation over juniper berries and other aromatics in the production of gin did not make or constitute this respondent a distilling company in the sense commonly understood by the liquor industry. There were also called a number of witnesses, some being members of the trade and some being members of the purchasing public, who, with few exceptions testified that the word "distilled" or similar words such as "distillers," "distilleries," and "distilling," etc., indicated the initial distilling process of producing spirituous and alcoholic liquors from grain, mash, etc., or the manufacturer thereof. The greater number of these witnesses testified that the use of such words would induce them to purchase the products of the concern using such words in its corporate name or on the label of the bottle containing the prod-

ucts in the belief that a distiller's product would be more uniform and that a manufacturer's name should mean something. They testified that they preferred buying in as direct a manner as practical and considered distillers as being more responsible than a rectifier or bottler of spirituous liquors. It was testified by many of these witnesses that the use of the word "distilled" 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 "distilled," or any other word indicating a distilling process in the corporate name.

The Commission finds that for a long period of time the words "distilled products," when used as respondent has used them, in connection with the liquor industry and with the products thereof, have had and still have 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. 6. There were among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufactured and distilled from mash, wort, or wash, whiskies, gins, and other spirituous 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, 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, and bottling whiskies, gins, and other spirituous beverages in rectifying plants under rectifiers' permits who did not use the words "distillery," "distilleries," "distilling," "distillers," or "distilled products," 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 sold and shipped their said products.

PAR. 7. The representations by respondent as set forth in paragraph 4 hereof had the capacity and tendency to and did mislead and deceive dealers and the purchasing public into the beliefs that

respondent Lionel Distilled Products, Inc., was a distiller or distilling company in the ordinarily accepted sense of those terms, and that the whiskies, gins, and other spirituous beverages sold by respondents were manufactured or distilled by Lionel Distilled Products, Inc., from mash, wort, or wash by one continuous process, and that by purchasing respondent's said products they were effecting the saving of a middleman's profit, and had the capacity and tendency to and did 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 had a distinct tendency to give respondent what amounted to unfair competitive advantage over those of its competitors who did 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 consumers, was a distillery-bottled package and this in turn tended to divert trade to respondent from such competitors and thereby respondent did substantial injury to competition in interstate commerce.

PAR. 8. 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.

PAR. 9. The Commission's complaint in this case was issued on the same day as 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 1 specifically charged a violation of the Federal Trade Commission Act, and count 2 charged that the practices of respondent, as herein before 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.

PAR. 10. It has been represented to the Commission in this proceeding that during the month of December 1936, the respondent's stockholders commenced to wind up the affairs of the company and that all of its assets were completely disposed of by December 31, 1936. However, as of the present time, the company still maintains

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its corporate existence and the Commission can have no assurance that its plans may not change and that it may not resume the unfair acts and practices hereinbefore set forth.

CONCLUSION

The aforesaid acts and practices of respondent, Lionel Distilled Products, Inc., 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."

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 having been offered by respondent in opposition thereto, and upon brief filed herein by PGad B. Morehouse, counsel for the Commission (no brief having been filed in opposition thereto by Stanford Clinton, Esq., of Messrs. Pritzker & Pritzker, counsel for respondent, and 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, Lionel Distilled Products, Inc., 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), cease and desist from:

1. Representing through the use of the words "Distilled Products" in its corporate name, on all stationery, advertising, or labels attached to the bottles in which its said products are sold and shipped, or in any other way by word or words of like import, (a) that respondent is a distiller of the said whiskies, gins, or other spirituous beverages; or, (b) that the said whiskies, gins, or other spirituous beverages;

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ages were by it manufactured through a process of distillation; or (c) that respondent 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 in purchasing its said products the purchaser is saving a middleman's profit.

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 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
PARAMOUNT DISTILLING CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2446. Complaint, June 19, 1935—Decision, Aug. 12, 1937*

Where a corporation engaged in rectifying and bottling both rectified and straight distilled spirits, 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 products to wholesalers and distributors thereof in various 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 from mash, wort, or wash, and in selling such products 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 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 and 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 "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, 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 alcoholic beverages contained in such bottles were by it made through process of distillation, notwithstanding fact it did not distill said various beverages, thus bottled, labeled, sold, and transported by it, through 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," used in connection with liquor industry and products thereof, in the trade and by the ultimate consuming 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, 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 plant, equipment, and requirements of which are more elaborate, extensive and burdensome than those of rectifier;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that it was a distiller or distilling company in the ordinarily accepted sense of those terms, 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, in such beliefs, to buy its said whiskies and other alcoholic beverages, rectified and bottled by it, and with distinct tendency to give it an unfair 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 one, and thereby to divert trade to it from such competitors; to the substantial injury of competition in interstate 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. John L. Hornor*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. R. E. Joyce, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Paramount Distilling 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 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 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 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. For a long period of time the word "Distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of such liquors by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy alcoholic liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that it 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, or other alcoholic 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 alcoholic beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other alcoholic beverages sold by them and who truthfully use the words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery 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 whiskies, gins, and other alcoholic 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 19, 1935 issued, and on June 21, 1935 served its complaint in this proceeding upon the respondent, Paramount 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.

Findings

Morehouse, attorney for the Commission, before John L. Hornor, an examiner of the Commission, theretofore duly designated by it. No testimony was introduced or offered in opposition to the allegations of the complaint by R. E. Joyce, attorney for respondent. The testimony and other evidence in support of the allegations of the complaint were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and briefs in support of and in opposition to the complaint, no oral arguments 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. Respondent is a corporation originally incorporated October 16, 1934, existing and doing business under the laws of the State of Illinois, with its principal office and place of business at 512 South Peoria Street, Chicago, Ill.

It is now and has been since February 2, 1935, engaged in the business of rectifying and bottling both rectified and straight distilled spirits, 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 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 distributors, some located within the State of New York, 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 since February 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 February 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.

A brief description of the equipment used by said respondent at its rectifying plant in Chicago is as follows: "66 processing receptacles with a total capacity of 2,393 gallons; 40 bottling tanks, total capacity 10,330 gallons; 1 only 40-gallon still for distilling gin; receiving tank, 115 gallons; 1 vacuum filling machine for bottling; 4 regular filling machines for bottling; 5 conveyor tables for bottling; also filter machine.

PAR. 3. Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or types or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

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 the distiller's 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 distiller's

rectifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by _____ Company."

With reference to the gin produced by respondent by the redistillation of purchased alcohol over juniper berries and other aromatics, existing regulations promulgated pursuant to Federal Alcohol Administration Act, approved August 29, 1935, (49 Stat. 977), provide that rectifiers who redistill purchased alcohol over juniper berries and other aromatics must call such resulting product "distilled gin," and require that the labels state who distilled it. This serves to distinguish between gin produced by such method and "cold" or compounded gin prepared by mixing neutral spirits with essential flavoring oils.

There is usually blown in the bottom of each bottle 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 233" 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 \$100,000.00, and is permitted to have untaxed liquor; the average bond of the rectifier is about \$5,000.00; 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 the 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 and rectifying plant; they do not lock the premises and maintain general supervision over the bottling and rectification; 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; 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 a distiller.

PAR. 4. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" in its corporate name, printed on its stationery and 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 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, or other alcoholic 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.

The testimony of those having long experience in both the distilled spirits rectifying industry and the distilling industry, established, and the Commission finds, 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, and with few exceptions, their testimony was to the effect, and the Commission also finds it to be a fact, 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. 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.

PAR. 6. Subsequently to the issuance of complaint herein, and on the 3rd day of June 1936, pursuant to proper application approved by the requisite governmental authorities, there was issued to respondent by the Federal Alcohol Administration a basic distiller's permit, No. D-740, authorizing it to distill spirituous beverages from mash, wort, or wash, but up to the present time respondent has not commenced operations under said basic permit.

That permit authorized respondent to engage in the production and sale of distilled spirits at a registered distillery not yet in existence, at St. Charles, Ill. The construction of such distillery was begun at St. Charles, Ill., by the Mervyn Building Corporation, a

company owned outright by Mr. N. C. Meyer, Mr. M. C. Meyer, and Mr. Joseph N. Meyer, under an agreement by which the land and buildings may be purchased by the Paramount Distilling Corporation, upon completion, for the sum of \$200,000.00.

All of the moneys advanced by the Mervyn Building Corporation for the construction of this distillery have been furnished by N. C. Meyer, M. C. Meyer, and Joseph N. Meyer.

The distillery, when completed, will have a capacity of approximately 4,000 gallons of distilled spirits per eight-hour working day, and at the time of the hearings it was anticipated that actual operation of the distillery by the Paramount Distilling Corporation would commence the latter part of January 1937.

Respondent expressed the intention, that as soon as the construction was completed and the necessary arrangements could be made, to proceed to engage in the manufacture of distilled spirits by a process of original and continuous distillation from mash, wort, or wash at the aforesaid distillery.

Respondent has not yet engaged in actual distillery operations.

PAR. 7. 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 Paramount Distilling Corporation 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 respondents are manufactured or distilled by Paramount Distilling Corporation 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 consumers, 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. 8. 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

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product "Distilled Gin," and requiring that the label 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 respondent, Paramount 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 briefs filed herein (no testimony or other evidence having been offered in opposition to the complaint and no oral arguments having been made either by PGad B. Morehouse, counsel for the Commission, or by R. E. Joyce, 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, Paramount 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 all stationery, advertising, or labels attached to the bottles in which its said products are sold and shipped, or in any other way by word or words of like import, (a) that respondent is a distiller of the said whiskies, gins, or other spirituous beverages; or, (b) that the said whiskies, gins, or other spirituous beverages were

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by it manufactured through a process of distillation; or (c) that respondent 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 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

ARPAUL 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 2748. Complaint, Mar. 20, 1936—Decision, Aug. 12, 1937

Where a corporation engaged in sale and distribution of its "ORTOSAN" preparation for facial treatment, in substantial competition with others engaged in sale in interstate commerce of creams and other preparations used and useful for beautification of face and skin—

(a) Falsely represented, in radio broadcasts, advertisements of interstate circulation, letters, pamphlets, and other forms of advertising media, that said preparation nourished and rejuvenated skin or face, and that use thereof would restore youthful contours to face, chin, and neck, eliminate sagging lines, erase wrinkles and blemishes, and banish large pores and fine lines, and immediately produce a fresh, healthy skin, and that it would keep the face looking younger, and that it was five creams in one and combined everything needed to give one a beautiful skin; and

(b) Falsely represented, as aforesaid, that said product was the highest praised skin preparation in the world and had been endorsed by leading medical authorities and leading beauty specialists;

With effect of misleading and deceiving many prospective purchasers of preparations for use in beautification of face and skin, and of causing them to believe that representations made by it were true, and that said preparation possessed properties and efficacy claimed, and of causing substantial portion of such persons, by reason of such erroneous beliefs, to buy said "ORTOSAN," and with result thereby of unfairly and unlawfully diverting trade in commerce to it from its competitors who do not misrepresent in any manner the properties or efficacy of their products; to their substantial injury and to the injury 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. Astor Hogg for the Commission.

Mr. William Huck, Jr., 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 Arpaul 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, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Arpaul Company, 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 333 West 52nd Street, New York, in said State. It is now, and for more than one year last past has been, engaged in advertising, selling, and distributing a preparation recommended for facial treatment designated "Ortosan," and other toilet preparations, and now causes, and for more than one year last past has caused, its said preparations, when sold by it, to be shipped from its place of business in New York, N. Y., 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 in commerce in said preparations 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 facial creams and other preparations similar to those sold by respondent 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 preparation designated "Ortosan," respondent now represents, and for more than one year last past has represented, in and by radio broadcasts, advertisements having an interstate circulation, letters, pamphlets, and other forms of advertising media as follows:

Ortosan 5-in-1 is the highest praised skin preparation in the world;

Ortosan is different from any cream or ointment in existence * * * Perfected during a period of over twenty-five years;

Ortosan Skin food, 5-in-1 especially, is a master stroke in its combination for rejuvenating and beautifying the skin. Created in Germany and perfected during a period of over 25 years;

Mme. Louise Hermance is well known today throughout the world and her name will, in all probability, live through the ages. For she alone, by vigilant experimentation during twenty-five years, has discovered what alchemists and scientists have sought for centuries in vain * * * The Secret of Preserving Youth and Beauty;

Ortosan has been endorsed by leading medical authorities and beauty specialists;

A single application demonstrates the superiority of Ortosan over all other creams or lotions. When you use Ortosan you need no other cream of any

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kind. Ortosan is a cleansing cream, a bleaching cream, a vanishing cream, a nourishing cream, and a rejuvenation cream, all in one, taking the place of 5 separate creams. That is why Ortosan is the most economical of all beauty preparations;

Ortosan combines in One Cream everything that is needed to give a woman a beautiful skin. It restores youthful contours of face, chin and neck, eliminates sagging lines, erases wrinkles and skin blemishes, and imparts Immediately a fresh, healthy skin;

You notice, the first time you use Ortosan, that it makes the face look younger and keeps it younger;

Ortosan, spelled O-R-T-O-S-A-N, is the amazing discovery of a famous skin specialist;

Ortosan combines in One cream everything that is needed to give a woman a beautiful skin. It produces a skin of velvety softness with the freshness and bloom of a young girl. It banishes large pores, erases wrinkles and fine lines, but most wonderful of all, it restores the youthful contours of cheek, chin and neck by completely eliminating the sagging of the skin around the chin and neck.

PAR. 3. In truth and in fact, the preparation "Ortosan" is not five creams in one and is not the highest praised skin preparation in the world; it is not unlike many similar creams on the market and was not perfected during a period of over 25 years; it has not been endorsed by leading medical authorities and beauty specialists; it is not a nourishing cream nor a rejuvenation cream; it does not take the place of five separate creams, it does not restore youthful contours or any contours of the face, chin or neck, and it does not eliminate sagging lines, erase wrinkles and skin blemishes, and its application does not immediately impart a fresh, healthy skin; the first application to the face does not make the face look younger and neither will the preparation keep it looking younger; the preparation "Ortosan" does not combine in one cream everything that is needed to give a woman a beautiful skin, it does not and will not banish large pores or erase wrinkles or fine lines, and it does not restore the youthful contour of the cheek or chin or neck in any manner whatsoever.

PAR. 4. The representations of respondent, as aforesaid, have had and do have the capacity and tendency to confuse, mislead, and deceive members of the public into the belief that respondent's product designated "Ortosan" contains five creams in one and is the highest praised skin preparation in the world; that it is different from any other cream or ointment in existence and was perfected during a period of over 25 years; that the preparation has been endorsed by leading medical authorities and beauty specialists; that said preparation has the property and capacity to nourish and rejuvenate the skin and to restore youthful contours of the face, chin and neck, and eliminate sagging lines, erase wrinkles and skin blemishes; that the preparation is five face creams in one; that its use will make the face

look younger and keep it younger; that it banishes large pores of the skin, erases wrinkles and fine lines and restores youthful contours of the face and neck. The said representations of respondent 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 beliefs engendered as above set forth and to unfairly divert trade to respondent from competitors engaged in the sale in interstate commerce of face creams and cosmetics similar to the preparation sold by respondent.

There are among the competitors of respondent, as mentioned in paragraph 1 hereof, many who sell and distribute in commerce similar face creams and preparations who do not misrepresent the properties or qualities or therapeutic virtues, functions, uses or effects of their said competing products.

PAR. 5. 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 March 20, 1936, issued and subsequently served its complaint in this proceeding upon respondent Arpaul 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, W. T. Kelley, Chief Counsel for the Federal Trade Commission, and William Huck, Jr., counsel for the respondent, executed a stipulation as to the facts wherein it was agreed that the statement of facts therein recited 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 Commission might proceed upon such 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. Said stipulation as to the facts was subsequently approved by the Commission and was duly recorded and filed in the office of the Commission. Thereafter, the proceed-

ing regularly came on for final hearing before the Commission on said complaint, the answer 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, Arpaul Company, 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 333 West 52nd Street, New York, in said State. It is now, and for more than one year last past has been, engaged in selling and distributing a preparation recommended for facial treatment designated "Ortosan", and now causes, and for more than one year last past has caused, its said preparation, when sold by it, to be shipped from its place of business in New York, N. Y., 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 in commerce in said preparation 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, in interstate commerce, of creams and other preparations used, and useful, for the beautification of the face and skin.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, in soliciting the sale of, and selling, its preparation designated "Ortosan," respondent now represents, and for more than one year last past has represented, in and by radio broadcasts, advertisements having an interstate circulation, letters, pamphlets, and other forms of advertising media, as follows:

Ortosan 5-in-1 is the highest praise skin preparation in the world;

Ortosan is different from any cream or ointment in existence * * *

Perfecting during a period of over twenty-five years;

Ortosan Skin food, 5-in-1 especially, is a master stroke in its combination for rejuvenating and beautifying the skin. Created in Germany and perfected during a period of over 25 years;

Mme. Louise Hermand is well known today throughout the world and her name will in all probability, live through the ages.

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For she alone, by vigilant experimentation during twenty-five years, has discovered what alchemists and scientists have sought for centuries in vain—The Secret of Preserving Youth and Beauty;

Ortosan has been endorsed by leading medical authorities and beauty specialists;

A single application demonstrates the superiority of Ortosan over all other creams or lotions. When you use Ortosan you need no other cream of any kind. Ortosan is a cleansing cream, a bleaching cream, a vanishing cream, a nourishing cream, and a rejuvenation cream, all in one, taking the place of 5 separate creams. That is why Ortosan is the most economical of all beauty preparations;

Ortosan combines in One Cream everything that is needed to give a woman a beautiful skin. It restores youthful contours of face, chin and neck, eliminates sagging lines, erases wrinkles and skin blemishes, and imparts Immediately a fresh, healthy skin;

You notice, the first time you use Ortosan, that it makes the face look younger and keeps it younger;

Ortosan, spelled O-R-T-O-S-A-N, is the amazing discovery of a famous skin specialist;

Ortosan combines in One cream everything that is needed to give a woman a beautiful skin. It produces a skin of velvety softness with the freshness and bloom of a young girl. It banishes large pores, erases wrinkles and fine lines, but most wonderful of all, it restores the youthful contours of cheek, chin and neck by completely eliminating the sagging of the skin around the chin and neck.

PAR. 3. In the manner and through the means above stated the respondent represents that the preparation "Ortosan" is five creams in one, that it is the highest praised skin preparation in the world and that it has been endorsed by leading medical authorities and leading beauty specialists. The respondent represents that the preparation "Ortosan" is a nourishing and rejuvenating cream and that it will restore youthful contours to the face, chin and neck, and that it will eliminate sagging lines and erase wrinkles and skin blemishes, and that its application will immediately produce a fresh healthy skin. The respondent represents that the first application of the preparation will make the face look younger and that its use will keep the face looking younger, and that there is combined in the preparation everything that is needed to give a woman a beautiful skin. The respondent also represents that the use of the preparation will banish large pores and fine lines.

PAR. 4. The preparation "Ortosan" is not five creams in one, nor is it the highest praised skin preparation in the world. The preparation "Ortosan" has not been endorsed by leading medical authorities and leading beauty specialists. The preparation "Ortosan" is not a nourishing cream, nor is it a rejuvenation cream. The use of the preparation "Ortosan" will not restore youthful contours, or

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any contours at all, to the face, chin, neck or other part of the body, nor will its use eliminate sagging lines, erase wrinkles and skin blemishes, or banish large pores and fine lines, and its application will not immediately produce a fresh healthy skin. The first application of the preparation will not make the face look younger, nor will the use of the preparation keep the face looking younger. The preparation "Ortosan" does not combine in one cream everything that is needed to give a woman a beautiful skin.

PAR. 5. The representations used by the respondent in connection with the sale and distribution of its preparation "Ortosan" in said commerce, as hereinabove set out, are false and misleading and deceptive and have the tendency and capacity to and do mislead and deceive many prospective purchasers of preparations for use in the beautification of the face and skin and cause them to believe that the representations made by the respondent are true and that said preparation possesses the properties and efficacy claimed; and cause a substantial portion of such persons, because of such erroneous belief, to purchase the preparation "Ortosan," thereby unfairly and unlawfully diverting trade in said commerce to the respondent from its competitors who do not misrepresent in any manner the properties or efficacy of their products, to the substantial injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Arpaul 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 the respondent and a stipulation as to the facts executed by W. T. Kelley, Chief Counsel of the Federal Trade Commission, and William Huck, Jr., counsel for the respondent, the filing of briefs having been waived, and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act

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

It is ordered, That the respondent, Arpaul Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of the preparation known as, and sold under the name, "Ortosan" or any other preparation, under whatever name sold, composed of similar ingredients and possessing properties similar to the preparation "Ortosan," in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That said preparation is five creams in one;
2. That said preparation is the highest praised skin preparation in the world and has been endorsed by leading medical authorities and leading beauty specialists;
3. That said preparation nourishes the skin;
4. That said preparation rejuvenates the skin or face;
5. That the use of said preparation will restore youthful contours to the face, chin and neck, and will eliminate sagging lines, erase wrinkles and skin blemishes, and banish large pores and fine lines and immediately produce a fresh healthy skin;
6. That the use of the preparation will keep the face looking younger;
7. That there is combined in said preparation everything that is needed to give one a beautiful skin.

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
MUTUAL BRIEF CASE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2889. Complaint, Aug. 7, 1936—Decision, Aug. 12, 1937*

Where a corporation engaged in manufacture of leather luggage, and in use in such manufacture of two types of leather employed in making such luggage, namely, top grain leather and split leather, and in sale and distribution of such leather luggage in commerce among the various States and in the District of Columbia, in substantial competition with those engaged in manufacture, sale and distribution of leather goods in commerce, as above set forth, and including many competitors who sell leather luggage made from top grain leather and also that made from split leather, and properly describe former, as variously known by manufacturers, dealers, and purchasing public, as "cowhide" only, "genuine cowhide," "leather," "genuine leather," "warranted leather," and "top grain," and properly describe latter, as similarly generally known, as "split leather" luggage—

Offered and sold, in interstate commerce, its split leather goods, labeled and branded "cowhide" only, or "warranted genuine cowhide," in distinction from its top grain leather goods labeled and branded by it as "genuine top grain cowhide," notwithstanding fact such split leather luggage, thus branded, was not made from outside or top side of hide, or from top grain, as understood in trade and by purchasing public, but was made from split leather, i. e., lower portion of hide, and from which top grain portion has been cut away;

With capacity and tendency to mislead and deceive purchasing public and substantial portion of trade into erroneous belief that its said luggage, thus branded and labeled, was made from top grain leather, for goods of which purchasing public has generally pronounced and distinct preference, and with result of placing in hands of wholesalers and retailers means whereby said luggage, made of split leather as above set forth, and goods of which can be made to resemble those of other in appearance, is passed off to purchasing public as top grain leather luggage, and consuming public purchased substantial volume of its aforesaid product, and trade was unfairly diverted to it from its competitors likewise engaged in manufacture, sale, and distribution of leather luggage, and who truthfully brand and represent kind of leather used in 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.

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

Mr. DeWitt T. Puckett for the Commission.

Mr. Charles J. Fagg, of Newark, N. J., 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 Mutual Brief Case Company, a corporation, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Mutual Brief Case Company, is a corporation, organized and existing under the laws of the State of New York with its principal factory, warehouse and sales office at 133-135 Kossuth Street, in the city of Newark, in the State of New Jersey. Respondent is now and for more than one year last past, has been engaged in the manufacture of leather, leather luggage, leather brief cases, and leather golf bags and in the sale and distribution of the same, 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 manufacturing and selling leather luggage 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, respondent manufactures certain of its luggage from split cowhide leather, also described as the under or flesh side of the hide. Respondent places upon such luggage, and has done so during the period aforesaid, a conspicuous stamp or label reading "Cowhide Only" or "Warranted Genuine Cowhide" as the case may be. Said stamp or label represents and implies to the purchasing public that the material with which such luggage is covered is top grain leather, or as otherwise described, the outside or surface layer of the hide. Further, retailers are enabled by reason of said stamp or label, to mislead, deceive, and defraud the purchasing public as to the quality of the material with which such luggage is covered. Top grain leather is superior in quality, durability and price to the split leather.

Findings

The public generally believes the word leather to mean the top or hairy side of the hide.

There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers of leather luggage who do not in any way misrepresent or falsely label their said merchandise.

PAR. 4. The above and foregoing representations, as shown by the label used by respondent, 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 luggage so labeled is manufactured from, or covered with, genuine top grain cow hide, 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 product, 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 for other purposes," the Federal Trade Commission, on August 7, 1936, issued and served its complaint in this proceeding upon respondent Mutual Brief Case Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. No answer to said complaint was filed. After the issuance of said complaint, 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 said testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony or other evidence in opposition to the allegations of the complaint was offered. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, and brief in

support of the complaint (no brief having been filed by respondent and no 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, Mutual Brief Case Company, is a corporation doing business under the laws of the State of New York. The respondent's principal office and place of business is at 133-135 Kossuth Street, Newark, N. J.

For several years last past it has been engaged in the sale and distribution of leather luggage in commerce between and among the various States of the United States and in the District of Columbia. When respondent's goods are sold, it causes them to be shipped from its place of business in Newark, N. J., to the purchasers thereof at their places of business in the various States of the United States and in the District of Columbia.

At all times since respondent has been in said business, it has been in substantial competition with other individuals, and partnerships, and with corporations likewise engaged in the manufacture, sale, and distribution, or in the sale and distribution of leather goods, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 2. Two general types of leather employed in the manufacture of leather luggage are top grain leather and split leather. Top grain leather is the top portion of the hide from which the hair has been removed and the under portion or that lying next to the flesh of the animal has been cut away. Split leather is the lower portion of the hide which lies next to the flesh of the animal and from which the top grain portion has been cut away. The respondent uses both types of said leather in the manufacture of its luggage.

Respondent's split leather goods offered for sale and sold in interstate commerce are labeled and branded "cowhide only" or "warranted genuine cowhide." Respondent labels and brands its top grain leather goods "genuine top grain cowhide."

The purchasing public generally and the trade understand the words "cowhide only" or "warranted genuine cowhide," or the word "leather," when used to describe luggage, to mean luggage manufactured from top grain leather.

PAR. 3. Many of respondent's competitors sell leather luggage manufactured from top grain leather and also from split leather.

Conclusion

Said top grain leather is properly described by said competitors, and is variously known by manufacturers, dealers, and the purchasing public as "cowhide only," "genuine cowhide," "leather," "genuine leather," "warranted leather," and "top grain." Said split leather luggage is properly described by said competitors, and is generally known by manufacturers, dealers, and the purchasing public, as "split leather" luggage.

The purchasing public generally has a pronounced and distinct preference for leather goods that are manufactured from top grain leather. Split leather goods can be made to resemble top grain leather in appearance and the purchasing public generally and a substantial portion of the trade cannot distinguish between split leather goods and top grain leather goods. As a result thereof, split leather goods are thus passed off as top grain leather goods.

PAR. 4. The descriptions, representations, stamps, and brands used by respondent in describing its split leather luggage are false and misleading in that said luggage branded as "cowhide only" and "warranted genuine cowhide" is not made from the outside or top side of the hide, or what is understood in the trade and by the purchasing public as top grain, but are manufactured from split leather.

PAR. 5. The use by respondent of the descriptions, marks, and brands set out in paragraph 2 hereof, to describe its split leather luggage, offered for sale and sold in interstate commerce, has had and does have the capacity and tendency to mislead and deceive the purchasing public and a substantial portion of the trade into the erroneous belief that the luggage so branded and labeled was made from top grain leather. By said practices, respondent also places in the hands of wholesalers and retailers the means whereby said luggage is passed off to the purchasing public as top grain leather luggage. As a direct consequence of the mistaken and erroneous beliefs induced by the false and misleading representations above referred to, the consuming public has purchased a substantial volume of respondent's luggage with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the manufacture, sale, and distribution of leather luggage, who truthfully brand and represent the kind of leather 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 in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Mutual Brief Case Company, are to the prejudice of the public and of respondent's

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competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and brief in support of the allegations of the complaint filed herein, no answer or brief having been filed by respondent and no 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, Mutual Brief Case Company, a corporation, its officers, representatives, agents, and employes in connection with the offering for sale, sale, and distribution of luggage in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the word "Cowhide," "Warranted genuine cowhide," or "leather" or any other word or words of similar import and effect, alone or in conjunction with other words, stamped or imprinted on labels or on the luggage itself, or in any other manner, that luggage manufactured in whole or in part from the underlayers or flesh sides of hides, known as split leather, is made from the outside layer of the hide.

- (2) Using the words "cowhide," "warranted genuine cowhide," or "leather" to describe or designate luggage manufactured in whole or in part from underlayers or flesh sides of hides.

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

JOHN F. BOLON, TRADING AS JOHN F. BOLON CIGAR
COMPANY

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

Docket 2293. Complaint, Dec. 30, 1935¹—Decision, Aug. 17, 1937

Where an individual engaged in manufacture, sale, and distribution of cigars through various States, in substantial competition with those likewise engaged in sale and distribution of such products in commerce among the various States and within the District of Columbia—

- (a) Caused cigars thus manufactured by him to be packed for display and sale to public in wooden boxes or containers, on the border of which were imprinted the words "Fabrica De Tabacos Vuelta Abajo," and thereby represented that said cigars were made from tobacco grown in the particular section of the Island of Cuba known as Vuelta Abajo, source of tobacco considered by many of cigar and tobacco trade and consuming public as of a higher and more desirable quality for use in manufacture of cigars than any other tobacco grown on said Island or elsewhere, and, to many of said trade and public, world's most famous cigar tobacco, notwithstanding fact said cigars were not made in Cuba from tobacco grown therein, either in aforesaid district in whole or in part, and, as such, considered by many of tobacco and cigar trade and cigar purchasing public superior in quality to cigars made wholly of tobacco not grown in aforesaid district, but were made entirely from the domestically grown product;
- (b) Caused to be imprinted on box phrase "Cured in Rum," notwithstanding fact he used no rum in curing, treating, flavoring, or sweetening tobacco used by him in manufacture of such cigars; and
- (c) Offered and sold to public cigars bearing trade or brand name "Turkey," with words "Matchless Turkish Blend" imprinted on cellophane wrappers thereof, notwithstanding fact cigars made, sold, and distributed by him to public under such trade names or brands or designations contained no Turkish tobacco whatever, but were made, as aforesaid, of domestic product;

With effect of confusing, deceiving and misleading many of said wholesale and retail dealers and many of said purchasing public into erroneous and mistaken belief that aforesaid cigars were made from tobacco grown wholly or in part in said district, and were cured in rum, or were made wholly from, or blended with, tobacco grown in Turkey, and with capacity and tendency to unfairly divert trade to him from competitors engaged in selling, in interstate commerce, truthfully advertised products of same kind and nature:

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.

¹ Amended.

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 John F. Bolon, doing business under the trade name of John F. Bolon Cigar Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, John F. Bolon, is an individual doing business at all times since 1924 under the trade name of John F. Bolon Cigar Company, and having, at all times, a place of business in the State of Ohio.

PAR. 2. During all the times above mentioned the respondent has been and still is engaged in the business of manufacturing and selling cigars. Respondent causes, and during the time above referred to has caused, the cigars sold by him to be packed for display and resale to the public in and from wooden boxes or other containers and to be transported to wholesale and retail dealers, the purchasers thereof, from his place of business in the State of Ohio or the State of origin of the shipment.

PAR. 3. During all the times above mentioned and referred to, other individuals, firms, and corporations, hereinafter referred to as sellers, have been engaged in the manufacture and sale of cigars and have caused said cigars to be packed for display and resale to the public in and from wooden boxes or other containers, and have caused said cigars to be transported to wholesale and retail dealers located in various States of the United States other than the State of the seller or the State of origin of the shipment.

PAR. 4. The respondent, in the manufacture and sale of cigars, is and has been in substantial competition in interstate commerce with other individuals, firms and corporations, referred to as sellers in paragraph 3 hereof, during all times mentioned and referred to in paragraph 1 hereof.

PAR. 5. During all the times above mentioned the respondent has manufactured and offered for sale and still sells cigars under the trade name

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GARCIA SWEETS

The boxes and containers in which the cigars are packed, transported, and offered for sale, carry on the edges thereof a border on which is imprinted the words

FABRICA DE TOBACOS VUELTA ABAJO

There is also imprinted on the box the following phrase:

Cured in Rum

PAR. 6. During all the time above mentioned, and for many years prior thereto, cigars made wholly of Cuban grown 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 name, on the bands of the cigars, on the boxes or containers and on the labels and in advertisements of their said cigars in newspapers and other publications.

During all of the times above mentioned, and for many years prior thereto, many in the cigar trade and many of the public became accustomed to believe and still believe that cigars printed with the name "Garcia," either on the box or container or on the band of the cigar, were made by manufacturers of Cuban nationality and of Cuban grown tobacco exclusively, and were and are of a quality superior to cigars made by 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 the manufacturer of that surname.

PAR. 7. Vuelta Abajo is the name of a district in the province of Pinar del Rio in the Island of Cuba in which tobacco is grown which is and has been considered, during all the time above mentioned, by many of the said tobacco and cigar trade and the public, to be of a higher and more desirable quality for the use in the manufacture of cigars for sale and consumption in the United States than any tobacco grown not only in the countries other than Cuba, but even of a higher and more desirable quality for such purpose than tobacco grown elsewhere on the Island of Cuba.

Likewise many of the said tobacco and cigar trade and many of the said cigar purchasing public have also considered, during all the times above mentioned, 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, are and have been superior in quality to cigars made wholly of tobacco grown outside of said district. To many of said trade and public Vuelta Abajo tobacco is the most famous tobacco in the world that is used in the manufacture of cigars.

PAR. 8. During all of the times above mentioned and for many years prior thereto many of the tobacco and cigar trade and the public have believed and still believe that cigars cured in rum are of a superior quality and flavor to cigars not so cured.

PAR. 9. During all of the times above mentioned the cigars manufactured and sold by the respondent were not made in the Island of Cuba or made wholly of Cuban-grown tobacco and were not made by manufacturers whose surname was "Garcia"; nor were the cigars manufactured and sold by the respondent made of tobacco grown in whole or in part in the Vuelta Abajo district of the Island of Cuba. In truth and in fact the tobacco from which the cigars sold by the respondent under the name "Garcia Sweets" were and are manufactured, was grown in the States of Ohio and Connecticut, and further in truth and in fact there is no rum used in curing the tobacco from which said cigars were and are manufactured.

PAR. 10. The respondent during all the times above mentioned has offered for sale and sold and still sells to the public cigars under the trade name of

TURKEY

On the cellophane wrapper in which said cigars are packed there is imprinted the words

TURKISH MATCHLESS BLEND

During all of the time above mentioned, and for many years prior thereto, the name "Turkey" in connection with the tobacco trade and the public is associated with tobacco which has been produced primarily in the country of Turkey and adjacent area and generally throughout the Near East. The said tobacco is used for its flavor and aroma in the blending and manufacture of cigars and cigarettes. In truth and in fact, the cigars manufactured by the respondent and sold and distributed to the public under the trade name and designation "Turkey Matchless Blend" do not contain any Turkish tobacco whatsoever; but the tobacco used in the manufacture of said cigars designated as "Turkish Matchless Blend" comes from or is grown in the States of Ohio and Connecticut.

PAR. 11. The use by the respondent of the aforesaid words "Garcia," "Vuelta Abajo," and "Turkey," and the phrase "Cured in Rum" on the cellophane wrapper of said cigars and on the boxes or con-

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tainers and labels thereon, in which said cigars are packed and sold by him for display and resale to the public, and in said advertisements and letterheads, has the capacity and tendency to mislead and deceive and to confuse many of the said wholesale and retail dealers and many of the said purchasing public, and has confused, deceived and misled and still confuses, misleads, and deceives them, respectively, in the belief that the said cigars were and are made wholly from tobacco grown in Cuba and either wholly or in part of tobacco grown in said district of Vuelta Abajo of the Island of Cuba and by manufacturers of the surname "Garcia," and further, that said cigars were cured in rum. The cigar and tobacco trade and the public are likewise misled and deceived in the matter hereinbefore stated into believing that the cigars manufactured and sold by the respondent under the trade name "Turkey" contain some Turkish tobacco.

Thereby trade is diverted to the respondent from his competitors, who do not make such misrepresentations by using false and misleading trade names or designations. Thereby substantial injury is done by the respondent to substantial competition in interstate commerce.

PAR. 12. The acts and practices of the respondent are all to the prejudice of the public and of 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 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 December 30, 1935, issued and thereafter served its amended complaint in this proceeding on respondent, John F. Bolon, trading as John F. Bolon Cigar 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 amended complaint and the filing of respondent's answer thereto, the Commission by order entered herein, granted the respondent's motion for permission to withdraw said answer to said amended complaint, and to substitute therefor an answer admitting all the material allegations of the said amended complaint, as modified by the Commission's order of December 24, 1936, to be true and waiving the taking of further evidence and all other inter-

vening 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 amended complaint, as modified, and the substitute answer (briefs 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, John F. Bolon, is an individual, trading as John F. Bolon Cigar Company and having his factory and place of business at 89½ South Summit Street, Bethesda, Ohio. For more than two years last past he has been engaged in the manufacture of cigars and in the sale and distribution of the same into and through various States of the United States.

PAR. 2. In the course and conduct of his said business, as described in paragraph 1 hereof, respondent has offered his said cigars for sale and has sold and transported, or caused the same to be transported, in commerce among and between the several States of the United States, direct from the aforesaid place of business to consumers located at points in the States of the United States other than the State of Ohio. In the course and conduct of such business, respondent has been and now is engaged in substantial competition with corporations, firms, 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. 3. 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. Vuelta Abajo is the name of a district in the Province of Pinar Del Rio, in the Island of Cuba, in which is grown tobacco that is and has been considered by many of the tobacco and cigar trade and consuming public to be of a higher and more desirable quality for use in the manufacture of cigars than any other tobacco grown on the Island of Cuba, or elsewhere. Many of the tobacco and cigar trade and many of the cigar purchasing public have considered and still believe the cigars made in Cuba from tobacco grown in Cuba, either wholly or in part in said Vuelta Abajo district, or cigars made in the United States from tobacco grown wholly or in part in the said Vuelta Abajo district of Cuba, are and have been superior in quality to cigars made wholly

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of tobacco grown outside of said district. To many of said trade and public Vuelta Abajo tobacco is the most famous tobacco in the world used in the manufacture of cigars.

PAR. 4. Respondent, in the course and conduct of his said business of manufacturing and offering cigars for sale has caused cigars so manufactured by him to be packed for display and sale to the public in wooden boxes or containers carrying on the edges thereof a border on which there has been imprinted the words:

Fabrica De Tabacos Vuelta Abajo

Through such statement, respondent represents that said cigars are made from tobacco grown on the Island of Cuba and are made from tobacco grown in that particular section of said Island known as Vuelta Abajo.

Respondent has also caused to be imprinted on the box the following phrase:

Cured in Rum

In truth and in fact, the cigars manufactured and sold by the respondent were not made in the Island of Cuba, nor from tobacco grown in whole or in part in the Vuelta Abajo, or other district, region, or section of the Island of Cuba. Respondent's said cigars, on the contrary, were and are manufactured entirely from tobacco grown in the States of Ohio and Connecticut. Respondent does not use and has not used any rum in curing, treating, flavoring, or sweetening tobacco used by him in the manufacture of cigars.

PAR. 5. For many years to the tobacco trade and the consuming public, the name "Turkey" has been associated with and indicates tobacco which has been produced in the country of Turkey. On account of its flavor and aroma, said tobacco is used in the blending and manufacture of cigars and cigarettes.

The respondent, in the further course and conduct of his business, in manufacturing and selling cigars, had offered for sale and sold to the public, cigars bearing the trade or brand name:

Turkey

On the cellophane wrapper in which said cigars are and have been wrapped, there is also imprinted the words:

Matchless Turkish Blend

In truth and in fact, the cigars manufactured by the respondent and sold and distributed by him to the public under the trade names or brands or designations "Turkey" and "Matchless Turkish Blend"

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do not contain and have not contained any Turkish Tobacco whatsoever. The tobacco used by respondent in the manufacture of said cigars so branded, labeled and designated was and is grown in the States of Ohio and Connecticut.

PAR. 6. The use by the respondent of the aforesaid words, "Vuelta Abajo" and the phrase "Cured in Rum" has the capacity and tendency to mislead and deceive and confuse many of the said wholesale and said retail dealers and many of the said purchasing public, and has confused, deceived, and misled, and still confuses, misleads and deceives them respectively, into the erroneous and mistaken belief that the said cigars were and are made from tobacco grown wholly or in part in said district of Vuelta Abajo of the Island of Cuba and further, that said cigars were cured in rum. The said cigar and tobacco trade and the public are likewise misled and deceived into erroneously and mistakenly believing that the cigars manufactured and sold by the respondent under the trade names "Turkey" and "Turkish" are manufactured wholly from or blended with tobacco grown in Turkey. The aforesaid practices have and have had the capacity and tendency to unfairly divert trade to respondent from competitors engaged in selling in interstate commerce products of the same kind and nature as those of respondent, which products are truthfully advertised.

CONCLUSION

The aforesaid acts and practices of the respondent, John F. Bolon, trading as John F. Bolon Cigar 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 original and amended complaints of the Commis-

¹ Case was closed, with respect to use of term "Garcia", by following order on Dec. 24, 1936:

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 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.

sion and the answer filed herein by the respondent, admitting the material allegations of said amended complaint as modified by the order of the Commission duly entered on December 24, 1936, 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, John F. Bolon, individually and trading as John F. Bolon Cigar Company or under any other trade name, his 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. Representing, through the use of the words "Vuelta Abajo" or any other word or words of similar import and meaning, as descriptive of, or as brand names for, or on labels of, cigars, or in any other manner, that said cigars are made from tobacco grown in and imported from the Island of Cuba and the Province of Pinar Del Rio, unless said cigars are actually made entirely from tobacco grown in the said Island of Cuba and Province of Pinar Del Rio;

2. Representing, through the use of the words, "Cured in Rum," or other words of similar import or meaning, that cigars have been cured, treated, flavored or sweetened through the use of rum, unless such is the fact;

3. Using the words "Turkey" or "Turkish" as descriptive of cigars unless such cigars are made wholly from tobacco grown in the country of Turkey, or using the words "Turkey" or "Turkish" in conjunction with the words "Matchless Blend" or other word or words of similar import or meaning, as descriptive of cigars, unless such cigars are made in substantial part from tobacco grown in the country of Turkey.

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
DISTILLERS BRANDS, 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 2390. Complaint, May 16, 1935—Decision, Aug. 17, 1937

Where a corporation engaged in purchasing, rectifying, blending, and bottling whiskies, brandies, 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, in various States and in the District of Columbia, its aforesaid various products to wholesalers and jobbers in various 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 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 from mash, wort, or wash of whiskies, gins, and other spirituous beverages, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate 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 rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth—

Furnished, through use of word "Distillers" in its corporate name, printed on its stationery and in its advertising, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways, its customers, both wholesalers and retailers, with the means of representing to the ultimate consuming public that the said whiskies, gins, brandies, and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not distill said beverages, so bottled, labeled, sold, and transported by it, 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;

With effect of misleading and deceiving purchasing public into the belief that the whiskies, brandies, gins, and other spirituous beverages sold by it were by it made and distilled from mash, wort, or wash, and of inducing said public, acting in such belief, to buy its said whiskies and other spirituous beverages, 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 manufacturers, by distillation from mash, wort, or wash, of such various 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.

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

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Before *Mr. John J. Keenan*, trial examiner.

Mr. PGad B. Morehouse, for the Commission.

Mr. R. E. Joyce, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Distillers Brands, 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

PARAGRAPH 1. Respondent is a corporation organized and existing under the laws of the State of Delaware, with its principal office in the city of Wilmington, in the said State, and doing business in and under the laws of the State of Ohio, with its principal place of business in the city of Cincinnati, Ohio. It is now and since its organization in 1933 has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, 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 Cincinnati aforesaid into and through various other States of the United States to the purchasers thereof, consisting of wholesalers and jobbers, some located within the State of Ohio and some located in other States of the United States and the District of Columbia. In the course and conduct of its business 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, partnerships, and firms engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, 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 stationery, in its 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, brandies, 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, brandies, 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 re-distillation 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.

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PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash 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 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, brandies, 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 and 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 whiskies, brandies, 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, brandies, 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 whiskies, brandies, 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 under the laws of the State of Delaware, with its principal office in the city of Wilmington, in the said State, and doing business in

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and under the laws of the State of Ohio, with its principal place of business in the city of Cincinnati, Ohio. It is now, and since its organization in 1933 has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, 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 Cincinnati aforesaid into and through various other States of the United States to the purchasers thereof, consisting of wholesalers and jobbers, some located within the State of Ohio and some located in other States of the United States and the District of Columbia. In the course and conduct of its business 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, partnerships, and firms engaged in the business of purchasing, rectifying, blending and bottling whiskies, brandies, 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 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:

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"That said Code will tend to effectuate the declared policy of Title I of the National Industrial Recovery Act as set forth in Section 1 of said Act in that the terms and provisions of such Code tend: (a) to remove obstructions to the free flow of foreign commerce, which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purposes of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by increasing purchasing power; and (g) otherwise to rehabilitate industry."

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

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

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

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

PAR. 8. The above alleged methods, acts and practices of the respondent are and have been in violation of the standard of fair competition for the Distilled Spirits Rectifying Industry of the United States. Such violation of such standard in the aforesaid transactions in interstate commerce and other transactions which affect interstate commerce in the manner set forth in Paragraph 5 of count 1 hereof, are in violation of Section 3 of Title I of the National Industrial Recovery Act and they are unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on May 16, 1935, issued, and on May 17, 1935 served its complaint in this proceeding upon the respondent, Distillers Brands, 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 J. Keenan, an examiner of the Commission, theretofore duly designated by it. No testimony was introduced or offered in opposition to the allegations of the complaint by R. E. Joyce, attorney for respondent. The testimony and other evidence in support of the allegations of the complaint were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint—no oral arguments having been made and no brief having been filed in opposition to 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, Distillers Brands, Inc., was originally incorporated November 2, 1933, and has since existed and done business under the laws of the State of Delaware, with its principal office in the city of Wilmington, in the said State, and its

principal place of business, up until about February 1937, located at 457 East Sixth Street, Cincinnati, Ohio. Some time prior to February 1937, it removed its place of business from Cincinnati, Ohio, to Jacksonville, Fla., and submitted an amended certificate of its incorporation to the Secretary of State for the State of Delaware, providing for a change in its name from "Distillers Brands" to "Distributors Brands." No evidence that this change has been finally effected has been presented to the Commission.

Respondent now is, and since its organization shortly after the date of its incorporation has been, engaged in the business of purchasing, rectifying, blending, and bottling whiskies, brandies, 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, prior to February 1937, it caused its said products when sold to be transported from its place of business in Cincinnati, Ohio, and subsequently to February 1937, from its place of business in Jacksonville, Fla., into and through various other States of the United States to the purchasers thereof, consisting of wholesalers and jobbers, some located within the State of Ohio and some located in other States of the United States and the District of Columbia. In the course and conduct of its business 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, partnerships, and firms engaged in the business of purchasing, rectifying, blending and bottling whiskies, brandies, 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 re-distilled 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.

PAR. 3. Rectifying in the distilled spirits rectifying industry means the mixing of whiskies of different ages or types or the mixing of other ingredients with whiskies, but reducing proof of whiskey by adding water is not rectifying. Rectifiers also blend whiskies with neutral spirits (grain alcohol).

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 the distiller's 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 distiller's rectifying plant, other spirits have been blended or rectified, he puts "Blended and Bottled by ----- Company."

With reference to the gin produced by respondent by a redistillation of purchased alcohol over juniper berries and other aromatics, existing regulations promulgated pursuant to Federal Alcohol Administration Act approved August 29, 1935, (49 Stat. 977), provide that rectifiers who redistill purchased alcohol over juniper berries and other aromatics must call such resulting product "distilled gin", and require that the labels state who distilled it. This serves to distinguish between gin produced by such method and "cold" or compounded gin prepared by mixing neutral spirits with essential flavoring oils.

Finally, (blown usually in the bottom of each bottle), there 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-164" 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 purchased and bottled under his distiller's or his rectifier's permit. This number is placed on the bottle to identify the bottler.

Knowledge of these details is not widespread among the retail trade and the knowledge of the general public in regard thereto is very limited. 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. 4. The business carried on by Distillers Brands, Inc., from shortly after its organization until its removal to Florida about February 1937, was that of rectifiers of gin and blenders or bottlers of distilled spirits. It produced no distilled spirits from mash, wort, or wash. The aforesaid gin still located on its premises at Cincinnati, Ohio, was a 735-gallon still. It also operated a 627-gallon condenser. In addition to being a rectifier, bottler and blender, it wholesaled and bottled its products to jobbers. It sold none of its products to the State of Ohio Liquor Control, and purchased its distilled spirits and whiskies from such distillers as Century Distilling Company, Peoria, Ill.; American Distilling Company, Pekin, Ill.; and Watham Distilling Company, Lebanon, Ky.

Respondent operates under a permit from the Federal Alcohol Control Administration known as No. R-164, and also had permit from the Department of Liquor Control of the State of Ohio, which authorized Distillers Brands, Inc., "as a manufacturer to manufacture spirituous liquor and sell such product to the Department only, to import into this State spirituous liquor for blending or other manufacturing process, and to export from this State spirituous liquor in bulk or otherwise, for sale outside this State * * *." Respondent later operated under a similar permit from the Federal Alcohol Administration.

The Distillers Brands, Inc., have five salesmen and employed from fifty to sixty employees and appeared, when an inspection of the gin still was made, to be busily engaged in the bottling of its various products. One of its main items was the "Old Gold Applejack Brandy." It had not done any newspaper advertising and very

little trade paper advertising. Its capacity was 150,000 gallons, of which about fifteen percent (15%) was gin. The plant was a large one, occupying four floors of a building 50' x 150', with the greater part given up to the plant, although one-half of a floor was occupied by the offices.

The sales were made principally to wholesalers in Kentucky, Florida, Missouri, Illinois, Wisconsin, West Virginia, although scattered sales were made elsewhere.

In the course and conduct of its business as aforesaid, respondent uses the word "Distillers" in its corporate name, printed on its stationery, invoices and on the labels attached to the bottles in which it sells and ships its said products. Respondent does not now own and never did own, operate or control any place or places where whiskies, gins, brandies, or other spirituous beverages were manufactured by distillation from mash, wort, or wash. The various brands shown on said labels were respondent's brands.

There was no proof that the word "Distillers" as used in respondent's corporate name in connection with the words "Brands" (in other words that the whole name "Distillers Brands") would deceive any retailer or wholesaler into the belief that this respondent was a distiller. However, out of twenty-nine members of the purchasing public called to the stand, nine of them testified that this respondent's name would lead them to believe that respondent was a distiller in the sense generally understood by the trade and the public, and practically all of the twenty-nine witnesses testified that they had a preference for a distillery bottled package over a rectifier bottled package. The said witnesses were selected and subpoenaed from the classified section of the telephone directories in five different large cities and testified as lay members of the purchasing public.

In addition to this likelihood and tendency toward deception of the purchasing public, respondent contended in its answer that it was a distiller and the facts disclosed are that the brands of liquors sold by this respondent were almost exclusively its own brands.

It is not difficult to choose statements, designs, and devices, or names, which will not deceive. Deception may result from the use of statements not technically false, or which may be literally true. The aim of the statute is to prevent resulting deception from indirection and ambiguity, as well as from statements which are false. Those statements which are ambiguous and liable to mislead should be read favorably to the accomplishment of the obvious purpose.

The Commission finds that 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, in its advertising and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent furnishes its customers, both wholesalers and retailers, with the means of representing to the ultimate consuming public that the said whiskies, gins, brandies, 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, brandies, 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. 5. There are among the competitors of respondent engaged in the sale of spirituous beverages as mentioned in Paragraph One 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 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, brandies, 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 and advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 6. The representation by respondent, as set forth in paragraph 4 hereof, has a capacity and tendency to and does mislead and deceive the purchasing public into the belief that the whiskies, brandies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, and has the capacity and tendency to and does induce the purchasing public, acting in such belief, to purchase the whiskies, brandies, 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 misrepre-

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

PAR. 7. Notwithstanding the contemplated change by respondent in its name as aforesaid from "Distillers Brands, Inc." to "Distributors Brands" respondent has at all times asserted that it had the legal right to use its former misleading designation and the Commission can under the circumstances have no assurance either that it has discontinued such practice or that, if so, such discontinuance will endure.

PAR. 8. 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.

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 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 respondent, Distillers Brands, 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 re-

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

It is further ordered, That the said complaint be and the same hereby is dismissed as to count 2 thereof.

It is further ordered, That the said respondent, within 60 days from and after the date of 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

THE SOLVOTONE COMPANY, AND JESSIE ROGERS,
INDIVIDUALLY AND AS PRESIDENT THEREOF

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

Docket 3082. Complaint, Mar. 18, 1937—Decision, Aug. 17, 1937

Where a corporation engaged in sale and distribution of its "Solvotone" medicines or preparations, in commerce among the various States, direct to members of the consuming public and also to wholesale and retail druggists for resale, in substantial competition with others engaged in sale and distribution, among the various States and in the District of Columbia, of medicines of the same general kind and adapted to and used for same general purposes; and its president and principal owner, in active charge of its business and responsible for its policies and conduct in relation to acts and practices as herein set forth; in promoting sale of said medicines—

- (a) Represented, in newspaper advertisements and in publications of general circulation, and in various other advertising matter circulated and distributed direct to members of the purchasing public, both directly and through reproduction of testimonials or purported testimonial statements, that its said preparations constituted a cure, remedy, or competent and adequate treatment for gall-stones and ailments of the gall-bladder and diseases of the stomach or liver, and that said preparations were effective in treatment of stomach ulcers or cancer of the stomach, and that use thereof would remove gall-stones and prevent operations in such various conditions above indicated, including appendicitis; and

- (b) Represented, as aforesaid, that use of such preparations would relieve tightness around the waist or pain in the right side, regardless of cause thereof, including serious pathological conditions, and would end suffering;

Facts being medicines in question were not a cure, remedy or competent and adequate treatment for gall-stones, ailments of the gall-bladder, or stomach and liver diseases, would not remove or relieve such stones or prevent an operation where they had developed, were of no material use in treatment thereof or ailments of gall-bladder, or of value in treatment of stomach ulcers or cancers, and would not relieve tightness around waist, etc., when due to any serious pathological condition, were of no value, and might do great harm, where such pain was symptom of appendicitis, and would not end suffering nor prevent operation in aforesaid various cases, ordinarily evidenced by one or more of such symptoms as set forth by it;

With tendency to confuse, mislead, and deceive members of the public into the erroneous belief that said medicines were a cure, remedy, or competent and adequate treatment for gall-stones and such various ailments and conditions as above stated, and that they would accomplish results above set forth, regardless of cause thereof, and that they were useful and effective in treatment of such various conditions and would end suffering and prevent operations as above noted, and of inducing members of the public to purchase its said medicines because of erroneous belief thus

Complaint

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engendered, and to divert trade to it from competitors engaged in sale in interstate commerce of medicines of the same general kind as those sold by it, as well as those thus engaged in such sale of medicines adapted to and used for treatment of various ailments and conditions for which its said medicines were adapted, and with effect of diverting to it business from competitors who do not misrepresent the therapeutic properties and effects of their medicines, but truthfully and accurately state such effects; to their substantial injury and prejudice:

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

Mr. Harry D. Michael for the Commission.

Mr. Charles E. Jensby, 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 The Solvotone Company, a corporation, and Jessie Rogers, individually and as president of said corporation, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The said respondent, The Solvotone Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 4303 Cottage Grove Avenue in the city of Chicago in said State. The respondent, Jessie Rogers, is president and principal owner of said corporation, and is, and has been, in active charge of, and responsible for the policies, and the conduct of the corporation in the acts and practices hereinafter set forth.

PAR. 2. The said respondent, The Solvotone Company, is now, and has been since October 1, 1935, engaged in the sale and distribution of a medicine known and described as "Solvotone." Said respondent, in the course and conduct of its business, during the time aforesaid, causes and has caused its said medicine to be transported from its said place of business in Illinois to, into, and through States of the United States other than Illinois to the various purchasers thereof in such other States. Said respondent's usual method of sale of said medicine is direct to members of the consuming public, but it is also sold to wholesale and retail druggists through whom it is in turn sold to members of the public.

PAR. 3. Other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution of medicines of the same general kind as that sold by respondent corporation, or adapted to and used for the same general purposes for which said medicine is adapted. Said respondent corporation has been, during the aforesaid time, in substantial competition in commerce between and among the various States of the United States in the sale of said medicine with such other individuals, firms, and corporations.

PAR. 4. Respondents, in promoting the sale of said medicine, make use of advertisements published in newspapers and other publications of general circulation, as well as circulars and other advertising matter circulated and distributed direct to members of the purchasing public. In all of said advertisements it is represented that said medicine is a cure, remedy, or competent and adequate treatment for gallstones, ailments of the gall bladder, and stomach and liver diseases; and for tightness around the waist, and pain in the right side, regardless of the cause thereof, and that its use in such conditions will end suffering and avoid operations. Examples of such statements and representations are the following:

STOMACH PAINS, COLIC ATTACKS, PAIN IN RIGHT SIDE, arising functional disorders of the Liver, Gallbladder, Indigestion, heavy load in stomach, tightness around waist, or constipation, often quickly relieved with this *Safe Home Treatment*. Avoid operation if possible. Don't suffer longer. Send today for FREE trial. There's no obligation. Write Quick. SOLVOTONE CO., 67-S, 4303 Cottage Grove, Chicago.

FREE trial box

* * * Dr. Rogers' safe home treatment for stomach distress, liver, and bile symptoms, * * *

Solvotone is a combination of medicinal agents designed to act indirectly on the bile, liver, and gall-bladder, tending to restore the solvent power of the bile, * * *

There is no need for you to suffer any longer. Dr. Rogers' Solvotone, the medicine that has brought relief to thousands upon thousands of stomach and gallstone sufferers, * * *

Practically every form of stomach and gall bladder trouble arising from functional disturbances of the liver and bile yields to Solvotone.

* * * Solvotone relieved their pains and made an operation unnecessary.

Relieved of gallstone suffering after 13 years.

Gallstone & Stomach Ailment Prescription.

Dr. Rogers' Solvotone * * * for Stomach Distress—Gallstones—Liver Troubles—Colic Pains.

PAR. 5. That respondents, in advertisements and circular matter, published and distributed as aforesaid, represent directly or by implication or by use of the statements of others, that said medicine is a cure for serious and dangerous conditions of the human body such

as gallstones, appendicitis, ulcer of the stomach, cancer of the stomach, etc., and that its use prevents the necessity for surgical operations to relieve such conditions. Examples of such representations are the following:

If you have a deep-seated case of long standing and suffer from frequent attacks of colic, pain in the right side or in the pit of the stomach, a feeling like a heavy load in the stomach or like a band drawn tightly around the waist, Solvotone may give you the relief you have been looking for * * *

* * * I was preparing for an operation for gallstones * * * The first dose of SOLVOTONE relieved me * * *

People from all over America tell how Solvotone relieved their pains and made an operation unnecessary.

Saved from Dangerous Operation.

* * * I thought myself it was an operation or death, but thanks to your wonderful remedy I am now well.

* * * the doctors advised an operation, but thanks to Solvotone, it was avoided * * *

To you who suffer from * * * that sharp pain and burning sensation around the waist, pain in the right side * * * Do you know that these symptoms, if neglected, often lead directly to the operating table.

Solvotone is a Safe Home Treatment for just such conditions * * *

Avoid An Operation if Possible—Try Solvotone First.

Let them tell you how SOLVOTONE made it unnecessary to submit to an operation, how they were relieved from agonizing colic pains and terrible stomach distress.

Solvotone * * * saved me from an operation and entirely relieved me.

Solvotone * * * in hundreds of cases on record has completely ended the need of an operation, even in very aggravated cases.

PAR. 6. In truth and in fact, said medicine is not a cure, remedy or competent and adequate treatment for gallstones, ailments of the gall bladder, or stomach and liver diseases. It will not relieve tightness around the waist, or pain in the right side when such conditions are due to any one of many causes. It will not remove gallstones nor will its use prevent an operation where gallstones have developed. It is of no material use in the treatment of gallstones or ailments of the gall bladder. It is of no value, and may do great harm, when used for a pain in the right side where such symptom is occasioned by appendicitis, as is often the case. It is of no value in the treatment of stomach ulcers or in the treatment of cancer of the stomach. Its use will not end suffering nor will it prevent operations in cases of appendicitis or of stomach ulcers or of cancer of the stomach, one or more of which conditions may, and usually do, show some of the symptoms listed by respondents as set forth in paragraphs 4 and 5 hereof.

PAR. 7. The use by respondents of the foregoing statements and representations, and other similar thereto, in offering for sale and selling said medicine has had, and now has, the tendency and capacity to, and does, in fact, mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations are true and induces them to purchase said medicine on account thereof. The result of respondents' said practices is to unfairly divert trade to respondent corporation from competitors engaged in the sale, between and among the various States of the United States, of medicines of the same kind, or similar to that sold by respondents, as well as those adapted to and used for the treatment of various bodily conditions for which respondents' said medicine is adapted.

There are among the competitors of said respondent corporation those who do not make the same or similar misleading representations as those made by respondents, as herein set out, but who truthfully and accurately state the facts in regard to the therapeutic effects of the medicines sold by them. As a result of respondents' practices, as herein set forth, injury has been and is now being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 8. The above acts and things done by respondents are all to the injury and prejudice of the public and of competitors of respondent corporation 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 March 18, 1937, issued and served its complaint in this proceeding upon respondents, The Solvotone Company, a corporation, and Jessie Rogers, individually and as president of said 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' answer thereto, a stipulation as to the facts was agreed upon by and between W. T. Kelley, Chief Counsel for the Commission, and the respondents 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. The said respondent, The Solvotone Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, and its office and principal place of business at 4303 Cottage Grove Avenue in the city of Chicago in said State. The respondent, Jessie Rogers, is president and principal owner of said corporation, and is and has been in active charge of the business thereof, and is and has been responsible for its policies and its conduct in relation to the acts and practices hereinafter set forth.

PAR. 2. The said respondent, The Solvotone Company, is now and has been since October 1, 1935, engaged in the sale and distribution in commerce between and among the various States of the United States of a medicine known and described as "Solvotone." Said respondent, in the course and conduct of its business, during the time aforesaid, causes and has caused its said medicine to be transported from its said place of business in Illinois to, into and through States of the United States other than Illinois to the various purchasers thereof in such other States. Said respondent's usual method of sale of said medicine is direct to members of the consuming public, but said medicine is also sold to wholesale and retail druggists through whom it is in turn sold to members of the public.

PAR. 3. During the time aforesaid, 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 medicines of the same general kind as that sold by respondent corporation or adapted to and used for the same general purposes for which said medicine is adapted. Said respondent corporation has been, during the aforesaid time, in substantial competition in commerce between and among the various States of the United States in the sale of said medicine with such other individuals, firms, and corporations.

PAR. 4. Respondents, in promoting the sale of said medicine, make use of advertisements published in newspapers and other publications of general circulation, as well as circulars and other advertising matter circulated and distributed direct to members of the purchasing public.

Examples of statements and representations contained in said advertising matter are the following:

STOMACH PAINS, COLIC ATTACKS, PAIN IN RIGHT SIDE, arising functional disorders of the Liver, Gallbladder, Indigestion, heavy load in stomach, tightness around waste, or constipation, often quickly relieved with this *Safe Home Treatment*.

FREE trial Box

 Avoid operation if possible. Don't suffer longer. Send today for FREE trial. There's no obligation. Write Quick. SOLVOTONE CO. 67-S, 4303 Cottage Grove, Chicago.

Solvotone is a combination of medicinal agents designed to act indirectly on the bile, liver and gall-bladder, tending to restore the solvent power of the bile, * * *

Practically every form of stomach and gall bladder trouble arising from functional disturbances of the liver and bile yields to Solvotone.

Relieved of gallstone suffering after 13 years.

Dr. Rogers' Solvotone * * * for Stomach Distress-Gallstones — Liver Troubles—Colic Pains.

PAR. 5. Respondents, in advertisements and circular matter, published and distributed as aforesaid, also make representations of which the following are examples:

If you have a deep-seated case of long standing and suffer from frequent attacks of colic, pain in the right side or in the pit of the stomach, a feeling like a heavy load in the stomach or like a band drawn tightly around the waist, Solvotone may give you the relief you have been looking for * * *

* * * I was preparing for an operation for gallstones * * * The first dose of SOLVOTONE relieved me * * *

* * * I thought myself it was an operation or death, but thanks to your wonderful remedy I am now well.

To you who suffer from * * * that sharp pain and burning sensation around the waist, pain in the right side * * * Do you know that these symptoms, if neglected, often lead directly to the operating table * * *

Solvotone is a Safe Home Treatment for just such conditions * * *

Avoid An Operation if Possible — Try Solvotone First.

Let them tell you how SOLVOTONE made it unnecessary to submit to an operation, how they were relieved from agonizing colic pains and terrible stomach distress.

Solvotone * * * saved me from an operation and entirely relieved me.

Solvotone * * * in hundreds of cases on record has completely ended the need of an operation, even in very aggravated cases.

PAR. 6. Respondents' said medicine consists of three preparations which are referred to herein as No. 1, No. 2, and No. 3, respectively. The qualitative formulae, with quantitative formulae per tablet, are as follows:

No. 1.	Ext. Nux Vomica.....	1/10	gr.
	Ext. Rhubarb.....	1/4	gr.
	Powd. Ipecac.....	1/8	gr.
	Powd. Capsicum.....	1/4	gr.
	Ext. Gentian.....	1	gr.
	Pancreatin Ext.....	1	gr.
	Pepsin.....	1	gr.
	Sugar coated olive green		
No. 2.	Sodium Phosphate.....	15	grs.
	Oil Peppermint.....	1/8	gr.
No. 3.	Ext. Cascara Sagrada.....	1	gr.
	Ext. Belladonna Leaves.....	1/8	gr.
	Powdered Ipecac.....	1/8	gr.
	Podophyllum.....	1/8	gr.
	Aloin.....	1/10	gr.
	Chocolate coated	1/10	gr.

Respondents' said preparations are directed to be taken together in the treatment of the conditions for which they are recommended. It is directed that said medicine be taken as follows:

No. 1.—One tablet before each meal.

No. 2.—One tablet after each meal—either swallowed whole or dissolved in hot water.

No. 3.—One to four tablets each day if constipated.

PAR. 7. The representations of respondent as aforesaid, import and imply and serve as representations to the effect that respondents' said medicine is a cure, remedy, or competent and adequate treatment for gall-stones, ailments of the gall-bladder, and stomach and liver diseases, and for tightness around the waist, and pain in the right side, regardless of the cause thereof, and that the use thereof in such conditions will end suffering and avoid operations; that it will remove gall-stones; and that its use will make operations unnecessary in serious conditions referred to generally by references to symptoms and organs and parts of the body which, by implication, include appendicitis, ulcers of the stomach and cancer of the stomach.

PAR. 8. In truth and in fact said medicine is not a cure, remedy or competent and adequate treatment for gall-stones, ailments of the gall, bladder, or stomach and liver diseases. It will not relieve tightness around the waist, or pain in the right side, when such conditions are due to any serious pathological condition. It will not remove or relieve gall-stones nor will its use prevent an operation where gall-stones have developed. It is of no material use in the treatment of gall-stones or ailments of the gall-bladder. It is of no value, and may do great harm, when used for pain in the right side where such symptom is occasioned by appendicitis, as is often the case. It is of no value in the treatment of stomach ulcers or in the treatment of cancer of the stomach. Its use will not end suffering nor will it prevent operations in cases of appendicitis or of stomach ulcers or of cancer of the stomach, one or more of which conditions may and usually do show some of the symptoms as set forth in the representations of the respondent as aforesaid.

PAR. 9. The representations of respondents as aforesaid, have had and do have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that said medicine is a cure, remedy or competent and adequate treatment for gall-stones, ailments of the gall-bladder, and stomach and liver diseases; that it will relieve tightness around the waist and pain in the right side, regardless of the cause thereof, and when such conditions are due to serious pathological conditions; that it will remove gall-stones and that its use will prevent an operation where gall-stones have developed; that it is useful and effective in the treatment of gall-stones, appendicitis, stomach ulcers, and cancer of the stomach, and that its use will prevent operations for such conditions as well as other serious pathological conditions; and that its use will end suffering, when such are not the facts. Said representations of respondents have had and do have the tendency and capacity to induce members of the public to purchase said medicine because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent corporation from competitors engaged in the sale, in interstate commerce, of medicines of the same general kind as that sold by respondent corporation as well as those so engaged in such sale of medicines adapted to and used for the treatment of the various ailments and conditions for which said medicine is adapted. There were and are among the competitors of the respondent corporation those who do not misrepresent the therapeutic properties and effects of the medicines sold by them but who truthfully and accurately state the therapeutic effects thereof. Respondents' said acts and

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practices tend to and do in fact divert business to respondent corporation from its said competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts and practices of the respondents, The Solvotone Company, a corporation, and Jessie Rogers, individually and as president of said corporation, are to the prejudice of the public and of the competitors of the respondent corporation, 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, 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 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 Solvotone Company, a corporation, its officers, and Jessie Rogers, an individual, and their respective representatives, agents, and employees, in connection with the offering for sale, sale and distribution of certain medicinal preparations now known and described as "Solvotone," or of said preparations, or any other preparations of the same or similar formulae or therapeutic effect, sold under that name, or any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing directly or by implication, or by use of the statements, endorsements or testimonials of others:

1. That said preparations constitute a cure, remedy, or competent and adequate treatment for gall-stones, ailments of the gall-bladder, or for diseases of the stomach or liver.

2. That the use of said preparations will relieve tightness around the waist or pain in the right side regardless of the cause thereof or when such symptoms are due to any serious pathological condition.

3. That the use of said preparations will remove gall-stones or will prevent an operation where gall-stones have developed.

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4. That said preparations are useful or effective in the treatment of gall-stones, stomach ulcers, or cancer of the stomach or any other serious pathological condition or will prevent an operation in any such condition.

5. That the use of said preparations will end suffering.

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

KEELEY'S, INC.

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

Docket 3112. Complaint, Apr. 24, 1937—Decision, Aug. 17, 1937

Where a corporation engaged in manufacture and sale of candy, including numerous 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, along with punchboard supplied, were composed of a number of boxes or packages of candy of varying size, for sale and distribution to customers under a plan or scheme, and in accordance with said board's explanatory legend, by which purchaser received, for the five cents paid, one of said boxes or nothing other than privilege of making a punch, dependent upon number punched by chance, or the making of the last punch in each of the sections into which board was divided, or the making of the last punch of the entire board—

Sold, to wholesalers and jobbers 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 such products in accordance with such plan, and thus sold, itself, in retail establishment of its own, such assortments, 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 and sell candy so packed and assembled, as above described, or otherwise arranged and packed for sale to purchasing public as to involve a game of chance, refrain therefrom;

With capacity and tendency to induce purchasers of its said products to buy same in preference to candy offered and sold by competitors, and with result that many dealers in, and ultimate purchasers of, candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof as aforesaid, and thereby induced to buy its said candy, thus packed and sold by it, in preference to that offered and sold by said competitors who do not use same or equivalent method, and with tendency and capacity, because of said game of chance, to divert to it trade from its competitors, as aforesaid, who do not use such or equivalent method, exclude from said trade all competitors who do not use such method because unlawful, lessen competition in candy trade, and tend to create a monopoly thereof in it and in such other competitors as do use such method, and deprive purchasing public of benefit of free competition in trade in question, and eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

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

Complaint

Before *Mr. Henry M. White*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. H. Hartland Halliday, of Salt Lake City, Utah, 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 Keeley's, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and doing business under the laws of the State of Utah, with its principal office and place of business located at 258 South State Street in Salt Lake City, Utah. It is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States, and is also engaged in the sale and distribution of candy and candy products to the consuming public in the State of Utah. It causes and has caused its said candy when sold to be transported from its principal place of business in Salt Lake City, Utah, to wholesale and retail purchasers thereof in the State of Utah and in other States of the United States at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers and to 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, and it has also, in its retail establishment, sold to the consuming public such assortments by means of a lottery scheme.

Such assortments are composed of a number of boxes or packages of candy of varying size, together with a device commonly called a "punchboard." The boxes or packages of candy contained in said assortments are distributed to purchasers in substantially the following manner:

Said punchboard contains a number of holes divided into sections. A slip of paper bearing a printed number is secreted in each hole. The punchboard also bears at the top thereof a number of printed legends or statements informing customers and prospective customers which numbers receive a box of candy and the size thereof. Sales are 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy is entitled to receive the same as a prize and without additional charge. The purchaser of the last punch in each section and the purchaser of the last punch on the board are entitled to receive a specified box or package of candy as a prize and without additional charge. Purchasers of punches, who do not procure one of the numbers calling for a box of candy, receive nothing for their money other than the privilege of punching a number from said board. The numbers on said printed slips secreted in said punchboard are effectively concealed from purchasers and prospective purchasers until a selection has been made and the printed slip punched from the board. The boxes or packages of candy are thus distributed to the consuming public wholly by lot or chance.

Respondent sells and distributes numerous assortments, all of which involve substantially the same principle or sales plan as described above, but varying in detail.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments resell the same to retail dealers, and such retail dealers and the retail dealers to whom respondent sells direct, and the respondent in its retail establishments, expose said assortments for sale and sell said packages of 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 respondent in its retail establishments conducts lotteries in the sale of its products to the consuming public. Such 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 its competitors.

PAR. 4. The sale of 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 or package 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 the candy trade in this, to wit: that the use thereof has the tendency and capacity to exclude from said trade competitors of respondent 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 in such other competitors of respondent as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity 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. The aforementioned method, acts and practices of 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, 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 24, 1937, issued and on April 27, 1937, served its complaint in this proceeding upon the respondent, Keeley's, 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, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to file in lieu thereof its substitute answer dated August 4, 1937, 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, 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 is a corporation organized and doing business under the laws of the State of Utah, with its principal office and place of business located at 258 South State Street in Salt Lake City, Utah. It is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale dealers and jobbers and to retail dealers located at points in the various States of the United States, and is also engaged in the sale and distribution of candy and candy products to the consuming public in the State of Utah. It causes and has caused its said candy when sold to be transported from its principal place of business in Salt Lake City, Utah, to wholesale and retail purchasers thereof in the State of Utah and in other States of the United States at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said

respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers and jobbers and to 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, and it has also, in its retail establishments, sold to the consuming public such assortments by means of a lottery scheme. Such assortments are composed of a number of boxes or packages of candy of varying size, together with a device commonly called a "punchboard." The boxes or packages of candy contained in said assortments are distributed to purchasers in substantially the following manner: Said punchboard contains a number of holes divided into sections. A slip of paper bearing a printed number is secreted in each hole. The punchboard also bears at the top thereof a number of printed legends or statements informing customers and prospective customers which numbers receive a box of candy and the size thereof. Sales are 5¢ each, and a purchaser who obtains one of the numbers calling for a box of candy is entitled to receive the same as a prize and without additional charge. The purchaser of the last punch in each section and the purchaser of the last punch on the board are entitled to receive a specified box or package of candy as a prize and without additional charge. Purchasers of punches, who do not procure one of the numbers calling for a box of candy, receive nothing for their money other than the privilege of punching a number from said board. The numbers on said printed slips secreted in said punchboard are effectively concealed from purchasers and prospective purchasers until a selection has been made and the printed slip punched from the board. The boxes or packages of candy are thus distributed to the consuming public wholly by lot or chance.

Respondent sells and distributes numerous assortments, all of which involve substantially the same principle or sales plan as described above, but varying in detail.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments resell the same to retail dealers, and such retail dealers and the retail dealers to whom respondent sells direct, and the respondent in its retail establishments, expose said assortments for sale and sell said packages of 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 respondent in its retail establishments conducts lotteries in the sale of its products to the consuming public. Such 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 its competitors.

PAR. 4. The sale of candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a box or package 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 the candy trade in this, to wit: that the use thereof has the tendency and capacity to exclude from said trade competitors of respondent 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 are unwilling to offer for sale or sell candy so packed and assembled as above described, 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 an equivalent method. 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 in such other competitors of respondent as use the same or an equivalent method; and to deprive the purchasing public of the

benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity 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.

CONCLUSION

The aforesaid method, acts and practices of respondent, Keeley's, Inc., 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 within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer dated August 4, 1937, filed herein 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, Keeley's, Inc., a corporation, its officers, agents, representatives, and employees, in connection with the offering for sale, sale and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard," which punchboard is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "punchboard," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public 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, Keeley's, Inc., a corporation, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
PUBLIC SERVICE INSTITUTE, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3043. Complaint, Jan. 29, 1937—Decision, Aug. 18, 1937*

Where a corporation engaged in sale and distribution of correspondence courses of study and instruction designed and intended to prepare students for examinations for certain United States civil service positions, in substantial competition with those similarly engaged and also with those engaged in sale and distribution in commerce of correspondence courses of study and instruction in other lines—

- (a) Represented, directly or by implication, through statements in circulars, folders, and other printed matter distributed to the public by mail or otherwise, and through its salesmen, that the business conducted by it was operated on a large and substantial basis with a staff of twenty or more teachers or qualified instructors, and that its said staff was made up exclusively, or in the majority, of former Government employees who were experts on the subject of civil service examinations by reason of previous Government employment or prior connection with the United States Civil Service Commission, as well as by general education and other experience, facts being it did not have as many as twenty teachers and instructors on its staff and its said staff was not made up, in whole or in large part, of such former Government employees, and its said instructors were not civil service experts by reason of previous Government connection;
- (b) Represented, as aforesaid, that it conducted a large residence school where individual instruction was given to large numbers of students, and that enrollment for its courses of study and instruction constituted enrollment for a civil service examination or position, or both, and that it was an agency of, or connected with, the United States Government, facts being it did not conduct a residence school, enrollment in its courses did not constitute enrollment for such an examination or position, and it was not an agency of, nor connected with, the Government;
- (c) Represented, as aforesaid, that the position of railway mail clerk in such service was a desirable one with relatively short working hours, and that thousands of its students had successfully passed civil service examinations and received appointments in the Government service, and that, at that time, more than two thousand people had enrolled and fully completed its course of study, facts being hours of such clerks were not, as a regular thing, short, and no such number of its students had successfully passed examinations, as aforesaid, and received appointment, nor had any such number as above set forth at that time fully completed its courses;
- (d) Represented, as aforesaid, that those who purchased its said courses direct, without the intervention of salesmen, were enabled to secure at lower prices not only the same material for study, but also the identical services therewith, and same supervision as offered and given by it in the courses

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- of study and instruction sold by salesmen, facts being same service and supervision were not given when study material was sold direct as when courses were sold, as aforesaid, by salesmen; and
- (c) Misleadingly represented, through its salesman and through use of a so-called refund agreement which it entered into with its students, that Government positions were guaranteed to those who successfully completed its courses, and that all sums paid therefor would be refunded if no such position was secured thereby, through use of terms and conditions in agreement in question contingent, among other things, upon taking first examination for which student was qualified, and written application, or training, without additional cost for future examination until same should be passed with an eligible grade, facts being conditions imposed were difficult of fulfillment and conditions precedent upon which refund depended were uncertain and might not exist or happen, due to uncertainty of civil service examinations and remote chances for appointment even for passing candidates, and possibility of either Government position or refund was remote in great majority of cases;

With tendency and capacity to confuse, mislead and deceive members of the public into the belief that it conducted a large school with a staff of twenty or more qualified teachers, and that the facts as to its nature, operations, attendance, and advantages and opportunities, etc., were as hereinabove set forth, and to induce such members to purchase its said courses of study and instruction because of the various erroneous beliefs thus engendered, and to divert trade to it from competitors similarly engaged and from those engaged in such sale in other lines of study, and with effect of diverting business to it from competitors, included among those above set forth, who do not make the same or similar misleading representations but truthfully and accurately state the facts in regard to their courses, as well as in regard to other matters connected therewith; to their substantial injury and prejudice:

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

Mr. 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 Public Service Institute, Inc., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. That said respondent, Public Service Institute, Inc., is a corporation organized, existing, and doing business under and by

virtue of the laws of the State of Missouri, with its office and principal place of business at 425 DeBaliviere Avenue, in the city of St. Louis, in said State.

PAR. 2. That said respondent, Public Service Institute, Inc., is now, and has been since September 25, 1935, engaged in the sale and distribution of courses of study and instruction designed and intended for preparing students thereof for examinations for certain civil service positions under the United States Government, which said courses of study and instruction are pursued by correspondence through the medium of the United States mails. That said respondent, in the course and conduct of said business during the time aforesaid, causes and has caused its said courses of study and instruction to be transported from its said place of business in Missouri, to, into, and through, States of the United States other than Missouri to the various purchasers thereof in such other States to whom said courses of study and instruction are, or have been, sold.

PAR. 3. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are, and have been, engaged in the sale and distribution of courses of study and instruction designed and intended for the purpose of preparing students thereof for examinations for civil service positions under the United States Government, and also of courses of study and instruction in other lines, all of which are pursued by correspondence. That such other individuals, firms, and corporations have caused and do now cause their said courses of study and instruction, when sold by them, to be transported from various States of the United States to, into and through, States other than the State of origin of the shipment thereof. That said respondent has been, during the aforesaid time, in competition in commerce between and among the various States of the United States in the sale of its said courses of study and instruction with such other individuals, firms, and corporations.

PAR. 4. That respondent, in promoting the sale of its said courses of study and instruction to and among members of the public, makes use of circulars, folders and other printed matter which it distributes to the public by mail or otherwise. That, by such means, respondent makes, or has made, various misleading statements. Among such statements are the following:

1. You will have the help, aid and assistance of our staff of 20 persons,
* * *
2. We have prepared thousands successfully.
3. Railway Mail Clerk * * *. On duty a few hours per day—* * *.

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4. Our staff consists of Ex-Government employees * * * they are Civil Service experts.

5. We have assisted more than two thousand to prepare.

6. You could get no more thorough training in our highly tutored individual instruction school, where we have more than sixteen hundred active students, * * *.

7. Deal Direct With Us And Save Salesman's Commission.

8. Civil Service Enrollment Department.

9. * * * It is our intention without further notice to you to turn this entire matter over to the United States Collection and Credit Agency with instructions to handle to a conclusion.

The aforesaid statements, together with other similar statements not set out herein, and also various statements of like nature made by respondent's salesmen in the sale of said courses of study and instruction, purport to be descriptive of the character, nature and size of respondent's said business or of the personnel connected therewith, or both, and serve respectively, directly or by implication, as representations to purchasers and prospective purchasers of respondent's courses of study and instruction that:

1. The business conducted by respondent is operated on a large and substantial basis with a staff of 20 or more teachers or qualified instructors.

2. Thousands of respondent's students have successfully passed civil service examinations and received appointments in the Government service.

3. The position of railway mail clerk in the Government service is a desirable one with relatively short working hours.

4. That respondent's staff of instructors is made up exclusively, or in the majority, of ex-Government employees who are experts on the subject of civil service examinations by reason of previous Government employment or prior connection with the United States Civil Service Commission as well as by general education and other experience.

5. More than two thousand persons had enrolled and fully completed respondent's course of study at the time said statement was made.

6. Respondent conducts a large residence school where personal, individual instruction is given to large numbers of students.

7. In purchasing respondent's courses of study direct, without the intervention of salesmen, such purchasers are enabled to secure, at lower prices, not only the same material for study but also the identical services therewith and the same supervision as offered and given by respondent in the courses of study and instruction sold by salesmen.

8. The enrollment for respondent's courses of study and instruction is an enrollment for a civil service examination or position, or both.

9. Respondent corporation is an agency of or connected with the United States Government.

That said representations and implications do not reflect the true facts and are erroneous and misleading.

PAR. 5. That, in truth and in fact: Respondent does not have as many as 20 teachers and instructors on its staff. Thousands of respondent's students have not successfully passed civil service examinations and received appointments in the Government service. The hours of work of railway mail clerks are not short as a regular thing. Respondent's staff of instructors is not made up in whole or in large part of ex-Government employees nor are they civil service experts by reason of previous Government connection. No such number as two thousand persons had fully completed respondent's courses at the time representations to that effect were made. Respondent does not conduct a residence school. The same service and supervision is not given when study material is sold direct. Enrollment in respondent's course does not constitute enrollment for a civil service examination or position. And respondent is not an agency of, or connected with, the United States Government.

PAR. 6. That respondent, through its salesmen and through use of a so-called "Refund Agreement," which it enters into with its students, represents that government positions are guaranteed to those who successfully complete respondent's courses and that all sums paid for such courses will be refunded if no government position is secured thereby. Said refund agreement, so used by respondent, is as follows:

REFUND AGREEMENT

It is understood that the Public Service Institute, Inc., agrees to refund all money paid by me, if I have met the following conditions:

(a) I am to complete each lesson of the entire training promptly, as received, sending in all work and examination papers for correction.

(b) I am to make all payments direct to the Public Service Institute, Inc. (except down payment attached hereto), to be received on or before date due.

(c) I am to try the first examination or examinations which I am qualified to take as specified by the Government at the time such examinations are announced by the Civil Service Commission.

(d) If I fail to pass such governmental examination, I am upon written application to receive a refund of the entire amount paid by me for this training, or I will be trained without additional cost for future governmental examinations, which the Government qualifications will permit me to take,

until I pass an examination with a grade high enough to make me eligible for an appointment in governmental service.

Such refund agreement is misleading in that the conditions upon which it depends are difficult of fulfillment and, further, because the facts and circumstances upon which a refund depends are uncertain and may not exist or happen. Such facts and circumstances are not set out in said agreement and are not explained by salesmen. In consequence, the possibility of either a government position or of a refund is remote in the great majority of cases and the refund agreement is inoperative and meaningless in such cases.

PAR. 7. That, the use by respondent of the foregoing statements and representations, and others similar thereto, in offering for sale and selling its courses of study and instruction, as herein set out, has had, and now has, the tendency and capacity to, and does in fact, mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations as set out in paragraphs 4 and 6 hereof are true and induces them to purchase such courses of study and instruction on account thereof. The result of respondent's said practices is to divert trade to respondent from competitors engaged in the sale of correspondence courses in interstate commerce in similar lines to those offered by respondent, as well as those so engaged in such sale in other lines of study.

There are among the competitors of respondent those who do not make the same or similar misleading representations as those made by respondent, as herein set out, but who truthfully and accurately state the facts in the particulars as aforesaid. As a result of respondent's practices, as herein set forth, injury has been and is now being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 8. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on January 29, 1937, issued and served

its complaint in this proceeding upon respondent, Public Service Institute, 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, 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 the 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, this 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. The respondent, Public Service Institute, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business at 425 DeBaliviere Avenue, in the city of St. Louis, in said State.

PAR. 2. The respondent, Public Service Institute, Inc., is now, and has been since September 25, 1935, engaged in the sale and distribution in commerce between and among various States of the United States of courses of study and instruction designed and intended for preparing students thereof for examinations for certain civil service positions under the United States Government, which said courses of study and instruction are pursued by correspondence through the medium of the United States mails. Said respondent, in the course and conduct of said business during the time aforesaid, causes and has caused its said courses of study and instruction to be transported from its said place of business in Missouri, to, into, and through States of the United States other than Missouri to the various pur-

chasers thereof in such other States to whom said courses of study and instruction are, or have been, sold.

PAR. 3. During the time above mentioned, other individuals, firms, and corporations in various States of the United States are, and have been, engaged in the sale and distribution in commerce between and among the various States of the United States, and in the District of Columbia, of courses of study and instruction designed and intended for the purpose of preparing students thereof for examinations for civil service positions under the United States Government, and also of courses of study and instruction in other lines, all of which are pursued by correspondence. Said respondent has been, during the aforesaid time, in substantial competition in commerce between and among the various States of the United States in the sale of its said courses of study and instruction with such other individuals, firms, and corporations.

PAR. 4. Respondent, in promoting the sale of its said courses of study and instruction to and among members of the public, has made use of circulars, folders and other printed matter which it has distributed to the public by mail or otherwise. By such means, respondent has made various misleading statements. Among such statements are the following:

1. You will have the help, aid and assistance of our staff of 20 persons, * * *.
2. We have prepared thousands successfully.
3. Railway Mail Clerk * * * On duty a few hours per day— * * *.
4. Our staff consists of Ex-Government employees * * * they are Civil Service experts.
5. We have assisted more than two thousand to prepare.
6. You could get no more thorough training in our highly tutored individual instruction school, where we have more than sixteen hundred active students, * * *.
7. Deal Direct With Us and Save Salesman's Commission.
8. Civil Service Enrollment Department.
9. * * * It is our intention without further notice to you to turn this entire matter over to the United States Collection and Credit Agency with instructions to handle to a conclusion.

The aforesaid statements, together with other similar statements, and also various statements of like nature made by respondent's salesmen in the sale of said courses of study and instruction, purported to be descriptive of the character, nature and size of respondent's said business or of the personnel connected therewith, or both, and served, respectively, directly or by implication, as representations to purchasers and prospective purchasers of respondent's courses of study and instruction that:

1. The business conducted by respondent is operated on a large and substantial basis with a staff of 20 or more teachers or qualified instructors.

2. Thousands of respondent's students have successfully passed civil service examinations and received appointments in the Government service.

3. The position of railway mail clerk in the Government service is a desirable one with relatively short working hours.

4. Respondent's staff of instructors is made up exclusively, or in the majority, of ex-government employees who are experts on the subject of civil service examinations by reason of previous government employment or prior connection with the United States Civil Service Commission as well as by general education and other experience.

5. More than two thousand persons had enrolled and fully completed respondent's course of study at the time the statement to that effect was made.

6. Respondent conducts a large residence school where personal, individual instruction is given to large numbers of students.

7. In purchasing respondent's courses of study direct, without the intervention of salesmen, such purchasers are enabled to secure, at lower prices, not only the same material for study but also the identical services therewith and the same supervision as offered and given by respondent in the courses of study and instruction sold by salesmen.

8. The enrollment for respondent's courses of study and instruction is an enrollment for a civil service examination or position, or both.

9. Respondent corporation is an agency of or connected with the United States Government.

Said representations and implications do not reflect the true facts and are erroneous and misleading.

PAR. 5. In truth and in fact:

Respondent does not have as many as 20 teachers and instructors on its staff.

Thousands of respondent's students have not successfully passed civil service examinations and received appointments in the government service.

The hours of work of railway mail clerks are not short as a regular thing.

Respondent's staff of instructors is not made up in whole or in large part of ex-government employees nor are they civil service experts by reason of previous government connection.

No such number as two thousand persons had fully completed respondent's courses at the time representations to that effect were made.

Respondent does not conduct a residence school.

The same service and supervision is not given when study material is sold direct as when courses are sold by salesmen.

Enrollment in respondent's course does not constitute enrollment for a civil service examination or position.

Respondent is not an agency of, or connected with, the United States Government.

PAR. 6. Respondent through its salesmen and through use of a so-called "Refund Agreement," which it enters into with its students, represents that government positions are guaranteed to those who successfully complete respondent's courses and that all sums paid for such courses will be refunded if no government position is secured thereby. Said refund agreement, so used by respondent, is as follows:

REFUND AGREEMENT

It is understood that the Public Service Institute, Inc., agrees to refund all money paid by me, if I have met the following conditions:

(a) I am to complete each lesson of the entire training promptly, as received, sending in all work and examination papers for correction.

(b) I am to make all payments direct to the Public Service Institute, Inc. (except down payment attached hereto), to be received on or before date due.

(c) I am to try the first examination or examinations which I am qualified to take as specified by the Government at the time such examinations are announced by the Civil Service Commission.

(d) If I fail to pass such governmental examination, I am upon written application to receive a refund of the entire amount paid by me for this training, or I will be trained without additional cost for future governmental examinations, which the Government qualifications will permit me to take, until I pass an examination with a grade high enough to make me eligible for an appointment in governmental service.

Such refund agreement is misleading in that the conditions upon which it depends are difficult of fulfilment and, further, because the facts and circumstances upon which a refund depends are uncertain and may not exist or happen. The holding of civil service examinations is uncertain as well as the time thereof. In some classifications many candidates do not pass with a grade high enough to be placed on the eligible list. The chance for appointment to government service is remote even though a candidate passes an examination. Such facts and circumstances are not set out in said agreement and are not explained by salesmen. The possibility of either a government position or of a refund is remote in the great ma-

majority of cases and the refund agreement is, in consequence, inoperative and meaningless in such cases.

PAR. 7. The representations of respondent, as aforesaid, had the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent conducts a large school with a staff of twenty or more qualified teachers; that thousands of respondent's students have successfully passed civil service examinations and received appointments in government service; that railway mail clerks have easy jobs and short hours; that respondent's staff is made up of ex-government employees who are experts in civil service matters because thereof; that more than two thousand students had enrolled and completed respondent's course at the time representation to that effect was made; that respondent conducts a residence school with large enrollment; that the same supervised instruction is offered at lower price when respondent's course is purchased direct as that given when sold by salesmen; that enrollment for respondent's course is an enrollment for a civil service examination or position, or both; that respondent is an agency of or connected with the United States Government; and that government positions are guaranteed to those who successfully complete respondent's course and that all money paid therefor will be refunded if no Government position is secured, when such are not and were not the facts. Said representations of respondent had the tendency and capacity to induce members of the public to purchase said courses of study and instruction because of the erroneous beliefs engendered as above set forth, and to divert trade to respondent from competitors engaged in the sale, in interstate commerce, of correspondence courses in similar lines to those offered by respondent, as well as those so engaged in such sale in other lines of study. There were and are among the competitors of respondent those who do not make the same or similar misleading representations as those made by respondent, as herein set out, but who truthfully and accurately state the facts in regard to the courses offered by them as well as in regard to other matters connected therewith. Respondent's said acts and practices tended to and did in fact divert business to respondent from its said competitors to the substantial injury and prejudice of such competitors.

CONCLUSION

The aforesaid acts and practices of the respondent, Public Service Institute, Inc., are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in com-

merce, 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 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, Public Service Institute, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of courses of study and instruction, designed and intended for preparing students thereof for examinations for civil service positions under the United States Government, in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly, through salesmen or in any other manner:

1. That the number of instructors on its staff is greater than the actual number of bona fide, qualified instructors.

2. That the number of respondent's students who have successfully passed civil service examinations or received positions in the Government service is greater than the actual number who have passed such examinations or received such positions.

3. That railway mail clerks or other Government workers have unusually short hours or that such work is easy as a result thereof.

4. That the staff of said school consists of ex-government employees who are civil service experts, unless such is the fact.

5. That the number of students who have enrolled in said school or completed the courses involved or successfully prepared for civil service examinations, is greater than the actual number so enrolled or prepared or who have completed said courses.

6. That respondent conducts a residence school.

7. That the service rendered on sale of instruction material direct to students is the same as that given when courses are sold by salesmen at a higher price and in which supervised instruction is given.

8. That enrollment for respondent's course constitutes an enrollment for a civil service examination or position, or both.

Order

9. That respondent is connected with, or represents the United States Government, or the United States Civil Service Commission.

It is further ordered, That said respondent, its officers, representatives, agents, and employees, in the connection as aforesaid, do forthwith cease and desist from the use of any so-called refund agreement which is misleading because of failure to disclose all the facts upon which it depends or because it is inoperative, or for any other reason.

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
MARYLAND BAKING COMPANY

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

Docket 3058. Complaint, Feb. 15, 1937—Decision, Aug. 18, 1937

Where a corporation engaged in manufacture, sale, and distribution of ice cream cones, including cones packed and assembled with small printed slips bearing various legends so as to involve use of a lottery scheme when sold and distributed by retail dealers to consumers thereof, and including legend "LUCKY! U-WIN-A Cone FREE With this COUPON," chance recipient of which thereby, and in accordance with explanatory display circulars furnished by it, depicting a child with ice cream cone and winning ticket, became entitled to receive, free of charge, another such cone—

Sold, thus packed, to wholesalers, jobbers, and ice cream manufacturers, for use, sale, and distribution by their retail dealer purchasers to purchasing public, in accordance with aforesaid sales plan, said cones and slips, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its product in accordance with such sales 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 ice cream cones with printed slips as above described, or otherwise arranged and packed for sale to purchasing public so as to involve game of chance, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said product in preference to cones offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of ice cream cones were attracted by its said method and manner of inserting in a number thereof printed slips entitling purchasers to free ice cream cones, and by element of chance involved in sale thereof as above described, and were thereby induced to buy its said products, containing such printed slips and sold by it, in preference to those offered and sold by said competitors who do not use same or equivalent method, and with tendency and capacity, by reason of said game of chance, to divert to it trade and custom from its said competitors who do not use such or equivalent method, exclude from said trade all competitors who are unwilling to and do not use such method because unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors of ice cream cones as do use same or equivalent method, deprive purchasing public of benefit of free competition in trade involved, and eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use said or equivalent method:

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

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Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

Mr. Leslie E. Salter, 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 Maryland Baking Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Maryland Baking Company, is a corporation organized and operating under the laws of the State of Maryland, with its principal office and place of business located at 1200 South Eutaw Street, Baltimore, Md. Respondent is now, and for several years last past has been, engaged in the manufacture of ice cream cones and in the sale and distribution thereof to wholesale dealers, jobbers, and ice cream manufacturers. It causes, and has caused, its said products when sold to be transported from its principal place of business in Baltimore, Md., to purchasers thereof in the State of Maryland and in other States of the United States at their respective places of business. There is now, and has been for several years last past, a constant course of trade and commerce by said respondent in said ice cream cones 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 ice cream cones 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, on or about May¹ 1, 1936, began the sale and distribution, and since said date has continued the sale and distribution to wholesale dealers and jobbers and ice cream manufacturers of ice cream cones packed and assembled with small printed slips therein so as to involve the use of a lottery scheme when sold and distributed by retail dealers to the consumers thereof. Respond-

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ent has had printed small slips of paper bearing various legends, and a few of said printed slips bear the following legend, to wit:

LUCKY!
U-WIN-A Cone
FREE
with this
COUPON

The ultimate consumer procuring a cone containing one of the above printed slips is entitled to receive, and is to be given free of charge, another ice cream cone. The printed slips are so placed in the cones that the ultimate consumer cannot ascertain whether or not he is entitled to a free ice cream cone until after his purchase has been made and the cone partially consumed. The fact as to whether the ultimate purchaser receives an additional ice cream cone free of charge is thus determined wholly by lot or chance. Respondent furnishes with cartons of ice cream cones containing the above described printed slips a display circular bearing the following legends, to wit:

(Representation of a child holding an
ice cream cone and a winning ticket)
GEE—AM I LUCKY!
U-WIN-A FREE
cone if you find a
winning slip in the tip

PAR. 3. The wholesale dealers and jobbers and ice cream manufacturers to whom respondent sells the above described ice cream cones containing said printed slips resell said cones, as packed by respondent, to retail dealers and said retail dealers sell and distribute said cones, after placing ice cream therein, 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 to induce purchasers thereof to purchase respondent's said product in preference to ice cream cones offered for sale and sold by its competitors.

PAR. 4. The sale of said ice cream cones to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an additional ice cream cone. The use by respondent of said method in the sale of ice cream cones, and the sale of ice cream cones 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. Many persons, firms, and corporations who make and sell ice cream cones in competition with respondent are unwilling to offer for sale or sell said ice cream cones with printed slips 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 and ultimate purchasers of ice cream cones are attracted by respondent's said method and manner of inserting in some of the cones printed slips entitling ultimate purchasers to free ice cream cones and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said ice cream cones containing said printed slips and sold by respondent in preference to ice cream cones 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 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 trade and to tend to create a monopoly of said trade in respondent and such other distributors of ice cream cones as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by respondent has the tendency and capacity to eliminate from said 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. 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 February 15, 1937, issued and on

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February 17, 1937, served its complaint in this proceeding upon the respondent, Maryland Baking Company, a corporation charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, the Commission by order entered herein on August 9, 1937, granted respondent's request for permission to withdraw said answer and to file in lieu thereof its substitute answer (undated) 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; 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, Maryland Baking Company, is a corporation organized and operating under the laws of the State of Maryland, with its principal office and place of business located at 1200 South Eutaw Street, Baltimore, Md. Respondent is now, and for several years last past has been engaged in the manufacture of ice cream cones and in the sale and distribution thereof to wholesale dealers, jobbers, and ice cream manufacturers. It causes and has caused, its said products when sold to be transported from its principal place of business in Baltimore, Md., to purchasers thereof in the State of Maryland and in other States of the United States at their respective places of business. There is now, and has been for several years last past, a constant course of trade and commerce by said respondent in said ice cream cones 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 ice cream cones 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 on or about May 1, 1936, began the sale and distribution, and since said date has continued the sale and distribution to wholesale dealers and jobbers and ice cream manufacturers of ice cream cones packed and assembled with small

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printed slips therein so as to involve the use of a lottery scheme when sold and distributed by retail dealers to the consumers thereof. Respondent has had printed small slips of paper bearing various legends, and a few of said printed slips bear the following legend, to wit:

LUCKY!
U-WIN-A Cone
FREE
With this
COUPON

The ultimate consumer procuring a cone containing one of the above printed slips is entitled to receive, and is to be given free of charge, another ice cream cone. The printed slips are so placed in the cones that the ultimate consumer cannot ascertain whether or not he is entitled to a free ice cream cone until after his purchase has been made and the cone partially consumed. The fact as to whether the ultimate purchaser receives an additional ice cream cone free of charge is thus determined wholly by lot or chance. Respondent furnishes with cartons of ice cream cones containing the above described printed slips a display circular bearing the following legends, to wit:

(Representations of a child holding an
ice cream cone and a winning ticket)

GEE—AM I LUCKY!
U-WIN-A FREE

cone if you find a winning slip in the tip

PAR. 3. The wholesale dealers and jobbers and ice cream manufacturers to whom respondent sells the above described ice cream cones containing said printed slips resell said cones as packed by respondent, to retail dealers and said retail dealers sell and distribute said cones, after placing ice cream therein 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 to induce purchasers thereof to purchase respondent's said product in preference to ice cream cones offered for sale and sold by its competitors.

PAR. 4. The sale of said ice cream cones to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an additional ice cream cone. The use by respondent of said method in the sale of ice cream cones, and the sale of ice cream cones 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. Many persons, firms, and corporations who make and sell ice cream cones in competition with respondent are unwilling to offer the sale or sell said ice cream cones with printed slips as above described, 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 and ultimate purchasers of ice cream cones are attracted by respondent's said method and manner of inserting in some of the cones printed slips entitling ultimate purchasers to free ice cream cones and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said ice cream cones containing said printed slips and sold by respondent in preference to ice cream cones offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. 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 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 trade and to tend to create a monopoly of said trade in respondent and such other distributors of ice cream cones as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by respondent has the tendency and capacity to eliminate from said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

CONCLUSION

The aforesaid method, acts, and practices of respondent, Maryland Baking 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 within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer (undated) filed herein 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, Maryland Baking Company, a corporation, its subsidiaries, officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of ice cream cones, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, ice cream cones so packed and assembled that sales of such ice cream cones 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 ice cream cones 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 ice cream cones in said packages or assortments to the public.
3. Packing or assembling in packages or assortments of ice cream cones, for sale to the public at retail, printed slips which are for use, or which may be used, in distributing or selling said ice cream cones to the public at retail.
4. Furnishing to retail and wholesale dealers and jobbers printed slips, either with packages or assortments of ice cream cones or separately, a small number of which printed slips bear a legend or legends or statements informing the purchasing public that another ice cream cone will be delivered free of charge or as a prize.
5. Furnishing or supplying to wholesale dealers and jobbers, for distribution to retail dealers or to retail dealers direct, display circulars or other advertising material bearing a legend or legends or statements informing the purchasing public that the ice cream cones

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are being sold to the public in accordance with a sales plan which constitutes a lottery, gaming device or gift enterprise.

It is further ordered, That the respondent, Maryland Baking Company, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
WESLEYAN DIESEL SERVICE, INC.

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

Docket 3097. Complaint, Apr. 6, 1937—Decision, Aug. 18, 1937

Where a corporation engaged in sale and distribution of correspondence courses of study in the installation, care, and maintenance of Diesel engines to members of the public in the various States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such courses of study and instruction in the same and allied fields in commerce among the various States and in aforesaid District, and including among those engaged in sale of such courses pertaining to Diesel engines as aforesaid, competitors who do not misrepresent the nature of their courses nor make untrue claims therefor; in soliciting sale of its said courses through statements and representations circulated among the various States in newspapers, periodicals, booklets, circulars, and general business correspondence, and through agents and radio broadcasts, to pupils and prospective pupils—

- (a) Represented that there was a great demand for men trained to work with Diesel engines, and that it had not been able to fill the demand therefor, and that it wanted "to consider a few young men mechanically inclined" and was selecting and training for service and installation work on such engines a limited number of young men, and that a job was "practically certain," facts being there was no great demand for such men, it was not selecting or restricting number of its pupils for such courses to those possessing certain qualifications, but accepting all members of the public paying the required price, and positions were not available to all students completing its courses;
- (b) Represented that its instruction service included careful handling and grading of the written work of students by instructors who were competent and qualified to do such work, and that students finishing its said course were qualified to install, maintain, and service such engines, facts being its said instruction service did not include careful handling and grading of written work, such work was not handled or graded by any competent person or persons qualified so to do or to make constructive suggestions in regard thereto, and students finishing its course were not qualified and did not acquire sufficient knowledge therefrom to enable them properly to install, operate, or service such engines;
- (c) Represented that after the completion of its said course, the students had the privilege of entering another institution for practical shop training at a named total tuition fee, and that such tuition was "special" to such students and lower than the usual amount charged therefor, facts being practical training in shop work referred to as "special" in price of tuition to those students was not such, in that tuition fee to said students was not lower than usual amount charged therefor; and
- (d) Represented that it maintained branches of its school in certain named cities other than the city of its location, and maintained a free employment service for a period of two years for the benefit of those students com-

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pleting its course, and that tuition fee would be refunded if student was not satisfied with results obtained after such completion, facts being it had no branches in any city other than that in which its said school was located, maintained no free employment service for any period of time whatever, or at all, for the benefit of its students, and made no such refunds;

With effect of misleading and deceiving substantial portion of the public into the erroneous belief that such representations were true, and of causing such members of the public to enroll and pay for its said course as students, on account of such erroneous beliefs, and of thereby diverting trade from its aforesaid competitors who do not misrepresent the nature of their courses or make untrue claims therefor; 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. Miles J. Furnas* and *Mr. Henry M. White*, trial examiners.

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 Wesleyan Diesel Service, Inc., a corporation hereinafter referred to as respondent, has been, and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Wesleyan Diesel Service, 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 at 2906 Leavenworth Street, Omaha, Nebr.

Respondent is now, and has been for several years last past, engaged in the sale and distribution of correspondence courses of study in the installation, care and maintenance of Diesel engines, to members of the public located in the various States of the United States and in the District of Columbia. It now causes, and during the time herein mentioned has caused, its correspondence courses, when sold, to be shipped from its place of business in Omaha, Nebr., to the purchasers thereof located in various States of the United States other than the State of Nebraska, 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

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correspondence courses between and among the various States of the United States, and in the District of Columbia.

Respondent is now, and at all times mentioned herein has been in substantial competition with other corporations, and with persons, firms, and individuals engaged in the sale and distribution of correspondence courses of study and instruction in the same and allied fields in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in soliciting the sale of and in selling its correspondence courses, now circulates in and among the various States of the United States, and during all the time herein mentioned has so circulated, certain statements and representations in newspapers, periodicals, booklets, circulars, and general business correspondence, and through agents, and radio broadcasts to pupils and prospective pupils. Typical of such representations are the following, to wit:

WE WANT—to select reliable young men to train immediately for service and installation work of Diesel engines, 90 days training, free employment service.

Diesel Engineering—we want to consider a few young men mechanically inclined—.

The school had calls for 150 positions in 1935 that could not be filled because of an insufficient amount of men taking the course; a job is practically certain.

Instruction service includes carefully handling and grading of all written work.

Points not made clear in the lessons will be explained in personal letters by the Chief Engineer.

Money Back Agreement—I believe I have not benefitted by it, I may make application within ten days from graduation before a notary public, and the full amount paid by me will be refunded.

Two years free CONSULTATION and EMPLOYMENT SERVICE after completion.

Demand for Diesel-trained men increasing. Our 3-month training at small cost qualifies you with 1936 Diesel Knowledge.

Branches are maintained at Tulsa, Oklahoma, Dallas, Texas, Los Angeles, California.

To be acceptable, a man must be mechanically inclined or have machinery experience, steady or good habits, as well as reliable.

Special Offer.—may have the privilege of entering The American Technical Institute—for practical shop training—at a total tuition fee of \$35.00.

Such statements and representations serve as representations on the part of the respondent to prospective pupils that several young men possessing required qualifications are to be selected and trained for service and installation work on Diesel engines; that there is a great demand for men trained to work with Diesel engines, and that good positions can be secured by students after completing the course of instruction sold by respondent; that instruction service

includes careful handling and grading of all written work by instructors who are competent and qualified to do such work; that the tuition fee will be refunded if the student is not satisfied with the results obtained after the course has been completed; that a free employment service is maintained by respondent for a period of two years for the benefit of those students completing the course; that students finishing the course will be qualified to install, maintain, and service Diesel engines; that the respondent maintains branches of its school in various cities other than Omaha, Nebr.; that after the completion of the course, the students have the privilege of entering another institution for practical shop training at a total tuition of \$35.00, and that such tuition is "special" to such students and is less than the usual amount charged therefor.

PAR. 3. The above and foregoing representations, and other representation made by respondent of similar import and effect, are false and misleading. Respondent does not select or restrict the number of its pupils for such courses to those possessing certain qualifications. In truth and in fact any and all members of the public who pay the required price for the course are accepted as students. There is no great demand for men trained in the installation, maintenance and repair of Diesel engines, and such positions are not available to all of the students completing the course. The instruction service does not include careful handling and grading of the written work, nor is such written work handled or graded by any competent person or persons qualified to do such work or to make constructive suggestions about such work. The respondent will not, and does not, refund the tuition fee if the student is not satisfied with the results obtained after the completion of the course. No free employment service is maintained by the respondent for the benefit of the students completing the course for a period of two years or for any period of time, and in fact respondent does not maintain any employment service for the benefit of its students. Students finishing the course are not qualified to, and they do not acquire sufficient knowledge from the course to enable them to properly install, operate, service, or maintain Diesel engines. Respondent does not maintain branches of its school in any city other than Omaha, Nebr. The practical training in shop work referred to by the respondent as special in price of tuition to such students is not special in that the tuition fee to such students is not less than the usual amount charged therefor.

PAR. 4. The use by respondent, of the statements and representations set forth herein in paragraph 2 and others similar thereto, has had, and now has, the capacity and tendency to mislead and deceive, and has misled and does now mislead a substantial portion of the

public into the erroneous belief that such representations are true, and has caused and now causes said members of the public to enroll as students of respondent on account of such erroneous belief. There are among the competitors of respondent mentioned in paragraph 1 hereof, corporations, individuals, partnerships, and firms engaged in the sale of correspondence courses pertaining to the study of installation, care, and maintenance of Diesel engines who do not misrepresent the nature of the business of the course offered, nor otherwise publish claims for the course which are untrue. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors 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.

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 April 6, 1937, issued, and on April 8, 1937, served, its complaint in this proceeding upon respondent, Wesleyan Diesel Service, 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, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Wesleyan Diesel Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2906 Leavenworth Street, Omaha, Nebr. It is now, and has been for several years last past, engaged in the sale and distribution of correspondence courses of study in the installation, care, and maintenance of Diesel engines to members of the public located in the various States of the United States and in the District of Columbia. It causes, and during the time mentioned herein, has caused its correspondence courses when sold to be shipped from its place of business in Omaha, Nebr., to the purchasers thereof located in the various States of the United States other than the State of Nebraska 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 correspondence courses between and among the various States of the United States, and in the District of Columbia. Respondent is now, and, at all times mentioned herein, has been in substantial competition with other corporations, and with persons, firms, and individuals engaged in the sale and distribution of correspondence courses of study and instruction in the same and allied fields in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 2. In soliciting the sale of and selling its correspondence courses, respondent circulated and circulates in and among the various States of the United States, certain statements and representations in newspapers, periodicals, booklets, circulars, and general business correspondence, and through agents and radio broadcasts to pupils and prospective pupils. Typical of such representations are the following, to wit:

WE WANT—to select reliable young men to train immediately for service and installation work of Diesel engines, 90 days training, free employment service.

Diesel Engineering—we want to consider a few young men mechanically inclined—

The school had calls for 150 positions in 1935 that could not be filled because of an insufficient amount of men taking the course; a job is practically certain. Instruction service includes carefully handling and grading of all work.

Points not made clear in the lessons will be explained in personal letters by the Chief Engineer.

Money Back Agreement—I believe I have not benefited by it, I may make application within ten days from graduation before a notary public, and the full amount paid by me will be refunded.

Two years free CONSULTATION and EMPLOYMENT SERVICE after completion.

Demand for Diesel-trained men increasing. Our 3-month training at small cost qualifies you with 1936 Diesel Knowledge.

Branches are maintained at Tulsa, Oklahoma, Dallas, Texas, Los Angeles, California.

To be acceptable, a man must be mechanically inclined or have machinery experience, steady or good habits, as well as reliable.

Special Offer—may have the privilege of entering The American Technical Institute—for practical shop training—at a total tuition fee of \$35.00.

In the manner and through the means above stated, the respondent represents and represented that several young men possessing required qualifications are and were to be selected and trained for service and installation work on Diesel engines; that there is a great demand for men trained to work with Diesel engines, and that good positions can be secured by students after completing the course of instruction sold by respondent; that instruction service includes careful handling and grading of all written work by instructors who are competent and qualified to do such work; that the tuition fee will be refunded if the student is not satisfied with the results obtained after completion of the course; that a free employment service is maintained by respondent for a period of two years for the benefit of those students completing the course; that students finishing the course will be qualified to install, maintain, and service Diesel engines; that the respondent maintains branches of its school in various cities other than Omaha, Nebr.; that after the completion of the course, the students have the privilege of entering another institution for practical shop training at a total tuition of \$35.00, and that such tuition is "special" to such students and is less than the usual amount charged therefor.

PAR. 3. The above and foregoing representations are and were false and misleading in that respondent did not and does not select or restrict the number of its pupils for such courses to those possessing certain qualifications, but on the contrary, all members of the public who pay the required price for the course are accepted as students. There is no great demand for men trained in the installation, maintenance and repair of Diesel engines, and positions are not available to all students completing the course. The instruction service does not include careful handling and grading of the written work, nor is such written work handled or graded by any competent person or persons qualified to do such work or to make constructive suggestions about such work. Respondent does not refund the tuition fee paid by the student if the student is not satisfied with the results obtained after the completion of the course. No free employment service is

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maintained by the respondent for the benefit of the students completing the course for a period of two years, or for any period of time, and in fact respondent does not maintain any employment service for the benefit of its students. Students finishing the course are not qualified to and they do not acquire sufficient knowledge from the course to enable them properly to install, operate, service, or maintain Diesel engines. It does not maintain branches of its school in any city other than Omaha, Nebr. The practical training in shop work referred to by respondent as special in price of tuition to such students, is not special in that the tuition fee to such students is not less than the usual amount charged therefor.

PAR. 4. There are among the competitors of respondent, corporations, individuals, partnerships, and firms engaged in the sale of correspondence courses pertaining to the study of the installation, care, and maintenance of Diesel engines who do not misrepresent the nature of the course offered, or make claims for the course which are not true.

PAR. 5. The use by respondent of the foregoing false and misleading representations has had and now has the capacity and tendency to mislead and deceive, and has misled and does now mislead, a substantial portion of the public into the erroneous belief that such representations are true, and has caused and now causes such members of the public to enroll and pay for such course as students of respondent on account of such erroneous beliefs. By the representations aforesaid, trade in said commerce is unfairly diverted to respondent from such competitors 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, Wesleyan Diesel Service, Inc., 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 July 28, 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 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, Wesleyan Diesel Service, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of correspondence courses of study and instruction in installing, maintaining and servicing Diesel engines in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing in any manner, directly or indirectly, that a limited number of young men are to be selected and trained for service and installation work on Diesel engines;

2. That the demand for men trained to work with Diesel engines is in excess of the demand that actually exists or that positions are available to all of the students completing said course of instruction;

3. That the instruction service includes careful handling and grading of the written work of students by persons qualified to do such work;

4. That the tuition fee paid by a student will be refunded if the student is not satisfied with the results obtained after the completion of said course of instruction;

5. That free employment service, or any kind of employment service, is maintained for the benefit of the students completing the course of instruction;

6. That students finishing said course of instruction are qualified to install, maintain and service Diesel engines;

7. That branches of its school are maintained in cities other than Omaha, Nebr.;

8. That after the completion of said course of instruction students are privileged to enter another institution for practical shop training for a "special" tuition price or for a less price than the usual amount charged therefor.

It is furthered 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
BIRCONJEL CORPORATION, INC.

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

Docket 2998. Complaint, Nov. 27, 1936—Decision, Aug. 20, 1937

Where a corporation engaged in the manufacture of certain so-called hygienic and other products for use by women, including its so-called "Birconjel" and a patented applicator for use in connection therewith, and in the sale of said "Birconjel" and applicator, through radio and other advertising, to wholesale druggists and others, and, on order, to any individual unit of the purchasing or consuming public, in substantial competition with others similarly engaged in the offer and sale, in commerce among the various States, of hygienic and other products intended and designed for use exclusively by women, and including among its competitors those offering medicines or preparations of various kinds for use in connection with feminine hygiene and for aforesaid preventive effects, without stating expressly, or implying or importing, in their representations that their products or any of them are invariably or uniformly effective and safe and harmless, and those offering and selling, as aforesaid, medicines, with or without applicators, and other preparations, truthfully represented as for use in feminine hygiene and to prevent diseases arising from lack thereof, and as preventing contraction of diseases by women when used in accordance with directions—

- (a) Represented, through advertising literature enclosed in the carton or container of said product and distributed also among purchasers and prospective purchasers, and through window display advertising and other advertising matter distributed by its agents in introducing and promoting sale of said product, and also through booklets and other advertising, that said "Birconjel" and appliance constituted a competent and effective contraceptive and could be relied upon absolutely for such preventive purpose, and that its said preparation constituted a reliable remedy, treatment and cure for ills and diseases peculiar to women, facts being preparation in question could not be relied upon as such a preventive and had no beneficial therapeutic value in the treatment of any ailments, ills, or diseases peculiar to the feminine anatomy; and
- (b) Represented that said preparation constituted a protection against diseases and acted both mechanically and as a germicide in the prevention of trouble, and that it was prescribed by thousands of physicians and had the approval of the American Medical Association, American Birth Control League, and physicians generally, and that it was not a patent or proprietary medicine, but an open formula which might be used with safety and without deleterious effects by all women, facts being it was not a scientific prophylactic for feminine hygiene or otherwise, had not been used or approved as above claimed, formula thereof was not open, but secret, and use thereof, either with or without said applicator, was not absolutely harmless, but in many cases was capable of causing injuries and had deleterious effect upon the user thereof;

With effect of confusing, misleading, and deceiving members of the public as to the properties and efficacy of said preparation and appliance in the particulars above set forth, and of causing them, because of erroneous beliefs engendered by its representations and implication, to buy and use the same, and thereby unfairly divert trade in commerce to it from its aforesaid competitors who truthfully represent their products; to their 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. William L. Taggart for the Commission.

Mr. Nathaniel K. Altman, of Brooklyn, 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 Birconjel Corporation, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Birconjel Corporation, Inc., is now, and has been for several years last past, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 420 Lexington Avenue, city of New York, State of New York, and 37 East 28th Street said city and State.

Respondent has been and is engaged in the manufacture of certain so-called hygienic and other products for use by women, and in their sale and distribution in commerce between the State of New York and the various other States of the United States and in the District of Columbia. It causes these products, when sold, to be transported from its aforesaid place of business to purchasers thereof in the various States of the United States other than the State of New York and in the District of Columbia.

In the course and conduct of said business, respondent has been and is in substantial competition with other corporations, and with individuals and partnerships similarly engaged in offering for sale and selling, in commerce among and between the various States of the United States, hygienic and other products intended and designed for use by women exclusively.

PAR. 2. In the course and conduct of its business, it has been and is the practice of respondent to offer for sale and sell a product known and described as Birconjel. In connection with the sale of its product "Birconjel" respondent also sells a patented applicator intended and designed for use in applying said "Birconjel" said applicator supposedly measuring and applying the correct amount of Birconjel to satisfactorily accomplish the results claimed by respondent. Sales are made through radio and other advertising to wholesale druggists and others, although when an order is received by respondent from any individual unit of the purchasing or consuming public, it is filled by respondent.

In the carton or container in which the said product is marketed, there is enclosed certain advertising literature in which the product is represented and described. Such advertising matter is also distributed by respondent among purchasers and prospective purchasers who inquire about the said product. It also employs and uses agents for the introduction of said product and promotion of its sale. They call upon druggists and install advertising window display and distribute other advertising matter, including circulars, a booklet called "A Straightforward Talk About Feminine Hygiene Sometimes Called Marriage Hygiene," and covered matches, the latter of which contain on their cover certain legends. Such legends as "Why Do Modern Women Practice Feminine Hygiene?," "The Birconjel Patented Applicator," "Some Scientific and Legal Aspects of Birconjel," "Measured Never Too Little and Never Too Much," "Approved Birconjel in Measured Applications Never Too Little, Never Too Much, Gloriously Simple, Feminine Hygiene, Truly Positive," appear on matches, blotters, and other advertising which is distributed in interstate commerce and otherwise. In its newspaper advertising it represents that "Birconjel enjoys medical and clinical approval"; that "Most chemicals powerful enough in solution to kill germs can be dangerous to delicate membranes (burns)"; that "The practice of feminine hygiene can have an aesthetic as well as practical side," and makes other similar representations through similar statements.

As inducements to the purchase of Birconjel and its applicator contrivance, respondent represents and infers that the use of such product will prevent conception; and that it is a protection against diseases; through such statements as "Keeps feminine secrets, complete safety and peace of mind is yours when you use Birconjel"; "Acts two ways in preventing trouble mechanically and is a germicide," and through other similar fraudulent statements. As a further inducement for the purchase of its product, Birconjel, and its appli-

cator contrivance, respondent has represented its cooperation with the American Birth Control League, using such language as signifies and implies a close connection between respondent and such league. It also represents that it has received approval of said product by physicians generally and that it is generally likewise dispensed and prescribed by thousands of such physicians. It further represents that it is well known to the medical profession for its high class pharmaceutical product. Respondent further represents that the product, Birconjel, is not a patent or proprietary medicine, but, rather an open formula which is given to physicians whenever they request it.

In truth and in fact, the use of respondent's said product will not accomplish such benefits as are claimed for said product in its advertising as set forth above, and it is not a scientific prophylactic for feminine hygiene, or otherwise. Its use is not absolutely harmless and its use with its patented applicator is not absolutely harmless, as is claimed in said representations made through its advertising. The product, Birconjel, has not received the approval of the American medical profession, nor physicians generally. It has not been dispensed and prescribed by thousands of physicians, and it is not recommended by the American Birth Control League. The product of respondent is a patented or proprietary medicine. Its formula is not open, as the word is understood, since the ingredients of the product are not declared or disclosed but held in secret by its manufacturers.

PAR. 3. There are now, and for several years last past have been, individuals, partnerships, and corporations who have been offering for sale and selling, in commerce among and between the various States of the United States, medicines or preparations of various kinds for use by women in feminine hygiene and for the prevention of conception, without stating expressly or implying or importing in their representations that their products or any of them are invariably or uniformly effectual and safe and harmless. They are now, and for several years last past have been, individuals, partnerships, and corporations offering for sale and selling, in commerce as herein set out, medicines with and without applicators and other preparations which they truthfully represent are for use in feminine hygiene and likely to prevent diseases arising from lack of feminine hygiene and will prevent the contraction of diseases by women when used in accordance with directions.

PAR. 4. The aforesaid practices of respondent have had and have the capacity and tendency to mislead and deceive wholesale dealers, retail dealers and their customers, the consuming or purchasing public, into the erroneous and mistaken beliefs that Birconjel is in-

variably and uniformly effective in preventing conception and is likewise a preventive of diseases caused by lack of feminine hygiene, and that all other representations of the respondent hereinbefore stated in paragraph 2 are true, and into the purchase of such product in reliance upon such erroneous beliefs or one or more of them.

The aforesaid practices have also had and have the capacity and tendency to unfairly divert trade to respondent from the competitors mentioned in paragraph 3 hereof. As a result thereof substantial injury has been, and is now being, done to such competitors by respondent in the course of such competition.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on November 27, 1936, issued, and on December 30, 1936, served its complaint in this proceeding upon the respondent, Birconjel Corporation, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer, no briefs having been filed or oral argument 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. Respondent, Birconjel Corporation, Inc., is now, and has been for several years last past, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 420 Lexington Avenue, city of New York, State of New York, and 37 East 28th Street said city and State.

Respondent has been and is engaged in the manufacture of certain so-called hygienic and other products for use by women, and in their sale and distribution in commerce between the State of New York and the various other States of the United States and in the District of Columbia. It causes these products, when sold, to be transported from its aforesaid place of business to purchasers thereof in the various States of the United States other than the State of New York and in the District of Columbia.

PAR. 2 In the course and conduct of said business, respondent has been and is in substantial competition with other corporations, and with individuals and partnerships similarly engaged in offering for sale and selling, in commerce among and between the various States of the United States, hygienic and other products intended and designed for use by women exclusively.

PAR. 3. In the course and conduct of its business, it has been and is the practice of respondent to offer for sale and sell a product known and described as Birconjel. In connection with the sale of its product "Birconjel" respondent also sells a patented applicator intended and designed for use in applying said "Birconjel," said applicator supposedly measuring and applying the correct amount of Birconjel to satisfactorily accomplish the results claimed by respondent. Sales are made through radio and other advertising to wholesale druggists and others, although when an order is received by respondent from any individual unit of the purchasing or consuming public, it is filled by respondent. By means and in the manner set out in paragraphs 4 and 5, the respondent represents and implies that the preparation Birconjel and its applicator appliance is a competent and effective preventive of conception, and that it is an absolute protection against pregnancy and can be depended upon for such purpose without limitation; and that the preparation is a reliable remedy, treatment, and cure for ills and diseases peculiar to women.

PAR. 4. In the carton or container in which the said product is marketed, there is enclosed certain advertising literature in which the product is represented and described. Such advertising matter

is also distributed by respondent among purchasers and prospective purchasers who inquire about the said product. It also employs and uses agents for the introduction of said product and promotion of its sale. They call upon druggists and install advertising window display and distribute other advertising matter, including circulars, a booklet called "A Straightforward Talk About Feminine Hygiene Sometimes Called Marriage Hygiene," and covered matches, the latter of which contain on their cover certain legends. Such legends as "Why Do Modern Women Practice Feminine Hygiene?" "The Birconjel Patented Applicator," "Some Scientific and Legal Aspects of Birconjel," "Measured Never Too Little and Never Too Much," "Approved Birconjel in Measured Applications Never Too Little, Never Too Much, Gloriously Simple, Feminine Hygiene, Truly Positive," appear on matches, blotters, and other advertising which is distributed in interstate commerce and otherwise. In its newspaper advertising it represents that "Birconjel enjoys medical and clinical approval"; that "Most chemicals powerful enough in solution to kill germs can be dangerous to delicate membranes (burns)"; that "The practice of feminine hygiene can have an aesthetic as well as practical side," and makes other similar representations through similar statements.

PAR. 5. As inducements to the purchase of Birconjel and its applicator contrivance, respondent represents and implies that the use of such product will prevent conception; and that it is a protection against diseases; through such statements as "Keeps feminine secrets, complete safety and peace of mind is yours when you use Birconjel"; "Acts two ways in preventing trouble mechanically and is a germicide," and through other similar statements. As a further inducement for the purchase of its product, Birconjel, and its applicator contrivance, respondent has represented its cooperation with the American Birth Control League, using such language as signifies and implies a close connection between respondent and such league. It also represents that it has received approval of said product by physicians generally and that it is generally likewise dispensed and prescribed by thousands of such physicians. It further represents that it is well known to the medical profession for its high class pharmaceutical product. Respondent further represents that the product, Birconjel, is not a patent or proprietary medicine, but rather an open formula which is given to physicians whenever they request it.

PAR. 6. In truth and in fact, the use of respondent's said product will not accomplish such benefits as are claimed for said product in its advertising as set forth above, and it is not a scientific pro-

phylactic for feminine hygiene, or otherwise. Its use is not absolutely harmless and its use with its patented applicator is not absolutely harmless, as is claimed in said representations made through its advertising. The product, Birconjel, has not received the approval of the American medical profession, nor physicians generally. In many cases the use of the said preparation and appliance is capable of causing injuries and has a deleterious effect upon those using them. Said preparation has no beneficial therapeutic value in the treatment of any ailments, ills, and diseases peculiar to the female anatomy, and its use cannot be relied upon to prevent conception. It has not been dispensed and prescribed by thousands of physicians, and it is not recommended by the American Birth Control League. The product of respondent is a patented or proprietary medicine. Its formula is not open, as the word is understood, since the ingredients of the product are not declared or disclosed, but held in secret by its manufacturers.

PAR. 7. There are now, and for several years last past have been, individuals, partnerships, and corporations who have been offering for sale and selling, in commerce among and between the various States of the United States, medicines or preparations of various kinds for use by women in connection with feminine hygiene and for the prevention of conception, without stating expressly or implying or importing in their representations that their products or any of them are invariably or uniformly effectual and safe and harmless. There are now, and for several years last past have been, individuals, partnerships, and corporations offering for sale and selling, in commerce as herein set out, medicines with and without applicators and other preparations which they truthfully represent are for use in feminine hygiene and are designed to prevent diseases arising from lack of feminine hygiene and will prevent the contraction of diseases by women when used in accordance with directions.

PAR. 8. The representations and implications of the respondent in connection with the sale and distribution of said preparation and appliance, 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 preparation and appliance in the particulars herein set forth, and cause them, because of the erroneous beliefs engendered by said representations and implications, to buy and use said preparation and appliance, thereby unfairly diverting trade in said commerce to the respondent from its aforesaid competitors who truthfully represent their products. As a result thereof substantial injury has been done, and is now

being done, by respondent to such competitors in commerce between and among the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent, Birconjel Corporation, 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 July 9, 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, Birconjel Corporation, Inc., its officers, representatives, agents and employees in connection with the offering for sale, sale and distribution of its medicinal or pharmaceutical preparation and appliance which are designed, intended and used in the treatment of various female ailments and conditions, and for female hygiene purposes, now designated as Birconjel and patented applicator, or any other preparations of substantially the same ingredients and therapeutic effect, or appliances 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:

1. That the use of said preparation alone or in conjunction with the aforesaid appliance will prevent conception.

1. That the use of said preparation alone or in conjunction with hygiene or otherwise, and is a protection against disease.

3. That said preparation acts two ways in preventing trouble, mechanically and as a germicide.

4. That the preparation is prescribed by thousands of physicians and that it has the approval of the American Medical Association, American Birth Control League, and physicians generally.

Order

5. That the preparation is not a patent or proprietary medicine, but an open formula.

6. That the said preparation and appliance may be used with safety and without deleterious effects by all women, and

7. From making other representations of similar import and of like character to those made as above set forth.

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
CLEMENT A. DeGRACE, TRADING AS SOCIAL SECURITY
COUNSELORS

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

Docket 3168. Complaint, July 3, 1937—Decision, Aug. 20, 1937

Where an individual engaged in sale and distribution of a correspondence course of study and instruction designed and intended for the education of students for positions in the United States Government, in competition with those engaged in sale and distribution of courses of study and instruction designed and intended to prepare students for examinations for various Government positions—

- (a) Made use of trade name "Social Security Counselors," and represented, implied, and created belief, through newspaper advertisements in classified section and usually in "Help Wanted" section, that such advertisements were those of Government agencies or representative thereof, and that three thousand Government positions were open and available, with men and women wanted to fill same, and with examinations being held therefor, and that he could and would obtain such positions for those who completed his said courses of study and instruction, facts being he had had no connection whatever with the Social Security Board or with the United States Government, and representations aforesaid were false and misleading;
- (b) Falsely and misleadingly represented, through salesmen whom he had appointed and designated, and who traveled throughout the United States soliciting students for said courses, and through other means, to prospective purchasers and students, that he and said salesmen were connected with or otherwise represented the Government, and that there were thousands of positions available in the newly formed Social Security Board, and that examinations would be held therefor in the near future, or at different times stated, and that prospective students could and would be placed in Government positions if they pursued said courses of study; and
- (c) Represented, as aforesaid, that a Government position was guaranteed or assured, and that money paid for said courses would be refunded if no position was obtained by student solicited, and that only a limited number would be selected for training in a particular locality, facts being said representations were false and misleading, and money-back agreement made use of by said individual was conditioned, among other things, upon written application within thirty days after completing the regular work and studies, and the taking of two Government examinations, and, due to holding of few, if any, examinations and fact that few, if any, students had or would have opportunity to take two such examinations so as to determine whether or not student would or could be placed upon eligible list, and, in event of failure, become entitled to refunds under such agreement, was inoperative and misleading;

Complaint

With tendency and capacity to confuse, mislead, and deceive members of the public into believing that he was a representative of, or connected with, the Government, and had positions to offer to applicants or those qualifying, and that examinations were being held at frequent intervals with positions available and assured, etc., and that the facts were as hereinabove indicated, and to induce members of the public to answer his advertisements, sign his contracts, pay money down and promise additional sums, and purchase his said courses because of erroneous belief engendered as above set forth, and unfairly divert trade to him from competitors engaged in sale of correspondence courses in similar lines to those offered by him, as well as those in other lines of study; to their substantial injury and to the injury 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. Allen C. Phelps 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 Clement A. DeGrace, trading under the name and style of Social Security Counselors, 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. That said respondent, Clement A. DeGrace, is an individual doing business under the name and style of Social Security Counselors with his office and principal place of business in the Davis Building, Portland, Oreg. Said respondent is now and has been, for more than one year last past, engaged in the sale and distribution of a course of study and instruction designed and intended for preparing students thereof for positions in the United States Government, which said courses of study and instruction are pursued by correspondence through the medium of the United States mails; that said respondent, in the course and conduct of his said business, during the time aforesaid, causes and has caused his said courses of study and instruction, consisting of pamphlets, forms, study, and question sheets and other printed or mimeographed matter to be transported from his said place of business in the State of Oregon to, into, and through the several States of the United States, other than the State of Oregon, to various and numerous persons to whom said courses of study and instruction are or have been sold.

PAR. 2. That during the time above mentioned, other individuals, firms, and corporations located in the several States of the United States are and have been engaged in the sale and distribution of courses of study and instruction designed and intended for the purpose of preparing students thereof for examination for various positions under the United States Government, which said courses of study and instruction are pursued by correspondence. Such other individuals, firms, and corporations have caused and now cause their said course of study and instruction when sold by them to be transported from various States in the United States to, into, and through States other than the State of origin thereof. Said respondent has been, during the aforesaid time, in competition in interstate commerce in the sale of his said course of study and instruction with such other individuals, firms, and corporations.

PAR. 3. That the Social Security Board is an agency of the United States Government, engaged in the enforcement of the "Social Security Act" which became a law in August 1935; that since January 1936, said Social Security Board has issued public announcements of its activities including the setting up of training centers in cooperation with the several States in training personnel; that the use by said respondent of the trade name "Social Security Counselors" has the capacity and tendency to create the belief among persons solicited to pursue respondent's said course of study and instruction that it is a part of or is connected with said Social Security Board; that, in fact, the said respondent has never had any connection whatsoever with the said Social Security Board or with the United States Government.

PAR. 4. That respondent, in advertising its said course of study and instruction, makes use of and has made use of advertisements which he has caused to be inserted in the classified sections, usually in the "Help Wanted" part thereof, of newspapers circulated in and among various States of the United States. That said advertisements by the wording thereof, as well as by the place of their insertion represent, imply, and create the belief among readers thereof, that such advertisements are those of a Governmental agency or a representative thereof; that 300,000 Government positions are open and available and men and women are wanted to fill them; that examinations are being held for such positions and that respondent can and will obtain Government positions for those persons who complete his said course of study and instruction. That such representations were and are not true, but were and are false or misleading.

PAR. 5. That respondent, in the course and conduct of his said business, sells and has sold his said course of study and instruction

to the public by salesmen designated and appointed by respondent to travel throughout several States of the United States, soliciting students for said course of study and instruction. That respondent, through such salesmen and through and by other means, represents and has represented to prospective students and purchasers that respondent and such salesmen are connected with or otherwise represent the United States Government; that there are thousands of positions available in the newly formed Social Security Board; that examinations for such positions will be held in the near future or at definite times stated; that such prospective students can and will be placed in Government positions, if they pursue respondent's course of study; that a Government job is guaranteed or assured; that money paid for said course of study and instruction will be refunded if no job is obtained by the student solicited; that only a limited number of students will be selected for training in a particular locality. That such representations are not true but are false or misleading. That respondent has profited by such misrepresentations and continues to profit thereby and has accepted and continues to accept money on contracts induced by said misrepresentations.

PAR. 6. That respondent, in the sale of its said course of study and instruction, has made use of a contract form containing a so-called "money-back agreement" which reads as follows:

Upon fulfillment of the terms and conditions of this registration and upon sending written application to the SOCIAL SECURITY COUNSELORS within thirty days after completing the regular work and studies of the course, which includes taking two Government examinations, if I am not satisfied with the high grade and practical character of the service and the instructions as given under the terms and provisions of this registration, and am not thoroughly convinced I have more than received full value, the SOCIAL SECURITY COUNSELORS will refund me the full amount paid.

That the said "money-back agreement" is inoperative on account of the fact that few, if any, examinations for which said respondent has given training and service have been or will be held and few, if any, students taking said course of study and instruction have had or will have an opportunity to take "two Government examinations" whereby it could be determined whether they could or would be placed upon an eligible list and thereby, in the event of failure, become entitled to refunds under such agreement.

PAR. 7. That the representations of the respondent as aforesaid have had and have the tendency and capacity to confuse, mislead, and deceive members of the public into the belief that respondent is a representative of or connected with the Government of the United States and has positions to offer to applicants or those who qualify; that examinations are being held at frequent intervals and

that positions are available and assured to those who qualify through taking the said course of study and instruction offered by respondent; that vacancies now exist in the Government service that are to be filled in the types of positions for which respondent offers training; that large numbers of appointments are being made in Government service; and that students who enroll for respondent's said course of study and instruction will receive their money back on conditions reasonably possible of fulfillment; when in truth and in fact such are not the facts and said representations of respondent have the capacity and tendency to induce members of the public to answer respondent's advertisements, to sign its said contracts, to pay money down and to promise to pay additional sums, and to purchase said course of study and instruction as hereinbefore described because of the erroneous beliefs engendered, as above set forth, and to divert trade to respondent from competitors engaged in the sale of correspondence courses in interstate commerce in similar lines to those offered by respondent, as well as those in other lines of study.

PAR. 8. The above acts and things done by respondent are all to the injury and prejudice of the public and the competitors of respondent in interstate commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on July 3, 1937, issued, and on July 7, 1937, served, its complaint in this proceeding upon respondent, Clement A. DeGrace, doing business under the name and style of Social Security Counselors, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 11, 1937, the respondent submitted an answer, in which answer he admitted all the material allegations of the complaint to be true and waived the taking of further evidence and all other intervening procedure, and said answer was duly filed in the office of the Commission. 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^s as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Clement A. DeGrace is an individual doing business under the trade name of Social Security Counselors, with his office and principal place of business located in the Davis Building, in Portland, Oreg. For several years last past the respondent has been engaged in the sale and distribution of a course of study and instruction designed and intended for the education of students for positions in the United States Government. The said courses of study and instruction are pursued by correspondence through the medium of the United States mails. In the course and conduct of the aforesaid business, the respondent causes his said courses of study and instruction, consisting of pamphlets, forms, study and question sheets, and other printed and mimeographed matter to be transported from his place of business in the State of Oregon, to, into and through the several States of the United States, to various and numerous persons to whom said courses of study and instruction are sold.

PAR. 2. There are other individuals, firms and corporations located in the several States of the United States, engaged in the sale and distribution of courses of study and instruction designed and intended for the purpose of preparing students thereof for examination for various positions under the United States Government, which said courses of study and instruction are pursued by correspondence. Such other individuals, firms and corporations cause their courses of study and instruction when sold by them to be transported to purchasers thereof located in the various States of the United States other than the State of origin thereof. During the aforesaid time the respondent has been in competition in interstate commerce in the sale of his said courses of study and instruction with such other individuals, firms, and corporations.

PAR. 3. The Social Security Board is an agency of the United States Government engaged in the enforcement of the "Social Security Act," which became a law in August 1935. Since January 1936, the said Social Security Board has issued public announcements of its activities, including the setting up of training centers in cooperation with the several States in training personnel. The use by the respondent of the trade name "Social Security Counselors" has the capacity and tendency to create the belief among persons solicited to pursue respondent's courses of study and instruction that it is a part of, or is connected with said Social Security Board. The respondent has never had any connection whatsoever with the said Social Security Board, nor with the United States Government.

PAR. 4. The respondent in advertising its courses of study and instruction makes use of advertisements which he causes to be inserted in the Classified Section, usually in the "Help Wanted" section thereof, of newspapers circulated in and among the various States of the United States. The said advertisements by the wording thereof as well as by the place of their insertion, represent, imply, and create the belief among readers thereof, that such advertisements are those of governmental agencies or a representative thereof; that 3,000 Government positions are open and available, and men and women are wanted to fill them; that examinations are being held for such positions and that respondent can and will obtain Government positions for those persons who complete the said courses of study and instruction. The aforesaid representations are not true but are false and misleading.

PAR. 5. In the course and conduct of the aforesaid business the respondent has appointed and designated salesmen who travel throughout the several States of the United States soliciting students for said courses of study and instruction. Through such salesmen, and through and by other means, the respondent represents to prospective students and purchasers that respondent and such salesmen are connected with or otherwise represent, the United States Government; that there are thousands of positions available in the newly formed Social Security Board; that examinations for such positions will be held in the near future or at different times stated; that such prospective students can and will be placed in Government positions if they pursue respondent's courses of study; that a Government position is guaranteed or assured; that money paid for said courses of study or instruction will be refunded if no position is obtained by the student solicited; that only a limited number of students will be selected for training in a particular locality. The aforesaid representations are not true but are false and misleading. Respondent has profited by such misrepresentations and continues to profit thereby, and has accepted and continues to accept money on contracts induced by said misrepresentations.

PAR. 6. In connection with the sale of the said courses of study and instruction the respondent has made use of a contract form containing a so-called "Money Back Agreement" which reads as follows:

Upon fulfillment of the terms and conditions of this registration and upon sending written application to the SOCIAL SECURITY COUNSELORS within thirty days after completing the regular work and studies of the course, which includes taking two Government examinations, if I am not satisfied with the high grade and practical character of the service and the instructions as given

under the terms and provisions of this registration, and am not thoroughly convinced I have more than received full value, the SOCIAL SECURITY COUNSELORS will refund me the full amount paid.

The aforesaid "Money Back Agreement" is misleading in that it is inoperative because few, if any, examinations for which said respondent has given training and service have been or will be held, and few, if any, students taking said courses of study and instruction have had or will have an opportunity to take "two Government examinations" whereby it could be determined whether they would or could be placed upon an eligible list and thereby in the event of failure entitled to refunds under such agreement.

PAR. 7. The trade name, "Social Security Counselors," and all of the aforesaid representations have the tendency and capacity to confuse, mislead and deceive members of the public into the belief that respondent is a representative of or connected with the Government of the United States, and has positions to offer to applicants, or those who qualify; that examinations are being held at frequent intervals and that positions are available and assured to those who qualify through taking the said courses of study and instruction offered by respondent; that vacancies now exist in the Government Service that are to be filled in the types of positions for which respondent offers training; that large numbers of appointments are being made in the Government Service; and that students who enroll for respondent's courses of study and instruction will receive their money back on conditions reasonably possible of fulfillment; and said representations of respondent have the capacity and tendency to induce members of the public to answer respondent's advertisements, to sign its said contracts, to pay money down and to promise to pay additional sums and to purchase said courses of study and instruction as hereinbefore described because of the erroneous belief engendered as above set forth; and unfairly divert trade in said commerce to respondent from competitors engaged in the sale of correspondence courses in similar lines to those offered by respondent, as well as those in other lines of study, to the substantial injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Clement A. DeGrace, doing business under the name and style of Social Security Counselors, 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

Order

25 F. T. C.

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and 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, Clement A. DeGrace, doing business under the trade name Social Security Counselors, his agents and employees, in connection with the offering for sale, sale, and distribution of courses of study and instruction by correspondence, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or by implication:

1. Through the use of the words Social Security Counselors or otherwise, that he is connected with the United States Social Security Board or the United States Government;
2. That positions with the United States Government or some agency thereof are open and available, or that examinations are being held to fill such positions, unless such positions are open and available and examinations being held;
3. That a knowledge of said courses of study and instruction will qualify one to obtain positions with the United States Government or some agency thereof;
4. That he will obtain positions with the United States Government or some agency thereof for students completing said courses of study and instruction, or that the money paid as tuition will be refunded if a position is not secured from the United States Government or some agency thereof.

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

OPPENHEIM, COLLINS AND 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 3160. Complaint, June 23, 1937—Decision, Aug. 21, 1937

Where a corporation engaged in the operation of large department stores and in the sale therefrom, among other things, of women's wearing apparel, and in shipping its articles of merchandise, when sold, from its places of business to purchasers in the various other States; in advertising in newspapers of interstate circulation soliciting sale of its said apparel—
 Represented evening wraps for women as "silk crepe," and other items of women's wearing apparel as "Made of quality silks," "taffeta," "crepe," "luxurious silks," "silk lingerie," and "dark satins sprinkled with white dots," and thereby represented as silk products such items of wearing apparel to members of purchasing public, notwithstanding fact products in question were not composed of silk, product of the cocoon of the silk worm, as long definitely understood in mind of consuming public, and were not silk products, long held in great public esteem and confidence for their preeminent qualities, and associated in the public mind with such terms as "silk crepe," "Made of quality silks," "taffeta," "crepe," "luxurious silks," "silk lingerie," "satins," and "dark satins," as used to designate, describe and refer to dress goods and other items of women's wearing apparel;
 With capacity and tendency to mislead and deceive substantial portion of purchasing public into the erroneous beliefs that such representations were true, and to cause them to buy such items of apparel as a result of such erroneous beliefs, engendered as above set forth, and with result that trade was unfairly diverted thereby to it from competitors engaged in sale of women's wearing apparel who do not misrepresent the kind of apparel offered for sale by them; 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. Astor Hogg for the Commission.

Chadbourne, Wallace, Parke & Whiteside, 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 Oppenheim, Collins and 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

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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, Oppenheim, Collins and Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 33 West 34th Street in the city of New York in said State. It is now, and for many years last past has been, engaged in the business of operating large department stores from which it sells, among other things, women's wearing apparel. It sells, and has sold and distributed, such articles of merchandise to members of the purchasing public located in the various States of the United States and in the District of Columbia. Respondent causes, and during the time herein mentioned has caused, its articles of merchandise, when sold, to be shipped from its places of business in New York, N. Y., to the purchasers thereof located in the various States of the United States other than the State of New York. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by said respondent in said merchandise so sold by it 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 persons, firms, and partnerships engaged in the sale and distribution of women's wearing apparel and other allied products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling said wearing apparel, caused, and now causes, advertising matter to be inserted in newspapers having interstate circulation. In said advertising matter evening wraps for women were, and are, represented, designated, and referred to as "silk crepe." In such advertising matter other items of women's wearing apparel were represented designated, and referred to as "Made in quality silks," "Taffeta," "crepe," "luxurious silks," "Sale! silk lingerie," "dark satins sprinkled with white dots."

Such statements and representations on the part of respondent serve as representations to members of the public that such items of wearing apparel so advertised and offered for sale were silk products. The representations hereinabove set forth are and were grossly false and misleading in that said items of wearing apparel so represented, designated and referred to 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 past has had, and still has, in the mind of the consuming public, a definite and specific meaning, to wit: The product of the cocoon of the silk worm. Silk products 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. A variety of distinctive terms have been applied to the fabrics resulting from different types of weaving of silk fibre. Dress goods and other items of women's wearing apparel designated, described and referred to as "silk crepe," "Made of quality silks," "taffeta," "crepe," "luxurious silks," "silk lingerie," "satins," "dark satins" have been for a long time and at the present time still are associated in the public mind with a fabric made from the cocoon of the silk worm, commonly known and understood by the public as silk.

PAR. 4. The use by respondent of the representations set forth herein have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that such representations are and were true and to cause them to purchase such items of wearing apparel on account of such erroneous beliefs 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 women's wearing apparel who do not misrepresent the kind of wearing apparel offered for sale. By use of the representations aforesaid, trade has been, and is unfairly diverted to respondent from said 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 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 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 23, 1937, issued, and on June 24, 1937, served, its complaint in this proceeding upon respondent, Oppenheim, Collins and 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, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Oppenheim, Collins and Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 33 West 34th Street in the city of New York in said State. It is now, and for many years last past has been, engaged in the business of operating large department stores from which it sells, among other things, women's wearing apparel. It sells, and has sold and distributed, such articles of merchandise to members of the purchasing public located in the various States of the United States and in the District of Columbia. Respondent causes, and during the time herein mentioned has caused, its articles of merchandise, when sold, to be shipped from its places of business in New York, N. Y., to the purchasers thereof located in the various States of the United States other than the State of New York. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by said respondent in said merchandise so sold by it 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 persons, firms and partnerships engaged in the sale and distribution of women's wearing apparel and other allied products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In soliciting the sale of and selling its wearing apparel, as described in paragraph 1 hereof, respondent caused, and now causes, advertising matter to be inserted in newspapers having an interstate circulation, in and by which advertising matter evening wraps for women were, and are, represented, designated, and referred to as "silk crepe." In such advertising matter other items of women's wearing apparel were, and are, represented, designated, and referred to as "Made of quality silks," "taffeta," "crepe," "luxurious silks," "silk lingerie," "dark satins sprinkled with white dots."

By the means and in the manner aforesaid, respondent represented, and represents, to members of the purchasing public that such items of wearing apparel were, and are, silk products. The representations thus made by respondent are and were grossly false and misleading in that said items of wearing apparel so represented, designated, and referred to 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 past has had, and still has, in the mind of the consuming public a definite and specific meaning, to wit: the product of the cocoon of the silk worm. Silk products 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. A variety of distinctive terms have been applied to the fabrics resulting from different types of weaving of silk fibre. Dress goods and other items of women's wearing apparel designated, described and referred to as "silk crepe," "Made of quality silks," "taffeta," "crepe," "luxurious silks," "silk lingerie," "satins," "dark satins" have been for a long time and at the present time still are associated in the public mind with a fabric made from the cocoon of the silk worm, commonly known and understood by the public as silk.

PAR. 4. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, corporations, individuals, partnerships, and firms engaged in the sale of women's wearing apparel who do not misrepresent the kind of wearing apparel offered for sale.

PAR. 5. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that such representations are and were true and to cause them to purchase such items of wearing apparel as a result of such erroneous beliefs engendered as above set forth. By use of the representations aforesaid, trade has been and is unfairly diverted

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to respondent from said competitors and thereby substantial injury is being and has been done by respondent to competition in said commerce, as herein set out.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the Complaint of the Commission and the answer filed herein on August 18, 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 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, Oppenheim, Collins and Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of wearing apparel in interstate commerce or in the District of Columbia, do forthwith cease and desist from using the words "silk," "crepe," "taffeta," or "satin," as descriptive of products which are not composed of silk, the product of the cocoon of the silk worm, but which are composed of a material or materials other than silk.

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

F. W. WASHBURN CANDY CORPORATION

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

Docket 3163. Complaint, June 29, 1937—Decision, Aug. 21, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments of candies which were so packed and assembled as to involve, or were designed to involve, use of a lottery scheme when sold and distributed to ultimate consumer thereof, and which were composed of a number of individually wrapped penny pieces, together with number of articles of merchandise to be given as prizes to chance purchasers of a relatively few of aforesaid uniform individually wrapped pieces, concealed colored centers of which differed from those of the majority, and entitled, as aforesaid, said chance purchasers and purchaser of last piece in assortment to one of said articles of merchandise as a prize—

Sold, to wholesalers and jobbers, and to retail dealers for display and resale to purchasing public in accordance with said sales 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 products, in accordance with such plan, contrary to public policy long recognized by the common law and criminal statutes and contrary 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 as above described, or otherwise arranged and packed for sale to purchasing public, so as to involve a game of chance, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said products in preference to candy offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said product and by element of chance involved in sale thereof as above set forth, and were thereby induced to buy its said candy, so packed and sold by it, in preference to that offered and sold by its said competitors who do not use same or equivalent method, and with tendency and capacity, by reason of said game of chance, to divert to it trade and custom from its said competitors who do not use such or equivalent method, exclude from said candy trade all competitors who are unwilling to and do not use any such method as unlawful, lessen competition in said trade and tend to create a monopoly thereof in it and in such other competitors as do use such or an equivalent method, deprive purchasing public of benefit of free competition in said trade, and eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent method:

Held, That such methods, 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.

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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 F. W. Washburn Candy 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 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 and doing business under the laws of the State of Massachusetts, with its principal office and place of business located in the city of Brockton, State of Massachusetts. It is now, and for several years last past has been engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers and jobbers, and retail dealers, located at points in the various States of the United States. It causes and has caused its said candy when sold to be transported from its principal place of business in Brockton, Mass., to purchasers thereof in the State of Massachusetts and in other States of the United States at their respective places of business. 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 various 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, and to retail dealers, assortments of candies so packed and assembled as to involve, or which are designed to involve the use of a lottery scheme when sold and distributed to the ultimate consumer thereof. Such assortments are composed of a number of pieces of candy of uniform size and shape, together with a number of other articles of merchandise, which other articles of merchandise are to be given as prizes to purchaser of the pieces of candy of uniform size and shape in the following manner: The pieces of candy of uniform size and shape are each contained within wrappers and retail at the price of 1¢ each. The majority of the said pieces of candy of uniform size and shape are of the same color throughout, but a small

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number of said pieces of candy have centers of a color different from the majority. 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 wrapper removed. Purchasers procuring one of the pieces of candy having a center colored differently from the majority are entitled to receive free of charge and are to be given as a prize one of the other articles of merchandise included in said assortment, and the purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive free of charge and is to be given as a prize one of the said other articles of merchandise. The other articles of merchandise contained in said assortment are thus distributed to purchasers of candy from said assortment wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers 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 assortments 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. Such sales plan has the capacity and tendency of inducing purchasers to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure another article of merchandise.

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 the candy trade in this, to wit: that the use thereof has the tendency and capacity to exclude from said trade competitors of respondent 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 in such other competitors of respondent as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity 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. The aforementioned methods, acts, and practices of 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, 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 29, 1937, issued and on June 30, 1937, served its complaint in this proceeding upon the respondent, F. B. Washburn Candy Corporation, a corporation, erroneously named in said complaint as F. W. Washburn Candy Corporation, charging said respondent with the use of unfair

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methods of competition in commerce in violation of the provisions of said act. Thereafter, respondent filed in the office of the Commission its answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure. In said answer respondent waived any rights it might have had by reason of the misnomer above described and consented that any action taken by the Commission would be against the F. B. Washburn Candy Corporation. After the filing of said answer, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer 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. Respondent, F. B. Washburn Candy Corporation, erroneously named in the complaint as F. W. Washburn Candy Corporation, is a corporation organized and doing business under the laws of the State of Massachusetts, with its principal office and place of business located in the city of Brockton, State of Massachusetts. 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 the wholesale dealers and jobbers and retail dealers located at points in the various States of the United States. It causes and has caused its said candy when sold to be transported from its principal place of business in Brockton, Mass., to purchasers thereof in the State of Massachusetts and in other States of the United States at their respective places of business. 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 various 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, the respondent sells and has sold to wholesale dealers and jobbers, and to retail dealers, assortments of candies so packed and assembled as to involve, or which are designed to involve, the use of a lottery scheme when sold and distributed to the ultimate consumer thereof. Such assortments are composed of a number of

pieces of candy of uniform size and shape, together with a number of other articles of merchandise, which other articles of merchandise are to be given as prizes to purchasers of the pieces of candy of uniform size and shape in the following manner: The pieces of candy of uniform size and shape are each contained within wrappers and retail at the price of 1¢ each. The majority of the said pieces of candy of uniform size and shape are of the same color throughout, but a small number of said pieces of candy have centers of a color different from the majority. 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 wrapper removed. Purchasers procuring one of the pieces of candy having a center colored differently from the majority are entitled to receive free of charge and are to be given as a prize one of the other articles of merchandise included in said assortment, and the purchaser of the last piece of candy of uniform size and shape in said assortment is entitled to receive free of charge and is to be given as a prize one of the said other articles of merchandise. The other articles of merchandise contained in said assortment are thus distributed to purchasers of candy from said assortment wholly by lot or chance.

PAR. 3. The wholesale dealers and jobbers 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 assortments 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. Such sales plan has the capacity and tendency of inducing purchasers to purchase respondent's said products in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure another article of merchandise. 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 the candy trade in this, to wit: that the use thereof has the tendency and capacity to exclude from said

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trade competitors of respondent 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 are unwilling to offer for sale or sell candy so packed and assembled as above described, 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 an equivalent method. 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 in such other competitors of respondent as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

respondent, F. B. Washburn Candy Corporation, erroneously named in the complaint as F. W. Washburn Candy Corporation, filed herein on August 10, 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 further waiving any rights it might have by reason of the misnomer above described and consenting that any action taken by the Commission will be against the F. B. Washburn Candy Corporation, 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. B. Washburn Candy Corporation, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers, for resale to retail dealers or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy 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 of different colors, or having centers of a different color, together with other articles of merchandise, which said other articles of merchandise are to be given as prizes to the purchaser procuring a piece of candy of a particular color, or having a center of a particular color.

It is further ordered, That the respondent, F. B. Washburn Candy Corporation, a corporation, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

OLIVER L. VON BACHELLE, DOING BUSINESS AS
H. SHADE'S LABORATORIES, AND BUREAU OF EDU-
CATION, SHADE'S LABORATORIES

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

Docket 3101. Complaint, Apr. 9, 1937—Decision, Aug. 25, 1937

Where an individual engaged in sale and distribution of certain medical preparations for use in meeting so-called problems of feminine hygiene, and for use in prevention and treatment of diseases, ailments, and conditions to which women are particularly susceptible, in substantial competition with those engaged in sale and distribution, in commerce among the States and in the District of Columbia, of products intended, designed, and used and useful for the purposes for which said individual represented and implied that his said products were effective, and including, among his competitors in said commerce, many who truthfully represent their products and the nature of their organization—

(a) Falsely represented, in advertising his "Cones," "Suppositories," and "Antiseptic Powder," as variously known and described, in certain advertising literature, such as books, pamphlets, and circulars, distributed to purchasing public through boxes in which products were marketed, and through druggists and the United States mails, direct to prospective purchasers, and in newspaper and magazine advertising, that the particular product, as the case might be, was efficacious for use in prevention, treatment, and cure of diseases, ailments, and conditions peculiar to women, arising out of so-called problems of feminine hygiene, and was safe for general use and solved problems of aforesaid hygiene, and constituted an efficient prophylactic where possibility of venereal infection was present, and was more effective than carbolic acid or chlorine in prevention and treatment and cure of aforesaid diseases, etc., and constituted an efficient treatment for certain specified ailments and conditions, and promoted cleanliness and good health, and misrepresented, in various specific particulars, the functioning and qualities or properties of said products; and

(b) Made use, in his advertisements, of name "Bureau of Education" in connection with other statements in said advertising matter, in such a manner as to represent and imply, and thereby lead purchasing public to believe, that such "Bureau of Education" was a separate organization or institution, in no wise connected with his business, organized to carry on scientific research in methods of preventing, treating, or curing maladies peculiar to women, and that his products had been tested or approved by said organization or institution, facts being there was no such organization created to carry on scientific research in such methods, his products had not been tested by such an organization, and so-called "Bureau of Education" was simply a name adopted in furtherance of the sale thereof;

With effect of misleading and deceiving many members of the purchasing public and causing them erroneously to believe that said representations

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were true, and, because of such erroneous belief, to buy substantial quantities of his said products, and of thereby unfairly diverting trade in commerce to him from his competitors who truthfully represent their products; 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.

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

Mr. William L. Taggart 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 Oliver L. Von Bachele, doing business as H. Shade's Laboratories and as Bureau of Education, H. Shade's 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. The respondent, Oliver L. Von Bachele, of 2335 Commonwealth Avenue, Chicago, Ill., is engaged in business individually and under the trade names H. Shade's Laboratories and as Bureau of Education, H. Shade's Laboratories, 2148 North Halsted Street, Chicago, Ill. He directs and controls the sales policies and business operations of said businesses.

PAR. 2. The respondent has been and is now engaged in the business of manufacturing, advertising, distributing and selling certain medical preparations for use in so-called feminine hygiene and for use in the female anatomy to purchasers in commerce among and between the various States of the United States and in the District of Columbia. He maintains a constant course of trade and commerce in said products so distributed and sold by him.

In the course and conduct of said business respondent has been, and is, in substantial competition with other corporations and with firms, individuals, and partnerships engaged in the distribution and the 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. 3. The products marketed by respondent are variously known and described as "Shade's Cones," "Shade's Suppositories," "Shade's Antiseptic Powder."

In the operation of his business and for the purpose of inducing the purchase of said products on the part of members of the purchasing public, the respondent has made use of certain advertising literature, such as books, pamphlets, circulars, as well as newspaper and magazine advertising which purports to be descriptive of the various products herein named. The advertising literature herein referred to is distributed to the members of the purchasing public through the medium of the boxes in which the products are marketed, in advertising literature distributed through the medium of drug stores, through the United States mails direct to prospective purchasers and in newspapers and magazines.

With reference to the product designated as "Shade's Suppositories," such statements as the following are made:

NEW BLESSING for MODERN WOMANHOOD.

Solve Problem of Feminine Hygiene.

The intelligent practice of feminine hygiene is of vital importance to good health. Shade's Suppositories, a recognized reliable formula, permits modern wives to enjoy the benefits of feminine hygiene without its attendant problems. Safe, reliable and convenient. No water or accessories needed. Melting at body heat, they provide a protective film which is powerfully germicidal, yet soothing to delicate membranes. Don't wait! Send 10¢ for samples and personal information. Box of 24 cones—\$1.00.

In said statements, together with other similar statements not herein set out with respect to the product named, respondent directly and through implication represents and the public is thereby led to believe that said product forms a safe, competent, reliable remedy, cure and preventive of ill health in that it solves the problem of feminine hygiene; that said product is a safe product, reliable and convenient to use and forms a protective film in the vaginal canal which is powerfully germicidal and that said product is soothing to delicate membranes.

PAR. 4. In truth and in fact the product designated above does not form a safe, competent treatment, remedy, cure and preventive of ill health. It does not solve the problem of feminine hygiene and, further, the said product is not a safe product for general use. It will not form a protective film which is powerfully germicidal.

PAR. 5. With reference to the product designated as "Shade's Cones," such statements as the following are made:

* * * Known to the medical profession as Vagi-Seals for intimate Feminine Hygiene * * *

Shade's Cones are also in demand as a prophylactic, where the possibility of Venereal Disease communication is present.

Dainty women appreciate the value of cleanliness, but cleanliness is far more important in the delicate mucous membranes of the hidden parts, as it is on the

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face. In fact, any matter foreign to the parts, may soon cause inflammation and annoyance. The use of Shade's Vagi-Seal Cones tends to relieve inflammation and soothes the irritated membranes.

Shade's Cones contain no poisonous chemicals, yet they are more effective than any Solution of odorous Carbollic acid or Chlorine, that can be applied to the human body. Physicians testify to the utter harmlessness and effectiveness to the purpose of these ingredients * * *

Shade's Cones deposit a protective film or coating over the mucous membranes of the area, which is effective for a long period * * *

They also act as a deodorant and the women that use them, can always be sure of being protected from embarrassing odors, which sometimes arise from vaginal disorders.

We know that Shade's Cones are safe, healthful and clean, and that they should be left at least 8 to 10 hours in the cavity, before being washed out with a Shade Antiseptic Powder douche.

In said statements, together with other similar statements not herein set out with respect to the product named, respondent directly and through implication represents and the public is thereby led to believe that said product forms a safe, competent, reliable remedy, cure and preventive of ill health and that it is known to the medical profession for intimate feminine hygiene; that said product is a competent and satisfactory prophylactic for use where the possibility of venereal disease and contamination are present; that said product will relieve inflammation and soothe the irritated membranes of the vagina; that said product is more effective than carbollic acid or chlorine and physicians testify to the utter harmlessness and effectiveness of these products for the troubles set forth; that the product when used deposits a protective film or coating over the mucous membranes of the vagina which is effective for a long period; that the product acts as a deodorant and the women that use it can always be sure of being protected from embarrassing odors which arise from vaginal disorders.

In truth and in fact said product will not form a safe, competent, reliable remedy, cure and preventive for ill health. It is not known to the medical profession as a remedy for intimate feminine hygiene. It is not in demand as a prophylactic and it is not in demand as a prophylactic for use where there is a possibility of venereal disease and contamination present. It will not relieve inflammation or soothe irritated membranes of the vagina. It is not more effective than carbollic acid or chlorine. Physicians do not testify as to its harmlessness and effectiveness for the troubles herein set out and it is not harmless or fully effective for such use. The product when used does not deposit a protective film or coating over the mucous membranes of the vagina and is not effective for long periods. Further, the product does not act as a deodorant and the woman who uses

it cannot be sure of always being protected from embarrassing odors which usually arise from vaginal disorders.

PAR. 6. With reference to the product designated and known as "Shade's Antiseptic Powder" such statements as the following are made:

Vaginal douching is so important to health, that dainty women, cannot afford to neglect it. Douching should be practiced regularly by every woman, and especially the married woman. Secretions in the marital state are more frequent and opportunities for infection are increased.

Shade's Antiseptic Powder not only promotes cleanliness and health, but also destroys bacteria, and it soothes and heals the delicate tissues.

Two teaspoonfuls of the powder to 2 quarts of warm water, used daily, in Leucorrhœa (Whites), Vaginitis and Cervicitis.

It destroys unpleasant odors, and produces that wonderful feeling of inner cleanliness, so much desired by every dainty woman.

In said statements, together with other similar statements not herein set out with respect to the product named, respondent directly and through implication represents and the public is thereby led to believe that said product promotes cleanliness and health, destroys bacteria and soothes and heals the delicate tissues of the vaginal tract; that it is a competent and satisfactory treatment for leucorrhœa, whites, vaginitis, and cervicitis and destroys unpleasant odors and promotes a feeling of cleanliness.

In truth and in fact the product does not promote cleanliness and health. It does not destroy bacteria nor soothe nor heal the delicate tissues of the vaginal tract. It is not a competent and satisfactory treatment for leucorrhœa, whites, vaginitis, and cervicitis and, further, it will not destroy unpleasant odors and promote a feeling of cleanliness.

PAR. 7. In the operation of his business, as aforesaid, respondent makes use of in his advertisements the name of "Bureau of Education." Said statement together with other statements in said advertising represents to the public directly or through implication that the Bureau of Education is a bureau devoted to scientific research on questions involving so-called marriage hygiene.

In truth and in fact the said Bureau of Education is not a separate organization or institution organized for the purpose of carrying on scientific research in the methods of preventing, treating or curing maladies peculiar to women or any other questions, and said bureau does not actually exist but the name is used for the purpose of encouraging the sale of respondent's products.

PAR. 8. There are among respondent's competitors in commerce, as herein set out, those who do not in any way misrepresent the character and nature of their products and who do not make use

of any of the misleading representations herein set out and similar ones with respect to the therapeutic value of the product and others.

PAR. 9. The aforesaid false and misleading statements and representations used by the respondent in offering for sale and selling the various products as herein described in commerce as herein set out, have had, and 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 respondent's various products on account of said erroneous and mistaken belief.

As a result thereof trade is unfairly diverted from competitors of respondent 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 respondent to competition in commerce among and between the various States of the United States.

PAR. 10. The methods, acts, and practices of respondent herein set forth are to the prejudice of the public and of competitors of the respondent 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 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 9, 1937, issued, and on April 13, 1937, served, its complaint in this proceeding upon respondent, Oliver L. Von Bachel, doing business as H. Shade's Laboratories, and as Bureau of Education, H. Shade's Laboratories, charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act. On July 16, 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 hearings on the charges set forth in the said complaint and that, without further evidence or other intervening procedure, the Commission might issue and serve upon him findings as to the facts and conclusions, 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 Commis-

sion 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 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, Oliver L. Von Bachelles, is engaged in business under the trade name H. Shade's Laboratories and under the trade name Bureau of Education, H. Shade's Laboratories, and has his office and principal place of business at 2148 North Halsted Street, in the city of Chicago, State of Illinois.

PAR. 2. The respondent is now, and has been for more than one year last past, engaged in the sale and distribution of certain medical preparations, for use in meeting the so-called problems of feminine hygiene, and for use in the prevention, and treatment of diseases, ailments and conditions to which women are particularly susceptible. Respondent causes said products, when sold, to be transported from his place of business in the city of Chicago, State of Illinois, to the purchasers thereof located in various States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains a constant current of trade in commerce between and among the various States of the United States and in the District of Columbia in the sale and distribution of said products.

In the course and conduct of his business in said commerce respondent has been, and is, in substantial competition with other individuals and with firms, corporations, and partnerships engaged in the sale and distribution in said commerce of products intended, designed, and used and useful for the purposes for which the respondent represent and implies that his said products are efficacious.

PAR. 3. The products marketed by respondent are variously known and described as "Shade's Cones," "Shade's Suppositories," "Shade's Antiseptic Powder."

In the operation of his business and for the purpose of inducing the purchase of said products on the part of members of the purchasing public, the respondent has made use of certain advertising literature, such as books, pamphlets, circulars, as well as newspaper and magazine advertising which purports to be descriptive of the various products herein named. The advertising literature herein referred to is distributed to the members of the purchasing public through the medium of the boxes in which the products are marketed, through advertising literature distributed by drug stores, and through the United States mails direct to prospective purchasers.

Respondent also uses advertisements of similar nature and effect which are placed in newspapers and magazines of interstate circulation.

With reference to the product designated as "Shade's Suppositories," such statements as the following are made:

NEW BLESSING FOR MODERN WOMENHOOD.

Solve Problem of Feminine Hygiene.

The intelligent practice of feminine hygiene is of vital importance to good health. Shade's Suppositories, a recognized reliable formula, permits modern wives to enjoy the benefits of feminine hygiene without its attendant problems. Safe, reliable and convenient. No water or accessories needed. Melting at body heat, they provide a protective film which is powerfully germicidal, yet soothing to delicate membranes. Don't wait! Send 10¢ for samples and personal information. Box of 24 cones—\$1.00.

Through said statements, and in other statements not herein set out, with respect to the product Shade's Suppositories the respondent represents and implies, and the purchasing public is thereby led to believe, that said product is efficacious for use in the prevention, treatment and cure of diseases, ailments and conditions peculiar to women arising out of the so-called problems of feminine hygiene; that it solves the problem of feminine hygiene; that the product may be used with safety; that its use forms a protective film which is powerfully germicidal, and that its use is soothing to delicate membranes. Respondent's product, Shade's Suppositories, is not efficacious for use in the prevention, treatment and cure of diseases, ailments and conditions peculiar to women arising out of the so-called problems of feminine hygiene; said product does not solve the problems of feminine hygiene, and is not safe for general use; said product does not form a protective film which is powerfully germicidal and its use is not soothing to delicate membranes.

PAR. 4. With reference to the product designated as "Shade's Cones," such statements as the following are made:

* * * Known to the medical profession as Vagi-Seals for Intimate Feminine Hygiene.

Shade's Cones are also in demand as a prophylactic, where the possibility of Venereal Disease communication is present.

Shade's Cones contain no poisonous chemicals, yet they are more effective than any Solution of odorous Carbolic acid or Chlorine, that can be applied to the human body. Physicians testify to the utter harmlessness and effectiveness to the purpose of these ingredients * * *

Shade's Cones deposit a protective film or coating over the mucous membranes of the area, which is effective for a long period * * *

They also act as a deodorant and the women that use them can always be sure of being protected from embarrassing odors, which sometimes arise from vaginal disorders.

Findings

We know that Shade's Cones are safe, healthful and clean, and that they should be left at least 8 to 10 hours in the cavity, before being washed out with a Shade Antiseptic Powder douche.

Through said statements, and in other statements of similar import, with respect to the product "Shade's Cones," the respondent represents and implies, and the purchasing public is thereby led to believe, that said product is efficacious for use in the prevention, treatment and cure of diseases, ailments and conditions peculiar to women arising out of the so-called problems of feminine hygiene; that said product is safe for general use; that said product is an efficient prophylactic where the possibility of venereal disease infection is present; that said product relieves inflammation and is soothing to irritated membranes; that the product is more effective than carbolic acid or chlorine in the prevention, treatment and cure of diseases and ailments peculiar to women arising out of the so-called problems of feminine hygiene; that its use deposits a protective film or coating over the mucous membranes which remains effective for a long period of time, and that the product is a deodorant and assures the user of protection from embarrassing odors arising from the so-called problems of feminine hygiene. Respondent's product "Shade's Cones" is not efficacious for use in the prevention, treatment and cure of diseases, ailments and conditions peculiar to women arising out of the so-called problems of feminine hygiene; said product is not safe for general use and is not an efficient prophylactic where the possibility of venereal disease infection is present; said product does not relieve inflammation and is not soothing to irritated membranes; said product is not more effective than carbolic acid or chlorine in the prevention, treatment and cure of diseases and ailments peculiar to women arising out of the so-called problems of feminine hygiene; its use does not deposit a protective film or coating over the mucous membrane which remains effective for a long period of time; said product is not a deodorant and its use will not assure the user of protection from embarrassing odors arising from the so-called problems of feminine hygiene.

PAR. 5. With reference to the product designated and known as "Shade's Antiseptic Powder" such statements as the following are made:

Vaginal douching is so important to health that dainty women cannot afford to neglect it. Douching should be practiced regularly by every woman, and especially the married woman. Secretions in the marital state are more frequent and opportunities for infection are increased.

Shade's Antiseptic Powder not only promotes cleanliness and health, but also destroys bacteria, and it soothes and heals the delicate tissues.

Two teaspoonfuls of the powder to 2 quarts of warm water, used daily, in Leucorrhœa (Whites), Vaginitis and Cervicitis.

It destroys unpleasant odors, and produces that wonderful feeling of inner cleanliness, so much desired by every dainty woman.

Through said statements, and in other statements of similar import, with respect to the product "Shade's Antiseptic Powder," the respondent represents and implies, and the purchasing public is thereby led to believe, that said product promotes cleanliness and good health; that it destroys bacteria and soothes and heals delicate tissues, and that it is an efficient treatment for leucorrhœa (whites), vaginitis and cervicitis and destroys unpleasant odors. The product "Shade's Antiseptic Powder" does not promote cleanliness and good health, destroy bacteria nor does it soothe and heal delicate tissues; said product is not an efficient treatment for leucorrhœa (whites), vaginitis and cervicitis and its use has no beneficial effects in the treatment of such conditions, nor will it destroy unpleasant odors.

PAR. 6. In the conduct of his business as aforesaid the respondent uses in his advertisements the name "Bureau of Education" in connection with other statements in the advertising matter in such a manner as to represent and imply, and thereby lead the purchasing public to believe, that the "Bureau of Education" is a separate organization or institution in no wise connected with the business of the respondent, organized for the purpose of carrying on scientific research in the methods of preventing, treating or curing maladies peculiar to women, and that respondent's products have been tested or approved by such organization or institution. There is no such organization as the "Bureau of Education" organized for the purpose of carrying on scientific research in the methods of preventing, treating or curing maladies peculiar to women, and respondent's products have not been tested by such an organization. The so-called "Bureau of Education" is simply a name adopted by the respondent to use in furtherance of the sale of his said products.

There are among respondent's competitors in said commerce many who truthfully represent their products and the nature of their organization.

PAR. 7. The representations and implications used by the respondent as above set out in connection with the offering for sale and sale of the products herein described in said commerce are false, misleading and deceptive and have had, and now have, the tendency and capacity to, and do, mislead and deceive many members of the purchasing public and cause them erroneously to believe that said representations are true and cause them, because of said erroneous belief, to purchase substantial quantities of respondent's said products,

thereby unfairly diverting trade in said commerce to the respondent from his competitors who truthfully represent their products to the substantial injury of said competitors in said commerce and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Oliver L. Von Bachelles, 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 July 16, 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, Oliver L. Von Bachelles, an individual, doing business as H. Shade's Laboratories, and as Bureau of Education, H. Shade's Laboratories, or under any other name, his representatives, agents and employees in connection with the offering for sale, sale and distribution of the medicinal or pharmaceutical preparations now designated Shade's Cones, Shade's Suppositories and Shade's Antiseptic Powder, or any other preparations of substantially the same ingredients and therapeutic efficacy, whether designated 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 or implying in connection with the offering for sale, sale and distribution of any of said products.

1. That said product is efficacious for use in the prevention, treatment and cure of diseases, ailments and conditions peculiar to women arising out of the so-called problems of feminine hygiene;

2. That said product is safe for general use;

3. That said product solves the problems of feminine hygiene;

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4. That said product is an efficient prophylactic where the possibility of venereal disease infection is present;

5. That said product relieves inflammation and is soothing to irritated or delicate membranes;

6. That said product is more effective than carbolic acid or chlorine in the prevention, treatment and cure of diseases, ailments and conditions peculiar to women arising out of the so-called problems of feminine hygiene;

7. That the use of said product deposits a protective film or coating over the membrane which remains effective for a long period of time;

8. That said product is a deodorant and that its use will assure the user of protection from embarrassing odors arising from the so-called problems of feminine hygiene;

9. That said product forms a protective film which is powerfully germicidal;

10. That said product promotes cleanliness and good health, destroys bacterial and soothes and heals delicate tissues or membranes;

11. That said product is an efficient treatment for leucorrhoea (whites), vaginitis and cervicitis, or has a beneficial effect in the treatment of such ailments or conditions, or that it will destroy unpleasant odors;

12. That, through the use of the words "Bureau of Education" or other words, said products have been submitted to or approved by an institution organized for the purpose of carrying on scientific research in the methods of treating and curing maladies peculiar to women, and that respondent's products have been tested by such an organization.

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

HARRY NEIVERT, TRADING AS PIGRO CHAMOIS
COMPANY

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

Docket 2513. Complaint, Aug. 13, 1935—Decision, Aug. 28, 1937

Where an individual engaged in the distribution of leather products, including certain products which were neither (1) chamois leather, as originally made from the skin of an Alpine antelope, highly prized for its soft and pliable quality for use in polishing such articles as jewelry, metals, glass, and wood, and possessed of additional feature of absorbing water readily and returning, when dry, to its original softness and pliability, nor (2) composed of the inner side of a sheepskin or "flesher," from which the outer or grain side has been split, tanned exclusively with marine-oil, and with a natural yellowish color well known to purchasing public, and possessed generally of same qualities as those of the original chamois skin, and commercially now known, and to public as "chamois," and in the sale of said products in competition with others engaged in manufacture and sale of washable leather goods to wholesale and retail dealers and other purchasers in the various States and in the District of Columbia—

Made use of trade name including word "chamois" on its invoices, letterheads, circulars, and other printed matter, and in other ways, in soliciting sale of and selling his aforesaid products, and included said word in invoices, circulars, and advertising matter in describing and referring to said certain products hereinabove referred to, through such names as "Carpincho chamois cuts," "Carpincho square cuts, chamois color," "Sheepskin chamois, chrome tan," notwithstanding fact said certain products were not the genuine or commercial chamois leather, as hereinbefore described, but constituted the inner side of the carpincho leather, grain or outside split of which is used in glove manufacture, and which, in color and appearance, as result of tanning process employed, resembles that of chamois, though not possessed of moisture-absorbent quality of the oil-tanned sheepskin fleshers and without latter's quality of returning to their original softness and pliability after being saturated with water;

With capacity and tendency to mislead and deceive number of the purchasing public into buying his said leather products in the erroneous and mistaken belief that they were purchasing such products possessing qualities of chamois as hereinabove set forth, and to deceive ultimate purchasers into buying leather products which they did not intend to buy and which do not possess said certain desirable qualities possessed by the chamois, as above set forth, and with result of placing in the hands of retailers means of deceiving ultimate purchaser as to the leather from which said products are actually made, and with tendency and capacity to divert trade from competitors engaged in selling articles of leather in commerce among the various states, truthfully represented as chamois, and from other competitors likewise engaged in selling in such commerce products truthfully

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advertised and of the same kind and general appearance as those of said individual:

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

Mr. James M. Hammond for the Commission.

Maidier & Maidier, 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 Harry Neivert, an individual doing business as the Pigo Chamois Company, hereinafter referred to as the respondent, 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 this, its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent herein, Harry Neivert, is an individual doing business under the firm name and style of Pigo Chamois Company, with his principal place of business being in the city of Gloversville, N. Y. He is now and has been for more than one year last past, engaged in the business of manufacturing leather products designated by him as Carpincho chamois cuts, pocket shaped carpincho chamois cuts, carpincho square cuts "chamois color," sheepskin chamois chrome tan, carpincho middle split chamois, sheepskin chamois, chrome tanned, Java flesher chamois and other leather products carrying as part of their name or designation the word "chamois" and in the sale thereof between and among the various States of the United States and the District of Columbia, shipping such products, when sold, to the purchasers thereof, some located in the State of New York and others located in various States of the United States and 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, the respondent is now, and for more than one year last past, has been in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale of leather products between and among the various States of the United States, and 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 the District of Columbia now represents and for more than one year last past has represented in and by the use of his aforesaid trade name by the designation of his leather products hereinbefore mentioned, by advertisements, price lists 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 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 general 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 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 the oil dressed sheepskin is the word "chamois" and that 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 "chamois," but are articles manufactured from sheepskin which have not been oil tanned or from pigskin and have the same general appearance but not the peculiar qualities or properties of articles known to the public and trade as "chamois."

PAR. 4. Use by the respondent of its aforesaid trade name, of the aforesaid designations of its leather products, and of other designations, and of the advertisements 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" and to purchase such products of respondent in such erroneous belief and places into the hands of dealers 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 anywise designate such products as "chamois." There are also among such competitors manufacturers who manufacture and sell "chamois" and who truthfully represent their products as "chamois." By the aforesaid acts and practices of respondent, trade is diverted

by respondent from his competitors who do not misrepresent their products whereby substantial injury is being done and has been done by respondent to 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 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 issued and served its complaint in this proceeding upon respondent herein, Harry Neivert, an individual, doing business under the firm name and style of Pigno Chamois 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, the respondent filed his answer in this proceeding, admitting in part, and denying in part, the allegations of the complaint. 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, Messrs. Maider & Maider, of Gloversville, N. Y., 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, 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. For more than one year prior to the filing of the complaint in this proceeding, Harry Neivert, respondent herein, was, and had been, doing business under the firm name and style of Pigro Chamois Company, in the distribution and sale of leather products. His office and principal place of business was then, and still is, located in the city of Gloversville, State of New York.

Respondent has caused, and still causes, his said leather products, when sold by him, to be transported in commerce from his place of business at Gloversville, N. Y., to the purchasers thereof by shipping the said products to, into, and through States other than the State of New York.

PAR. 2. During the times above referred to, other individuals, firms, and corporations located in the various States of the United States have been engaged in the manufacture of washable leather products which they have sold, and still sell, to wholesale and retail dealers and other purchasers located in the various States of the United States and in the District of Columbia. The respondent, during the aforesaid times, was, and still is, in competition in the sale of leather products with said other individuals, firms, and corporations, in commerce as herein set out.

PAR. 3. Respondent, for more than one year prior to the filing of the complaint in this proceeding, described and referred in his invoices, circulars, and advertising matter, to certain of the leather products sold by him as follows: Carpincho chamois cuts; pocket shaped carpincho chamois cuts; carpincho square cuts, chamois color; sheepskin chamois, chrome tan; carpincho middle split chamois; sheepskin chamois, chrome tanned; and Java flesher chamois; and carried as part of the respective names or designations of other leather products the word "chamois."

PAR. 4. The respondent, at the time of the filing of the complaint herein, and for a long time prior thereto, used as, and for, the trade name for his said business the words "Pigro Chamois Company." This trade name was used by the respondent on his invoices, letter-heads, circulars, and other printed matter, and in other ways, in soliciting the sale of, and in selling, his products in commerce as described in paragraph 1.

PAR. 5. Chamois leather was originally made from the skin of an Alpine antelope known as the "chamois." This animal is now, and has been for many years, practically extinct, so that its skin is a rarity and has not been sold in commercial quantities for many years. Its skin was highly prized for its soft and pliable quality

for use in polishing such articles as jewelry, metals, glass, and wood. It possessed the additional feature of absorbing water readily and returning, when dry, to its original softness and pliability.

In searching for a substitute for the original "chamois" leather after the source of supply became exhausted, tanners tried many different varieties of leather and processes of tannage. After many experiments, it was found that the inner side of a sheepskin, known technically as a "flesher," from which the outer, or grain, side has been split, when tanned exclusively with marine-oil, usually cod oil, would produce an article very similar to, and possessing, generally, the same qualities as that of the skin of the original "chamois" antelope. Sheepskin fleshers, thus tanned, because of their use for many years as a substitute for the skin of the "chamois" antelope, constitute what is now known commercially and to the public as "chamois." This leather is not dyed, as the oil tannage gives it a natural yellowish color which is well known to the purchasing public. Its original softness and its pliability, when dried, after having been saturated with water, are very desirable qualities, and influence the purchase of large quantities of said products in preference to other products designed for similar usage.

PAR. 6. Gloversville, N. Y., where respondent's place of business is located, is the center of the glovemaking industry in the United States. Gloves, except work gloves of the heaviest kind, are made from the grain, or outside split, of many different kinds of skins, including the carpincho, which is a semi-aquatic South American animal resembling in appearance a large pig. This leather resembles "chamois" in color and appearance, as the whole skin during the tanning process, and before splitting, is dyed yellow for use in making yellow gloves. Hides which are intended for ultimate use in the manufacture of gloves, however, are usually not oil-tanned, which is a slow and expensive process, but are either tanned by the use of formaldehyde or chrome, which are much cheaper and quicker processes of tanning. The inner side of these skins, the grain split of which has been used in the manufacture of gloves, is, therefore, a byproduct, and is sold cheaply for any use to which the same may be put. These inner splits, many of which are carpincho or peccary, constitute the articles purchased and marketed as "chamois" by the respondent. He deals primarily with the "Five and Ten Cent" retail chains, and his products usually sell for ten or twenty cents. Skins tanned by chrome or formaldehyde from which the respondent's products are made are entirely satisfactory for use as gloves, but will not absorb moisture with the ease and facility of oil-tanned sheepskin fleshers, and will not return to their original softness

and pliability after being saturated with water. The leather products made from these inner skins so tanned by the formaldehyde or chrome processes, therefore, do not have many of the desirable qualities of those products made from the skins referred to in paragraph 5. The yellow color and general similarity in appearance, coupled with the use of the descriptive terminology set out in paragraphs 3 and 4 has a capacity and tendency to mislead and deceive a number of the purchasing public into purchasing respondent's leather products in the erroneous and mistaken belief that they are purchasing leather products possessing the qualities detailed in paragraph 5.

PAR. 7. The use by respondent of the word "chamois" in his trade name, and in connection with the sale of articles of leather referred to in paragraph 3 hereof is misleading, and has the capacity and tendency to deceive, and may deceive, the ultimate purchasers into buying leather products which they do not intend to buy and which do not possess certain desirable qualities possessed by the leather products referred to in paragraph 5. Through and by virtue of the practices aforesaid, the respondent places, and has placed, in the hands of retailers a means of deceiving the ultimate purchaser as to the leather from which said products are actually made.

The use by the respondent of the aforesaid practices has the tendency and capacity to divert trade from competitors engaged in selling articles of leather in commerce between and among the various States of the United States which are truthfully represented as "chamois" and from other competitors of respondent likewise engaged in selling in like commerce products which are truthfully advertised and are of the same kind and general appearance as those of respondent.

CONCLUSION

The aforesaid acts and practices of the respondent, under the conditions and circumstances set forth in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and 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, Harry Neivert, an individual, doing

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business under the firm name and style of Pigo Chamois Company, by his attorneys 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 conclusion based thereon and an order disposing of the proceedings; 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, Harry Neivert, an individual, doing business under the firm name and style of Pigo Chamois Company, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of his leather products in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing, directly or by inference through his trade name, circulars, contracts, advertisements, invoices, or bulletins, or through any other means whatever, that the leather products sold by him are "chamois," or are made from "chamois" when said leather products are not manufactured:

(a) From the skin of the Alpine antelope commonly known and referred to as chamois; or

(b) From fleshers or under-splits of sheepskin straight oil-dressed or tanned without the use of alum, chrome, or formaldehyde.

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

Syllabus

IN THE MATTER OF
TRADE LABORATORIES, INC., ETC., 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 3064. Complaint, Feb. 19, 1937—Decision, Aug. 28, 1937

Where five corporations and three individuals, officers thereof and directors and in control of their sales policies and general business activities, engaged in distribution and sale of shoe polish, shaving, dental, and sun tan creams, and similar commercial preparations, and toilet articles made by two of aforesaid corporations—

- (a) Packed their aforesaid products in containers upon which were printed, together with description of product, certain price marks, facts being retail prices thus indicated, and appearing on items of merchandise or containers thereof, were not intended by them or by those buying for resale, to be true retail prices or values of merchandise thus price marked, but were intended to be far in excess of prices contemplated and actually charged for sale of merchandise to ultimate consumer buying in usual course of trade, and were not fairly indicative of quality, character, and amount of said products or their ingredients; in accordance with general public's understanding of manufacturers' long-standing practice of indicating retail price on containers of their product as indicative of quality, character, and amount of ingredients used, and in accordance with confidence placed by public in such price marks and representations thereby made and substantial volume of merchandise purchased in such lines;
- (b) Placed the tubes or containers of the products variously made and sold by them in cartons of a capacity and size greatly in excess of that required to house said various tubes, and capable of containing much larger and longer tubes of product than those actually contained, to the deception of the purchasing public, recipient, usually and in accordance with its expectation in purchasing product of type made and packed as aforesaid, of a tube or amount commensurate with size of pasteboard carton or container enclosing same; and
- (c) Caused certain of their said products to be conspicuously labeled and advertised as made and sold by "Dr. Dally's Laboratories, New York, N. Y.," notwithstanding fact products in question, made by two of their number as above set forth, were not made by Dr. Dally's Laboratories, nor under formula or supervision of any doctor so named, nor in laboratory having doctor in its employ; and

Where the non-manufacturing three of aforesaid five corporations—

- (d) Included word "laboratories" in their corporate names, and represented thereby that they owned, controlled, or operated chemical workroom or place devoted to experimental study in some branch of natural science or to the application of scientific principles in the testing, analysis, and preparation of their said products, facts being they were not directly engaged, as separate corporate entities, in manufacture of any product, but merely owned and controlled their own respective corporate names, used by said manufacturing corporations, in distribution of products sold

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by them, as designations or representations that aforesaid respective corporations were the actual manufacturers of the various products labelled with their said respective corporate names, and they neither owned, controlled, nor operated any type of laboratory or chemical workroom or places devoted to experimental study in any branch of natural science, as above set forth, and did not manufacture said products;

With effect of misleading and deceiving members of the purchasing public into the mistaken and erroneous belief that said representations were true, and into purchase of their said products by reason thereof, and of unfairly diverting trade to them from their competitors who do not use similar false and misleading practices in the sale of their respective products, but truthfully represent true quality thereof and their true business status; to the substantial injury of competition, and with further result of placing in the hands of purchasers buying for resale means enabling them to commit a fraud upon a substantial portion of consuming public:

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

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

Mr. William L. Taggart for the Commission.

Strange, Myers, Hinds & Wight, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914 (38 Stat. 717-15 U.S.C.A. Sec. 41), 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 Trade Laboratories, Inc., also trading as Redd Chemical Company, Modern Brands, Inc., Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., Dr. Daily's Laboratories, Inc., corporations, and J. C. Brush, C. R. Dickinson, and C. V. Brush, individuals, all 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. Trade Laboratories, Inc., also trading as Redd Chemical Company, Modern Brands, Inc., Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., are all corporations organized and existing under the laws of the State of New Jersey, with their principal place of business at 412 Halsey Street, Newark, N. J. All of the above named corporations are officered and directed by the individual respondents namely:

J. C. Brush, president,
C. R. Dickinson, vice president,
C. V. Brush, secretary and treasurer,

who direct and control the sales policies and general business activities of said corporations.

PAR. 2. All of the said corporate respondents and individuals herein named are now, and for several years last past have been, distributors and sellers of shaving cream, dental cream, shoe polish, sun tan cream, and similar commercial preparations and toilet articles. The products which they distribute are manufactured by respondents Modern Brands, and Trade Laboratories, Inc.

Said respondents, being engaged in business as aforesaid, cause said products, 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 and commerce in said above described products sold by respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondents are now, and have been, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of selling shaving cream, dental cream, sun tan cream, and similar toilet articles in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Over a period of many years many manufacturers have formed the custom of marking or stamping on articles or items of manufacture, or on the containers thereof, the retail price at which said manufacturers suggest the retailer should sell said items or articles to the ultimate consumer purchaser. This suggested retail price, so stamped or marked, is intended to represent the cost of the manufacture of the article plus a reasonable profit for the manufacturer, middleman, and retailer and, consequently, to represent the approximate retail sale value of the article. The range of the suggested retail price is intended by the manufacturer to be indicative of the quality, character and amount of the ingredients used. The public generally understands the custom herein detailed and has been led to, and does, place its confidence in the price markings so stamped and the representations thereby made as to the quality and amount of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

PAR. 5. Respondents pack their products in containers on the outside of which is printed a price mark and a description of the product. Among the items advertised and sold aforesaid in con-

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nection with which retail prices have been affixed either to the article itself or to the container thereof and which are placed in a carton or container to house said product are the following:

1. Windsor Shaving Cream.....	50¢
2. Trim Shaving Cream.....	Giant Size 60¢
3. Hudson Bay Shaving Cream.....	Large 35¢ Size
4. Royal Palm Shaving Cream.....	Giant 60¢ Size
5. Imperial Shaving Cream.....	Giant 50¢ Size
6. Barritt's Shaving Cream.....	Giant 50¢ Size
7. Society Brand Dental Cream.....	Large 35¢ Size

PAR. 6. In truth and in fact the retail prices, as indicated above, appearing on the items of merchandise or on the containers thereof, were not intended by either the respondents or the purchasers, purchasing for resale, to be the true retail price or the true retail value of the merchandise so price marked. The retail prices, as indicated, appearing on the items of merchandise, or on the containers thereof, were intended by the respondents, and by the purchasers purchasing for resale, to be far in excess of the price intended to be charged and actually charged on a sale of the merchandise to the ultimate consumer purchasing in the usual course of trade and far in excess of the true value of the various items of merchandise so price marked.

PAR. 7. When the purchasing public make a purchase of a product of the type manufactured and packed by the respondent (not being able to see the inside of the carton or container or able to examine it before purchase) they expect and do usually receive a tube or an amount of the product commensurate with the size of the paste board carton or container in which the product is packed for sale.

In truth and in fact the cartons in which the tubes or containers of the above products and others manufactured and sold by respondents are placed and shipped in commerce as herein described are of a capacity and size greatly in excess of that required to house said tubes of the product. Said cartons are of a size and capacity capable of containing much larger and longer tubes of the product than those which said cartons actually contain, and the public has been and is being deceived when purchasing any of the products packed and sold as aforesaid.

PAR. 8. In the manufacture, sale and distribution of their products in commerce respondents cause certain of their products to be labelled and advertised as being manufactured and sold by Dr. Daily's Laboratories, Inc., New York, N. Y. The labelling of this product contains in large type on the carton after a description of the product the words "Dr. Daily's Laboratories, New York, N. Y." This statement serves as a representation on the part of the respondents that

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the products so labelled and advertised were actually manufactured under a formula of, or under the supervision of, a Dr. Daily in the plant of the Dr. Daily's Laboratories.

In truth and in fact the product labelled as above mentioned is manufactured by the respondents Modern Brands, Inc. and Trade Laboratories, Inc., and is not manufactured by Dr. Daily's Laboratories. The product is not manufactured and made under the formula of, or the supervision of, any doctor by the name of Daily. No doctor is employed in the laboratory in which the product is manufactured.

The respondents, Perlox Laboratories, Inc., Pearl-White Laboratories, Inc. and Dr. Daily's Laboratories, Inc. are not directly engaged in the production of any products as separate corporate entities but they merely own and control their own respective corporate names, which are used by Modern Brands, Inc. and Trade Laboratories, Inc. in the distribution of the products which they sell as designations or representations that said respective corporations are the actual manufacturers of the various products labelled with their respective corporate names. The said respondents Perlox Laboratories, Inc., Pearl-White Laboratories, Inc. and Dr. Daily's Laboratories, Inc. do not own, control, or operate any type of laboratory for the manufacture of any commercial preparations or toilet products, and do not manufacture said products.

PAR. 9. The aforesaid false and misleading representations have had, and now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true and into the purchase of respondents' products on account thereof. As a result thereof trade is unfairly diverted to respondents from their competitors who do not use similar false and misleading practices in the sale of their respective products but who truthfully represent the true quality of their products and their true business status. In consequence thereof substantial injury has been done to competition in commerce among and between the various States of the United States.

Likewise, the false and misleading acts and representations, hereinabove set out on the part of respondents, places in the hands of the purchasers buying for resale, an instrument and a means whereby said purchasers may commit a fraud upon a substantial portion of the consuming public.

PAR. 10. The above and foregoing acts, practices, and representations of respondents have been, and are, all to the prejudice of the public and of respondents' competitors, and have been, and are, unfair

methods of competition within the meaning and intent of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its power and duties, and for other purposes," the Federal Trade Commission on February 19, 1937, issued, and on February 23, served, its complaint in this proceeding upon respondents Trade Laboratories, Inc., also trading as Redd Chemical Company, Modern Brands, Inc., Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., corporations, and upon the individual respondents, J. C. Brush, C. R. Dickinson, and C. V. Brush, 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 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. Trade Laboratories, Inc., also trading as Redd Chemical Company, Modern Brands, Inc., Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., are all corporations organized and existing under the laws of the State of New Jersey, with their principal place of business at 412 Halsey Street, Newark, N. J. All of the above named corporations are officered and directed by the individual respondents, namely:

J. C. Brush, president,

C. R. Dickinson, vice president,

C. V. Brush, secretary and treasurer,

who direct and control the sales policies and general business activities of said corporations.

PAR. 2. All of the said corporate respondents and individuals herein named are now, and for several years last past have been, distributors and sellers of shaving cream, dental cream, shoe polish, sun tan cream, and similar commercial preparations and toilet articles. The products which they distribute are manufactured by respondents Modern Brands, and Trade Laboratories, Inc.

Said respondents, being engaged in business as aforesaid, cause said products, 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 and commerce in said above described products sold by respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondents are now, and have been in substantial competition with other individuals, firms, and corporations likewise engaged in the business of selling shaving cream, dental cream, sun tan cream, and similar toilet articles in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Over a period of many years many manufacturers have formed the custom of marking or stamping on articles or items of manufacture, or on the containers thereof, the retail price at which said manufacturers suggest the retailer should sell said items or articles to the ultimate consumer purchaser. This suggested retail price, so stamped or marked, is intended to, and does represent the cost of the manufacture of the article plus a reasonable profit for the manufacturer, middleman, and retailer and, consequently, represents the approximate retail sale value of the article. The range of the suggested retail price is intended by the manufacturer to be, and is, indicative of the quality, character, and amount of the ingredients used. The public generally understands the custom herein detailed and has been led to, and does place its confidence in the price markings so stamped and the representations thereby made as to the quality and amount of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

PAR. 5. Respondents pack their products in containers on the outside of which is printed a price mark and a description of the product. Among the items advertised and sold aforesaid in connection with

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which retail prices have been affixed either to the article itself or to the container thereof and which are placed in a carton or container to house said product are the following:

1. Windsor Shaving Cream-----	50¢
2. Trim Shaving Cream-----	Giant Size 60¢
3. Hudson Bay Shaving Cream-----	Large 35¢ Size
4. Imperial Shaving Cream-----	Giant 50¢ Size
5. Royal Palm Shaving Cream-----	Giant 60¢ Size
6. Barritt's Shaving Cream-----	Giant 50¢ Size
7. Society Brand Dental Cream-----	Large 35¢ Size

PAR. 6. In truth and in fact the retail prices, as indicated above, appearing on the items of merchandise or on the containers thereof, were not intended by either the respondents or the purchasers, purchasing for resale, to be the true retail price or the true retail value of the merchandise so price marked. The retail prices as indicated, appearing on the items of merchandise or on the containers thereof, were intended by the respondents, and by the purchasers purchasing for resale, to be far in excess of the prices intended to be charged and actually charged on a sale of the merchandise to the ultimate consumer purchasing in the usual course of trade and are not fairly indicative of the quality, character, and amount of the said products or their ingredients.

PAR. 7. When the purchasing public makes a purchase of a product of the type manufactured and packed by the respondent (not being able to see the inside of the carton or container or able to examine it before purchase), it expects and usually does receive a tube or an amount of the product commensurate with the size of the pasteboard carton or container in which the product is packed for sale.

But the cartons in which the tubes or containers of the above products and others manufactured and sold by respondents are placed and shipped in commerce as herein described are of a capacity and size greatly in excess of that required to house said tubes of the product. Said cartons are of a size and capacity capable of containing much larger and longer tubes of the product than those which said cartons actually contain, and the public has been and is being deceived when purchasing any of the products packed and sold as aforesaid.

PAR. 8. In the manufacture, sale and distribution of their products in commerce, respondents cause certain of their products to be labelled and advertised as being manufactured and sold by Dr. Daily's Laboratories, Inc., New York, N. Y. The labelling of this product contains in large type on the carton after a description of the product the words "Dr. Daily's Laboratories, New York, N. Y." This state-

ment serves as a representation on the part of the respondents that the products so labelled and advertised were actually manufactured under a formula of, or under the supervision of, a Dr. Daily in the plant of the Dr. Daily's Laboratories.

In truth and in fact the product labelled as above mentioned is manufactured by the respondents Modern Brands, Inc., and Trade Laboratories, Inc., and is not manufactured by Dr. Daily's Laboratories. The product is not manufactured and made under the formula of, or the supervision of, any doctor by the name of Daily. No doctor is employed in the laboratory in which the product is manufactured.

In the sale and distribution of these products in commerce, respondents Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., represent through the use of the word "laboratories" in their corporate names that they own, control or operate a chemical workroom or a place devoted to experimental study in some branch of natural science or to the application of scientific principles in the testing, analysis, and preparation of their said products.

The respondents, Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., are not directly engaged in the production of any products as separate corporate entities but they merely own and control their own respective corporate names, which are used by Modern Brands, Inc., and Trade Laboratories, Inc., in the distribution of the products which they sell as designations or representations that said respective corporations are the actual manufacturers of the various products labelled with their respective corporate names. The said respondents Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., do not own, control or operate any type of laboratory or chemical workroom, or a place devoted to experimental study in any branch of natural science, where the application of scientific principles in testing, analysis and preparation of said products takes place, and do not manufacture said products.

PAR. 9. The aforesaid false and misleading representations have had, and now have the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true and into the purchase of respondents' products on account thereof. As a result thereof trade is unfairly diverted to respondents from their competitors who do not use similar false and misleading practices in the sale of their respective products but who truthfully represent the true quality of their products and their true business status. In conse-

quence thereof substantial injury has been done to competition in commerce among and between the various States of the United States.

Likewise, the false and misleading acts and representations hereinabove set out on the part of respondents, places in the hands of the purchasers buying for resale, an instrument and a means whereby said purchasers may commit a fraud upon a substantial portion of the consuming public.

CONCLUSION

The aforesaid acts and practices of the respondents, Trade Laboratories, Inc., also trading as Redd Chemical Company, Modern Brands, Inc., Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., corporations, and of the individual respondents, J. C. Brush, C. R. Dickinson, and C. V. Brush 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 July 9, 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 respondents, Trade Laboratories, Inc., also trading as Redd Chemical Company, Modern Brands, Inc., Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., their officers, representatives, agents and employees, and the individual respondents, J. C. Brush, C. R. Dickinson and C. V. Brush, the representatives, agents and employees of each of said individuals, in connection with the offering for sale, sale and distribution of shaving cream, dental cream, shoe polish, sun tan cream, similar commercial preparations and toilet articles, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, by marking or affixing an exaggerated or fictitious price upon the cartons or containers in which said articles are packed for sale or in any other manner that the prices so marked or affixed are the regular or customary retail prices at which such products are usually sold or offered for sale.

2. Representing, by the placing of any of said products in greatly over-sized cartons or containers, or in any other manner that a substantially larger quantity or amount of such product is therein contained than is actually the case.

3. Representing that any of said products are manufactured according to the formula or under the supervision of a "Dr. Daily" or any other physician when such is not the fact.

4. Representing, through use of the word "Laboratories" in the corporate name of respondents, Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., or Dr. Daily's Laboratories, Inc., that the respondents so named own, control or operate a chemical workroom or a place devoted to experimental study in any branch of natural science or to the application of scientific principles in the testing and analysis and preparation of said products unless and until the said respondents shall own, operate, or control such a place or places.

5. Representing, through the use of any labelling or other advertising, that the respondents Perlox Laboratories, Inc., Pearl-White Laboratories, Inc., and Dr. Daily's Laboratories, Inc., are engaged in the manufacture and production of said products, when such is not the fact.

It is further ordered, That each of the above named respondents 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
ILLINOIS BAKING CORPORATION

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

Docket 3023. Complaint, Dec. 24, 1936—Decision, Sept. 3, 1937

Where a corporation engaged in manufacture, sale, and distribution of ice cream cones, including cones packed and assembled with small printed slips bearing various legends, so as to involve use of a lottery scheme when sold and distributed by retail dealers to consumers thereof, and including legend "You're lucky YOU WIN A FREE ice cream cone," chance recipient of which printed slip, so placed in cones that ultimate consumer could not ascertain whether or not he was entitled to free ice cream cone until after his purchase had been made and cone partially consumed, became entitled thereby, and in accordance with explanatory display circulars furnished by it, free of charge, to another ice cream cone—

Sold, thus packed, said cones, to wholesalers, jobbers, and ice cream manufacturers, for use, sale, and distribution by their retail dealer purchasers in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its product in accordance with such sales 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 ice cream cones with printed slips as above described, or otherwise arranged and packed for sale to purchasing public so as to involve game of chance, refrain therefrom, and in competition with many unwilling to adopt and use said or any method involving game of chance to win by chance or any other method contrary to public policy;

With capacity and tendency to induce purchasers to buy its said product in preference to cones offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of ice cream cones were attracted by its said method and manner of inserting in a number thereof printed slips entitling purchasers to free ice cream cones, and by element of chance involved in sale thereof as above described, and were thereby induced to buy its said products, containing such printed slips and sold by it, in preference to those offered and sold by said competitors who do not use same or equivalent method, and with tendency and capacity, by reason of said game of chance, to divert to it trade and custom from its said competitors who do not use such or equivalent method, exclude from said trade all competitors who are unwilling to and do not use such method because unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors of ice cream cones as do use same or equivalent method, deprive purchasing public of benefit of free competition in trade involved, and eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use said or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Illinois Baking 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, Illinois Baking Corporation, is a corporation organized and operating under the laws of the State of Delaware, with its principal office and place of business located at 2230 South Union Avenue, Chicago, Ill. Respondent is now, and for several years last past has been, engaged in the manufacture of ice cream cones and in the sale and distribution thereof to wholesale dealers, jobbers, and ice cream manufacturers located at points in the State of Illinois and in other 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 Chicago, Ill., 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 several years last past, a course of trade and commerce by said respondent in said ice cream cones 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 ice cream cones and in the sales 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, on or about May 1, 1936, began the sale and distribution, and since said date has continued the sale and distribution to wholesale dealers and jobbers and ice cream manufacturers, of ice cream cones packed and assembled with small printed slips therein so as to involve the use of a lottery scheme when sold and distributed by retail dealers to the consumers thereof. Respondent has had printed small slips of paper bearing various leg-

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ends, and a few of said printed slips bear the following legend, to wit:

You're lucky
YOU WIN A FREE ice cream cone

The ultimate consumer procuring a cone containing one of the above printed slips is entitled to receive, and is to be given free of charge, another ice cream cone. The printed slips are so placed in the cones that the ultimate consumer cannot ascertain whether or not he is entitled to a free ice cream cone until after his purchase has been made and the cone partially consumed. The fact as to whether the ultimate purchaser receives an additional ice cream cone free of charge is thus determined wholly by lot or chance. Respondent furnishes with cartons of ice cream cones containing the above described printed slips a display circular bearing the following legends, to wit:

FREE ICE CREAM CONES!

<p>You're Lucky You win a FREE Ice Cream Cone</p>
--

—Look for This Coupon in
bottom of cone — The
lucky Ticket means you
get another Cone **FREE**

**YOU GET MORE ICE CREAM
IN A CONE**

PAR. 3. The wholesale dealers and jobbers and ice cream manufacturers, to whom respondent sells the above described ice cream cones containing printed slips, resell said cones as packed by respondent to retail dealers, and said retail dealers sell and distribute said cones, after placing ice cream therein, 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 ice cream cones offered for sale and sold by its competitors.

PAR. 4. The sale of said ice cream cones to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an additional ice cream cone. The use by respondent of said method in the sale of ice cream cones, and the sale of ice cream cones 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 to create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the ice cream cone manufacturing business competitors who do not adopt and use the said 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 ice cream cones in competition with respondent, as above alleged, are unwilling to offer for sale or sell said ice cream cones with printed slips, 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 and ultimate purchasers of ice cream cones are attracted by respondent's said method and manner of inserting printed slips entitling ultimate purchasers to free ice cream cones and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said ice cream cones containing said printed slips and sold by respondent in preference to ice cream cones 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 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 trade and to tend to create a monopoly of said trade in respondent and such other distributors of ice cream cones as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by respondent has the tendency and capacity to eliminate from said 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 December 24, 1936, issued and on December 26, 1936, served its complaint in this proceeding upon the respondent, Illinois Baking Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, the Commission, by order entered herein on August 9, 1937, granted respondent's request for permission to withdraw said answer and to file in lieu thereof its substitute answer (undated) 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; 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, Illinois Baking Corporation, is a corporation organized and operating under the laws of the State of Delaware, with its principal office and place of business located at 2230 South Union Avenue, Chicago, Ill. Respondent is now, and for several years last past has been engaged in the manufacture of ice cream cones and in the sale and distribution thereof to wholesale dealers, jobbers, and ice cream manufacturers located at points in the State of Illinois and in other 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 Chicago, Ill., to purchasers thereof in the State of Illinois and in other States of the United States at their respective places of business. There is now, and has been for several years last past, a course of trade and commerce by said respondent in said ice cream cones between and among the States of the United States. In the course and conduct of said

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business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of ice cream cones 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 on or about May 1, 1936, began the sale and distribution, and since said date has continued the sale and distribution to wholesale dealers and jobbers and ice cream manufacturers of ice cream cones packed and assembled with small printed slips therein so as to involve the use of a lottery scheme when sold and distributed by retail dealers to the consumers thereof. Respondent has had printed small slips of paper bearing various legends, and a few of said printed slips bear the following legend to wit:

You're lucky
YOU WIN A FREE ice cream cone

The ultimate consumer procuring a cone containing one of the above printed slips is entitled to receive, and is to be given free of charge, another ice cream cone. The printed slips are so placed in the cones that the ultimate consumer cannot ascertain whether or not he is entitled to a free ice cream cone until after his purchase has been made and the cone partially consumed. The fact as to whether the ultimate purchaser receives an additional ice cream cone free of charge is thus determined wholly by lot or chance. Respondent furnished with cartons of ice cream cones containing the above-described printed slips a display circular bearing the following legend, to wit:

FREE ICE CREAM CONES!

You're lucky You
win a FREE Ice Cream
Cone

—Look for This Coupon in
bottom of cone—The Lucky
Ticket means you get an-
other Cone FREE

YOU GET MORE ICE
CREAM IN A CONE

PAR. 3. The wholesale dealers and jobbers and ice cream manufacturers, to whom respondent sells the above described ice cream cones containing printed slips, resell said cones as packed by respondent to retail dealers, and said retail dealers sell and distribute said cones, after placing ice cream therein, 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 ice cream cones offered for sale and sold by its competitors.

PAR. 4. The sale of said ice cream cones to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an additional ice cream cone. The use by respondent of said method in the sale of ice cream cones, and the sale of ice cream cones 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 to create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the ice cream cone manufacturing business competitors who do not adopt and use the said 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 ice cream cones in competition with respondent are unwilling to offer for sale or sell said ice cream cones with printed slips, as above described, 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 and ultimate purchasers of ice cream cones are attracted by respondent's said method and manners of inserting printed slips entitling ultimate purchasers to free ice cream cones and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said ice cream cones containing said printed slips and sold by respondent in preference to ice cream cones offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. 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 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 trade and to tend to create a monopoly of said trade in respondent and such other distributors of ice cream cones as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by respondent has the tendency and capacity to eliminate from said trade all actual competitors and to exclude there-

from 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.

CONCLUSION

The aforesaid method, acts and practices of respondent, Illinois Baking Corporation, 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 within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer (undated) filed herein 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, Illinois Baking Corporation, a corporation, its officers, agents, representatives, and employees, in connection with the offering for sale, sale and distribution in interstate commerce of ice cream cones, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, ice cream cones so packed and assembled that sales of such ice cream cones 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 ice cream cones which are used, or which may be used, without alteration or rearrangement of the contents of such packages or assortments, to con-

duct a lottery, gaming device, or gift enterprise in the sale or distribution of the ice cream cones in said packages or assortments to the public.

3. Packing or assembling in packages or assortments of ice cream cones, for sale to the public at retail, printed slips which are for use or which may be used, in distributing or selling said ice cream cones to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers printed slips, either with packages or assortments of ice cream cones or separately a small number of which printed slips bear a legend or legends or statements informing the purchasing public that another ice cream cone will be delivered free of charge or as a prize.

5. Furnishing or supplying to wholesale dealers and jobbers for distribution to retail dealers or to retail dealers direct, display circulars or other advertising material bearing a legend or legends or statements informing the purchasing public that ice cream cones are being sold to the public in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

It is further ordered, That the respondent, Illinois Baking Corporation, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
MILKO CONE & BAKING CO., INC.

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

Docket 3046. Complaint, Feb. 1, 1937—Decision, Sept. 3, 1937

Where a corporation engaged in manufacture, sale, and distribution of ice cream cones, including cones packed and assembled with small printed slips bearing various legends, so as to involve use of a lottery scheme when sold and distributed by retail dealers to consumers thereof, and including legend "Your lucky day. Return this slip where you bought your Milko cone, and get a FREE package of gum," chance recipient of which printed slip, so placed in cones that ultimate consumer could not ascertain whether or not he was entitled to free package of chewing gum until after his purchase had been made and cone partially consumed, became entitled thereby, and in accordance with verses on explanatory display circulars furnished by it free of charge, to such "5¢ package of chewing gum"—

Sold, thus packed, said cones to wholesalers, jobbers, and ice cream manufacturers for use, sale, and distribution by their retail dealer purchasers in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its product in accordance with such sales 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 ice cream cones with printed slips as above described, or otherwise arranged and packed for sale to purchasing public so as to involve game of chance, refrain therefrom, and in competition with many unwilling to adopt and use said or any method involving game of chance to win by chance or any other method contrary to public policy;

With capacity and tendency to induce purchasers to buy its said product in preference to cones offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of ice cream cones were attracted by its said method and manner of inserting in a number thereof printed slips entitling purchasers to free packages of chewing gum, and by element of chance involved in sale thereof as above described, and were thereby induced to buy its said products, containing such printed slips and sold by it, in preference to those offered and sold by said competitors who do not use same or equivalent method, and with tendency and capacity, by reason of said game of chance, to divert to it trade and custom from its said competitors who do not use such or equivalent method, exclude from said trade all competitors who are unwilling to and do not use such method because unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors of ice cream cones as do use same or equivalent method, deprive purchasing public of benefit of free competition in trade involved, and eliminate therefrom all actual, and exclude therefrom all potential, competitors who do not adopt and use said or equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.
Beach, Fathchild & Scofield, of Chicago, Ill., for respondent.

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 Milko Cone & Baking 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, Milko Cone & Baking Co., Inc., is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 431 North Lincoln Street, Chicago, Ill. Respondent is now, and for several years last past has been engaged in the manufacture of ice cream cones and in the sale and distribution thereof to wholesale dealers, jobbers, and ice cream manufacturers located at points in the State of Illinois and in other 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 Chicago, Ill., 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 several years last past a course of trade and commerce by said respondent in said ice cream cones 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 ice cream cones 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 on or about May 1, 1935, began the sale and distribution, and since said date has continued the sale and distribution to wholesale dealers and jobbers and ice cream manufacturers, of ice cream cones packed and assembled with small printed slips therein so as to involve the use of a lottery scheme when sold

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and distributed by retail dealers to the consumers thereof. Respondent has had printed small slips of papers bearing various legends, and a few of said printed slips bear the following legend, to wit:

Your lucky day

Return this slip where you bought your Milko
cone, and get a FREE package of gum

The ultimate consumer procuring a cone containing one of the above printed slips is entitled to receive, and is to be given free of charge, a package of chewing gum. The printed slips are so placed in the cones that the ultimate consumer cannot ascertain whether or not he is entitled to a free package of chewing gum until after his purchase has been made and the cone partially consumed. The fact as to whether the ultimate purchaser receives a package of chewing gum free of charge is thus determined wholly by lot or chance. Respondent furnishes with cartons of ice cream cones containing the above described printed slips a display circular bearing the following legends, to wit:

Your FORTUNE told
with ice cream cold

5¢

Look for a lucky ticket.

Get your prize if you pick it!

A FREE 5¢ package of chewing gum
for the lucky ticket

Milko SUR-PRIZE ice cream cone

PAR. 3. The wholesale dealers and jobbers and ice cream manufacturers to whom respondent sells the above described ice cream cones containing printed slips, resell said cones as packed by respondent to retail dealers, and said retail dealers sell and distribute said cones after placing ice cream therein 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 ice cream cones offered for sale and sold by its competitors.

PAR. 4. The sale of said ice cream cones to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a package of chewing gum. The use by respondent of said method in the sale of ice cream cones, and the sale of ice cream cones 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

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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 to create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the ice cream cone manufacturing business competitors who do not adopt and use the said 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 ice cream cones in competition with respondent, as above alleged are unwilling to offer for sale or sell said ice cream cones with printed slips 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 and ultimate purchasers of ice cream cones are attracted by respondent's said method and manner of inserting printed slips entitling ultimate purchasers to free packages of chewing gum and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said ice cream cones containing said printed slips and sold by respondent in preference to ice cream cones 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 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 trade and to tend to create a monopoly of said trade in respondent and such other distributors of ice cream cones as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said trade. The use of said method by respondent has the tendency and capacity to eliminate from said 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 February 1, 1937, issued and on February 4, 1937, served its complaint in this proceeding upon the respondent, Milko Cone & Baking Co., 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, the Commission, by order entered herein on August 9, 1937, granted respondent's request for permission to withdraw said answer and to file in lieu thereof its substitute answer dated July 9, 1937, 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; 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, Milko Cone & Baking Co., Inc., is a corporation organized and operating under the laws of the State of Illinois, with its principal office and place of business located at 431 North Lincoln Street, Chicago, Ill. Respondent is now, and for several years last past has been, engaged in the manufacture of ice cream cones and in the sale and distribution thereof to wholesale dealers, jobbers, and ice cream manufacturers located at points in the State of Illinois and in other 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 Chicago, Ill., 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 several years last past, a course of trade and commerce by said respondent in said ice cream cones 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 ice cream cones 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, on or about May 1, 1935, began the sale and distribution, and since said date has continued the sale and distribution to wholesale dealers and jobbers and ice cream manufacturers, of ice cream cones packed and assembled with small printed slips therein so as to involve the use of a lottery scheme when sold and distributed by retail dealers to the consumers thereof. Respondent has had printed small slips of paper bearing various legends, and a few of said printed slips bear the following legend, to wit:

Your lucky day
Return this slip where you bought your Milko
cone, and get a FREE package of gum

The ultimate consumer procuring a cone containing one of the above printed slips is entitled to receive, and is to be given free of charge, a package of chewing gum. The printed slips are so placed in the cones that the ultimate consumer cannot ascertain whether or not he is entitled to a free package of chewing gum until after his purchase has been made and the cone partially consumed. The fact as to whether the ultimate purchaser receives a package of chewing gum free of charge is thus determined wholly by lot or chance. Respondent furnishes with cartons of ice cream cones containing the above described printed slips a display circular bearing the following legends, to wit: .

Your FORTUNE told
with ice cream cold
5¢
Look for a lucky ticket
Get your prize if you pick it!
A FREE 5¢ package of chewing gum
for the lucky ticket
Milko SUR-PRIZE ice cream cone

PAR. 3. The wholesale dealers and jobbers and ice cream manufacturers, to whom respondent sells the above described ice cream cones containing printed slips, resell said cones as packed by respondent to retail dealers, and said retail dealers sell and distribute said cones, after placing ice cream therein, 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 ice cream cones offered for sale and sold by its competitors.

PAR. 4. The sale of said ice cream cones to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure a package of chewing gum. The use by respondent of said method in the sale of ice cream cones, and the sale of ice cream cones 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 to create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the ice cream cone manufacturing business competitors who do not adopt and use the said 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 ice cream cones in competition with respondent are unwilling to offer for sale or sell said ice cream cones with printed slips as above described, 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 and ultimate purchasers of ice cream cones are attracted by respondent's said method and manner of inserting printed slips entitling ultimate purchasers to free package of chewing gum and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said ice cream cones containing said printed slips and sold by respondent in preference to ice cream cones offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. 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 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 trade and to tend to create a monopoly of said trade in respondent and such other distributors of ice cream cones as use the same or an equivalent method; and to deprive the

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purchasing public of the benefit of free competition in said trade. The use of said method by respondent has the tendency and capacity to eliminate from said 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.

CONCLUSION

The aforesaid method, acts and practices of respondent, Milko Cone & Baking Co., Inc., 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 within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer dated July 9, 1937, filed herein by the 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, Milko Cone & Baking Co., Inc., a corporation, its officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of ice cream cones, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, ice cream cones so packed and assembled that sales of such ice cream cones to the general public are to be made, or may be made, by mean 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 ice cream cones which are used, or which may be used, without alteration or re-arrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the ice cream cones in said packages or assortments to the public.

3. Packing or assembling in packages or assortments of ice cream cones, for sale to the public at retail, printed slips which are for use, or which may be used, in distributing or selling said ice cream cones to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers printed slips, either with packages or assortments of ice cream cones or separately, a small number of which printed slips bear a legend or legends or statements informing the purchasing public that a 5¢ package of chewing gum will be delivered free of charge or as a prize.

5. Furnishing or supplying to wholesale dealers and jobbers, for distribution to retail dealers or to retail dealers direct, display circulars or other advertising material bearing a legend or legends or statements informing the purchasing public that the ice cream cones are being sold to the public in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

It is further ordered, That the respondent, Milko Cone & Baking Co., 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF
WOLF DRUG 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 3124. Complaint, May 6, 1937—Decision, Sept. 3, 1937

Where four corporations engaged in sale, distribution, and transportation of products of a purported medicinal character, into and through the various States and the District of Columbia, under direction and control of certain individuals, owners of all, or virtually all, of their capital stock, and said individuals, in substantial competition with others engaged in sale, distribution, and transportation, as aforesaid, of medicinal products sold and intended for sale and use for same purposes for which said products of said corporations and individuals were sold and intended for sale and use, and including among their competitors those engaged in manufacture, sale, and distribution in commerce, as above set forth, of commodities represented as effective remedies or cures for similar diseases, but who do not falsely represent the curative value thereof or falsely represent that they maintain an "institute," laboratories or other establishments at Battle Creek, Mich., or at any other place, or that the commodities to be purchased from them have been prepared and manufactured according to a prescription of an accredited physician or physicians, or tested by accredited chemists—

- (a) Caused trade name "Health Institute, Battle Creek, Michigan," to be prominently and conspicuously displayed and featured, together with various statements describing their aforesaid products, in newspaper advertisements, advertising folders, pamphlets, circulars, letters, and other literature, circulated through the several States and aforesaid District to customers and prospective customers, and through radio broadcasts into other States, notwithstanding fact they maintained no laboratories or clinics at aforesaid city or at any other place, had in their employ no chemists or others trained in the conduct of analyses, and neither undertook nor carried on any researches, experiments, or analyses, and, other than maintenance or a mailing address for reception and forwarding of mail to their various places of business, had no connection with aforesaid city, but adopted aforesaid term to capitalize upon the particular significance associated by medical profession and general public with name "Battle Creek" as standing for locality associated with efficient, reliable, and successful conduct of institutions, asylums, sanitoriums, and hospitals;
- (b) Represented, as aforesaid, through use of such words as "W. J. Jones, M. D.," or "Dr. Kenyon," in connection with commodities offered and sold by them, that commodities in question were made according to formula, or under the supervision, of a doctor of medicine, notwithstanding facts none of such commodities, as sold or offered by them, were or had been prepared according to any formula discovered or prescribed by any such doctor, there was no accredited physician bearing such name or names connected with them in any capacity, and commodities thus sold were not

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prepared according to prescription or formula of any physician or physicians; and

- (c) Represented that one of their said preparations, offered under designation "Bio-Tabs," was a cure or remedy for obesity, through such statements as "Take Bio-Tabs after meals for one month. W. J. Jones, M. D.," "For years doctors have been prescribing it (Bio-Tabs) for over-weight patients with astonishing results," "Many cases have been reported in which patients have lost from 10 to 20 lbs. a month," "* * * now on the market only after a long process of painstaking research, checking and rechecking," etc., notwithstanding fact preparation in question was not an effective cure and remedy for aforesaid condition;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into false belief that statements made as aforesaid were true, and with result that a number of such members purchased substantial quantities of the commodities thus advertised and sold by them, believing in truth of such representations, and trade was unfairly diverted to them from competitors engaged, as aforesaid, in sale and distribution of products designed, intended, and sold for cure, relief, and treatment of the said various diseases, afflictions, and ailments, and who do not falsely represent the effectiveness of the commodities vended by them; to the substantial injury of competitors in commerce:

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

Mr. Alden S. Bradley for the Commission.

Jacobi & Jacobi, of Washington, D. C., for respondents, along with *Sevrin & Goldstein*, of Newark, N. J., for respondent William Goldstein.

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 Wolf Drug Company, Henry Wolf Wholesale Druggist, Inc., Charmley Drug Shop, William Wolf Sales Company, Inc., corporations, and Henry Wolf, William Wolf, William Goldstein, and David Cohen, individuals, 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 herein named are Wolf Drug Company, Henry Wolf Wholesale Druggist, Inc., each of which is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey and having their principal office and place of business at 683 Broad Street, Newark, N. J.; Charmley

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Drug Shop, a corporation existing and doing business under and by virtue of the laws of the State of New Jersey and having its principal office and place of business at 164 Halsey Street, Newark, N. J.; William Wolf Sales Company, Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York and having its principal office and place of business at 27 Park Place, New York, N. Y.; Henry Wolf, an individual, having his principal office and place of business at 683 Broad Street, Newark, N. J.; William Wolf, William Goldstein, and David Cohen, individuals, having their principal office and place of business at 164 Halsey Street, Newark, N. J.

The individuals Henry Wolf, William Wolf, William Goldstein, and David Cohen own all, or virtually all, of the capital stock of the several corporations named herein and during the entire existence of such corporations have directed and dictated the sales policies and business activities of the same.

The corporate respondents are now and for more than two years last past have been engaged under their own names and under various trade names in the sale, distribution and transportation into and through the various States of the United States and the District of Columbia of certain medicinal products.

There is now, and has been for such period, a constant current of trade and commerce in said products so sold, distributed, and transported by the respondents and each of them 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 in substantial competition with other individuals, firms, copartnerships, and corporations likewise engaged in the business of selling and distributing medicinal products intended and sold for the same purposes for which respondents' products are sold in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. As a part of the general advertising and sales promotion plans of respondents they have caused to be registered with the United States Patent Office a trade name, to wit, "Health Institute, Battle Creek, Michigan" and have thus represented that they conduct a place of business in the city of Battle Creek, Mich.

In the course and conduct of their business respondents for the purpose of inducing the purchase of the commodities offered for sale by them have printed and circulated throughout the several States to customers and prospective customers through the United States mails and otherwise by newspaper advertisements, advertising folders, pamphlets, circulars, letters, and other literature and have

made use of radio broadcasts over stations with sufficient power to convey programs emanating therefrom into the various States of the United States to advertise the products sold by them; in all of which advertisements respondents have caused the trade name "Health Institute, Battle Creek, Michigan" to be prominently and conspicuously displayed, together with the following statements or statements similar thereto:

Take Bio-Tabs after meals for one month. W. J. Jones, M. D.

For years doctors have been prescribing it (Bio-Tabs) for overweight patients with astonishing results.

Many cases have been reported in which patients have lost from 10 to 20 lbs. a month.

Bio-Tabs now on the market only after a long process of painstaking research, checking and rechecking.

Chemists' analysis shows Bio-Tabs are absolutely free from drugs ordinarily used in reducing preparations.

Bio-Tabs were tested and analyzed in long careful laboratory research by the Health Institute at Battle Creek, Michigan.

Dr. Kenyon's Malt Extract with Cod Liver Oil—This preparation is very beneficial in the treatment of certain types of malnutrition, valuable as an aid to increase the appetite and the digestion of starches in certain types of dyspepsia.

Dr. Kenyon's Ephedrine Cough Syrup—A valuable remedy for the relief of coughs due to colds and minor throat irritations.

Dr. Kenyon's Magnesia and Oil—as an antacid: as a laxative: as an intestinal lubricant.

PAR. 4. Among the commodities so advertised and sold are those known as "Bio-Tabs" which are represented by respondents to be an effective cure and remedy for obesity.

In truth and in fact the said commodity is not an effective remedy or cure for obesity.

PAR. 5. Respondents likewise in their advertising, as aforesaid, represent one "W. J. Jones, M. D." to be the originator or author of the formula with which "Bio-Tabs" are made. Among the commodities likewise so advertised, as aforesaid, are various commodities vended under the brand name "Dr. Kenyon's" represented by the respondents as being effective in the cure and treatment of variously named diseases or disorders, among which are run-down bodily conditions, malnutrition, constipation, low vitality, and others.

In truth and in fact none of such commodities so sold or offered for sale by the respondents are prepared or have been prepared according to any formula discovered or prescribed by any "Dr. Kenyon" or any "W. J. Jones, M. D." nor is there any accredited physician bearing such name or names connected with respondents in any capacity. The commodities so sold are not prepared according to the prescription or formula of any physician or physicians.

PAR. 6. By the use of the trade name "Health Institute, Battle Creek, Michigan" respondents represent themselves to be "an institute." No clinic, research work, experiments or analyses are maintained or carried on by the respondents or any of them. They do not have any laboratories wherein research work, experiments, or analyses are conducted. There are no chemists or other persons trained in the conduct of analyses employed by respondents or any of them. No analyses, experiments, or researches are undertaken or carried out by the respondents.

PAR. 7. The name "Battle Creek" has a particular significance to the medical profession and to the general public as well, referring as it does to a locality where are conducted institutes, asylums, sanatoriums, and hospitals believed by the general public to be thoroughly efficient, reliable and successful and the respondents adopted the term "Health Institute, Battle Creek, Michigan" for the purpose of capitalizing upon such reputation.

No establishment is maintained by the respondents in or about the city of Battle Creek, Mich., where clinics, research work, experiments, or analyses are conducted by chemists or other trained and skilled persons. In fact respondents merely have a mailing address in such city and all mail received at such address is forwarded to respondents at their afore-named place of business.

PAR. 8. There are among the competitors of the respondents various other individuals, copartnerships, and corporations likewise engaged in the manufacture, sale and distribution in commerce as herein described of commodities represented to be effective remedies or cures for similar diseases for which such commodities are sold, but who do not falsely represent the curative value of the same, and who do not falsely represent that they maintain an "Institute," laboratories or other establishments at Battle Creek, Mich., or at any other place and who do not falsely represent that the commodities to be purchased from them have been prepared and manufactured according to a prescription of an accredited physician or physicians or tested by accredited chemists.

PAR. 9. Each and all of the false and misleading statements and representations made by the respondents designating or describing the effectiveness of said products for curing, treating, or relieving the diseases, ailments, afflictions, and conditions of the human body herein named, in offering for sale and selling their said commodities were, and are, calculated to, had and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that said products will in truth accomplish the results

claimed. Further, as a direct consequence of the mistaken and erroneous belief induced by the acts and representations of the respondents, as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondents' commodities with the result that trade has been unfairly diverted to the respondents from competitors likewise engaged in the business of distributing and selling similar products or other products designed, intended, and sold for use in the cure, relief or treatment of the various diseases, ailments, afflictions, and conditions named herein and who truthfully represent the effectiveness of their respective commodities. As a result thereof injury has been done 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. 10. The above methods, 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 6th day of May 1937, issued and served its complaint in this proceeding upon respondents Wolf Drug Company, Henry Wolf Wholesale Druggist, Inc., Charmley Drug Shop, William Wolf Sales Company, Inc., corporations, and Henry Wolf, William Wolf, and William Goldstein, individuals, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. One David Cohen was likewise named respondent in the complaint but service thereof was not effected upon him. On June 2, 1937, the respondent William Goldstein filed in his own behalf an answer admitting in part and denying in part the material allegations of the complaint. Thereafter, the respondent, William Goldstein, filed with the Commission a motion for leave to withdraw such separate answer. Annexed to such motion was a joint answer tendered on behalf of each of the respondents except David Cohen. This motion was granted. The answer so tendered was filed. It admitted all of the material

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allegations of the complaint to be true, waived hearing on the charges set forth therein and stated that, without further evidence or intervening procedure, the Commission might issue and serve upon them findings as to the facts and conclusion drawn therefrom 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. Wolf Drug Company and Henry Wolf Wholesale Druggist, Inc., are corporations existing and doing business under and by virtue of the laws of the State of New Jersey, having their principal offices and places of business at 683 Broad Street, Newark, N. J. Charmley Drug Shop is a corporation existing under the laws of the State of New Jersey, having its principal office and place of business at 164 Halsey Street, Newark, N. J. William Wolf Sales Company, Inc., is a corporation existing under the laws of the State of New York and having its principal office and place of business at 27 Park Place, New York, N. Y. Henry Wolf is an individual having his principal office and place of business at 683 Broad Street, Newark, N. J. William Wolf and William Goldstein are each individuals having their principal offices and places of business at 164 Halsey Street, Newark, N. J. The individual respondents last above named own all, or virtually all of the capital stock of the several respondent corporations herein named and have during the entire existence of such corporations directed and controlled their sales policies and business activities.

The corporate respondents in their own names and under various trade names now are, and for more than two years last past have been, engaged in the, sale, distribution, and transportation under the direction and control of the individual respondents aforesaid of products of a purported medicinal character into and through the various States of the United States and the District of Columbia and have maintained throughout such period a constant current of trade and commerce in such products among and between the various States of the United States and the District of Columbia.

PAR. 2. The respondents now are, and have been during the entire period mentioned herein, in substantial competition with other individuals, firms, and corporations engaged in the business of selling, distributing, and transporting into and through the various States of the United States and the District of Columbia medicinal products sold and intended to be sold and used for the said purposes for which respondents' products are sold and intended to be sold and used.

PAR. 3. Respondents have, for the purpose of effecting the sale of the commodities above described, printed and circulated or caused to be printed and circulated throughout the several States of the United States and in the District of Columbia to customers and prospective customers through the United States mails, and otherwise, newspaper advertisements, advertising folders, pamphlets, circulars, letters, and other literature, and have caused to be conducted radio broadcasts over stations with sufficient power to convey the programs emanating therefrom into the various States of the United States. In all of said advertisements and broadcasts respondents have caused the trade name "Health Institute, Battle Creek, Michigan," to be prominently and conspicuously displayed and featured, together with the following statement or statements similar thereto:

Take Bio-Tabs after meals for one month. W. J. Jones, M. D.

For years doctors have been prescribing it (Bio-Tabs) for overweight patients with astonishing results.

Many cases have been reported in which patients have lost from 10 to 20 lbs. a month.

Bio-Tabs now on the market only after a long process of painstaking research, checking and rechecking.

Chemists' analysis shows Bio-Tabs are absolutely free from drugs ordinarily used in reducing preparations.

Bio-Tabs were tested and analyzed in long careful laboratory research by the Health Institute at Battle Creek, Michigan.

Dr. Kenyon's Malt Extract with Cod Liver Oil—This preparation is very beneficial in the treatment of certain types of malnutrition, valuable as an aid to increase the appetite and the digestion of starches in certain types of dyspepsia.

Dr. Kenyon's Ephedrine Cough Syrup—A valuable remedy for the relief of coughs due to colds and minor throat irritations.

Dr. Kenyon's Magnesia and Oil—as an antacid: as a laxative: as an intestinal lubricant:

PAR. 4. In using the trade name, "Health Institute, Battle Creek, Michigan," respondents represent and imply that they maintain an institute where clinical research work, experiments and analyses are maintained and carried on at Battle Creek, Mich. Respondents do not maintain any laboratories or clinics at Battle Creek, Mich., or

at any other place. There are no chemists or other persons who are trained in the conduct of analyses employed by the respondents nor are any researches, experiments, or analyses undertaken or carried on by them.

PAR. 5. Both the medical profession and the general public have attributed to the name "Battle Creek" a particular significance, referring as it does to a locality where are conducted institutions, asylums, sanatoriums, and hospitals generally believed to be efficient, reliable, and successful, and the respondents adopted the term "Health Institute, Battle Creek, Michigan," for the purpose of capitalizing upon such representation. The sole connection which respondents have with the city of Battle Creek, Mich., is the maintenance of a mailing address where mail is received and forwarded to their various places of business.

PAR. 6. The product known as "Bio-Tabs" is represented by respondent to be an effective cure and remedy for obesity when in truth and in fact it is not.

PAR. 7. Respondents likewise in their advertising, as aforesaid, represent one "W. J. Jones, M. D." to be the originator or author of the formula with which "Bio-Tabs" are made. Among the commodities likewise so advertised, as aforesaid, are various commodities vended under the brand name "Dr. Kenyon's" represented by the respondents as being effective in the cure and treatment of variously named diseases or disorders.

None of such commodities so sold or offered for sale by the respondents are prepared or have been prepared according to any formula discovered or prescribed by any "Dr. Kenyon" or any "W. J. Jones, M. D." There is no accredited physician bearing such name or names connected with respondents in any capacity. The commodities so sold are not prepared according to the prescription or formula of any physician or physicians.

PAR. 8. There are among the competitors of the respondents various other individuals, copartnerships, and corporations likewise engaged in the manufacture, sale, and distribution in commerce as herein described of commodities represented to be effective remedies or cures for similar diseases for which such commodities are sold, but who do not falsely represent the curative value of the same, and who do not falsely represent that they maintain an "Institute," laboratories or other establishments at Battle Creek, Mich., or at any other place and who do not falsely represent that the commodities to be purchased from them have been prepared and manufactured according to a prescription of an accredited physician or physicians or tested by accredited chemists.

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PAR. 9. The circulation of the false and misleading statements and representations made by the respondents as herein set forth, in connection with the sale and offering for sale of their aforementioned products, were and are calculated to have and have had a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false belief that the statements so made are true. A number of the members of the purchasing public have, believing such representations to be true, purchased substantial quantities of the commodities so advertised and sold by the respondents with the result that trade has been unfairly diverted to respondents from competitors as above described engaged in the sale and distribution of products designed, intended, and sold for the cure, relief, and treatment of the various diseases, afflictions, and ailments, and who do not falsely represent the effectiveness of the commodities vended by them. As a result thereof, substantial injury has been done, and is now being done, by respondents to competitors in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, Wolf Drug Company, Henry Wolf Wholesale Druggist, Inc., Charmley Drug Shop, William Wolf Sales Company, Inc., corporations and Henry Wolf, William Wolf and William Goldstein, individuals, have been and are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, 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 by respondents Wolf Drug Company, Henry Wolf Wholesale Druggist, Inc., Charmley Drug Shop, William Wolf Sales Company, Inc., corporations, and Henry Wolf, William Wolf and William Goldstein, individuals, 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 conclusion that said respondents have violated the provisions of an Act of Congress, ap-

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

Now therefore it is ordered, That the respondents Wolf Drug Company, Henry Wolf Wholesale Druggist, Inc., Charmley Drug Shop, William Wolf Sales Company, Inc., corporations, their officers, representatives, agents, and employees, and Henry Wolf, William Wolf, and William Goldstein, their agents, servants and employees in connection with the sale and offering for sale of products of a purported medicinal character in interstate commerce and in the District of Columbia forthwith cease and desist from representing, directly or by implication:

1. Through the use of the words "Health Institute, Battle Creek, Michigan," or "Health Institute" or "Battle Creek, Michigan," that they own or operate a health institute at Battle Creek, Mich., or at any other place until and unless they do so actually own and operate the same;

2. Through the use of the words "W. J. Jones, M. D.," "Dr. Kenyon," or any other name preceded by the title "Dr." or suffixed by the initials "M. D." that said commodities manufactured and sold by them were manufactured according to a formula of, or under the supervision of, a doctor of medicine or any other person skilled in the practice of medicine until and unless such products are so manufactured;

3. That a preparation now known as "Bio-Tabs" or any other preparation having substantially the same ingredients or the same effect sold under that name or any other name is a cure or remedy for obesity or that it will reduce excess fat.

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 the order.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondent David Cohen individually because of the lack of service of complaint upon said individual respondent, but is not dismissed as to him as an officer, representative or agent of the corporate respondents.

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IN THE MATTER OF

MUTUAL ROSENBLUM CORPORATION

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

Docket 3153. Complaint, June 15, 1937—Decision, Sept. 4, 1937

Where a corporation engaged in manufacture of garments, including ladies' dresses, and in sale and distribution thereof in commerce among the various States and in the District of Columbia, in substantial competition with others similarly engaged—

Made use of terms "Silk Jersey," "Satin Jersey," and "Silk Jersanese," in describing certain dresses offered and sold by it in advertising and circular matter furnished and distributed to its various customers and prospective customers, notwithstanding fact dresses thus advertised and represented by it were not, in fact, made from material composed of silk, product of the cocoon of the silk worm, as understood from terms aforesaid by trade and purchasing public;

With effect of misleading and deceiving purchasers, and of causing them erroneously to believe that its said dresses were made from materials composed of silk, product of cocoon of silk worm, and, because of said erroneous belief, to purchase same, thereby unfairly diverting substantial trade in said commerce to it from its competitors who truthfully represent their products; to their injury and that of 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. Pencke for the Commission.

Watterson & Whynman, 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 Mutual Rosenbloom Corporation, 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 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, Mutual Rosenbloom Corporation, 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 498 Seventh Avenue, in the city of New York, State of New

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York. Said respondent is now, and for a number of years last past has been, engaged in manufacturing garments including ladies' dresses, and in the sale and distribution thereof in commerce between and among the various States of the United States and the District of Columbia. It causes 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 as aforesaid, respondent is now, and for a number of years last past has been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the sale and shipment of similar products 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, in connection with the sale and distribution of its said products, furnishes and distributes to its various customers and prospective customers located in the various States of the United States and the District of Columbia, advertising and circular matter wherein certain dresses offered for sale and sold by the said respondent were and are described variously as "Silk Jersey" or "Satin Jersey." Many of its said customers located in States other than the State of New York have mailed in to its office orders for "Satin Jersey," "Silk Jersey," and "Silk Jersanese" dresses. Such orders were, and are, being filled by said respondent with dresses advertised and sold by it. An example of the circulars being distributed by the respondent as aforesaid contains among other advertising matter the following:

Mutual-Rosenbloom's Sculptured Jersanese Frock

Smart New Yorkers Have Gone Wild About It. Harper's Bazaar and Vogue both stress this new sculptural quality. The Grecian moulded lines that show every curve of the figure beneath. And it is unquestionably one of the most important fashion trends in seasons. Noteworthy, too, because it's in supple black silk Jersey—favored fabric of the great Alix. You can't do better than to adopt this dress at once. In sizes 10 to 18.

PAR. 4. In truth and in fact, said statements and representations made by said respondent, as described in paragraph 3, are false and misleading in that the said material from which said dresses are manufactured is not composed of silk, the product of the cocoon of the silkworm, but is composed of material other than silk. The said customers of said respondent were and are being led to believe by the respondent that they had been and are receiving mer-

chandise manufactured of silk in accordance with the specifications of their said orders, when in fact the merchandise they received was manufactured from material other than silk.

PAR. 5. The said representations and practices as described hereinabove have the capacity and tendency to, and do, mislead and deceive the purchasing public into the erroneous beliefs that the dresses manufactured by respondent and described by it as herein set forth are manufactured of silk, and that when they order dresses from the respondent specifying that said dresses be manufactured of silk jersey they receive dresses so manufactured, and are led into the purchase of respondent's dresses on account of such erroneous beliefs induced as aforesaid. As a result of the aforesaid false and misleading statements, representations and practices by the respondent with respect to its product, trade has been unfairly diverted to it from its said competitors who do not falsely represent the quality of their respective products and whose ability to compete successfully with respondent has been, and is, lessened. Injury has been done by respondent to substantial competition in commerce among and between the several States of the United States.

PAR. 6. 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 for other purposes," the Federal Trade Commission, on June 15, 1937, issued, and on June 16, 1937, served its complaint in this proceeding upon respondent, Mutual Rosenbloom Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 12, 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 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 com-

plaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Mutual Rosenbloom Corporation, 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 498 Seventh Avenue, in the city of New York, State of New York. Said respondent is now, and for a number of years last past has been, engaged in manufacturing garments, including ladies' dresses, and in the sale and distribution thereof in commerce between and among the various States of the United States and the District of Columbia. It causes 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 as aforesaid, respondent is now, and for a number of years last past has been, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the sale and shipment of similar products 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, in connection with the sale and distribution of its said products, furnishes and distributes to its various customers and prospective customers located in the various States of the United States and the District of Columbia, advertising and circular matter wherein certain dresses offered for sale and sold by the said respondent were and are described variously as "Silk Jersey" or "Satin Jersey." Many of its said customers located in States other than the State of New York have mailed in to its office orders for "Satin Jersey," "Silk Jersey," and "Silk Jersanese" dresses. One of the circulars distributed by the respondent contains, among others, the following statement:

Mutual-Rosenbloom's Sculptured Jersanese Frock.

Smart New Yorkers Have Gone Wild About It. Harper's Bazaar and Vogue both stress this new sculptural quality. The Grecian moulded lines that show every curve of the figure beneath. And it is unquestionably one of the most important fashion trends in seasons. Noteworthy, too, because it's in supple black

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Order

silk jersey—favored fabric of the great Alix. You can't do better than to adopt this dress at once. In sizes 10 to 18.

PAR. 4. The terms "Satin Jersey," "Silk Jersey," and "Silk Jersanese" are understood by the trade and purchasing public to mean and describe a material made from silk, the product of the cocoon of the silk worm, and respondent's use of these terms as above set out caused its customers to believe that the dresses advertised were made from materials composed of silk, the product of the cocoon of the silk worm.

The dresses so advertised and represented by the respondent were in fact not made from a material composed of silk, the product of the cocoon of the silk worm, but are made from a material other than silk. Orders received by the respondent for "Satin Jersey," "Silk Jersey," and "Silk Jersanese" were and are being filled with dresses which are not made from materials composed of silk, the product of the cocoon of the silk worm.

Respondent discontinued the practice of describing dresses not made from materials composed of silk, the product of the cocoon of the silk worm, as "Satin Jersey," "Silk Jersey," and "Silk Jersanese," prior to the issuance of complaint herein.

PAR. 5. The acts and practices of the respondent as hereinabove set out had the capacity and tendency to, and did, mislead and deceive purchasers, and to cause them erroneously to believe that respondent's said dresses are made from materials composed of silk, the product of the cocoon of the silk worm, and, because of said erroneous belief, to purchase respondent's said dresses, thereby unfairly diverting substantial trade in said commerce to the respondent from its competitors, who truthfully represent their products, to the injury of its competitors and the public.

CONCLUSION

The aforesaid acts and practices of the respondent, Mutual Rosenbloom 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 July 12, 1937, by respondent admitting all the material allega-

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tions 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, Mutual Rosenbloom Corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of dresses and garments in interstate commerce or in the District of Columbia, do forthwith cease and desist:

Using the terms "Silk Jersey," "Satin Jersey," or "Silk Jersanese," or the word "Silk" alone or in connection with any other word or words, to designate and describe dresses and garments made from a material not composed entirely of silk, the product of the cocoon of the silk worm.

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

COVERED BUTTON AND BUCKLE CREATORS, 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 3186. Complaint, July 24, 1937—Decision, Sept. 4, 1937

Where a membership non-profit corporation, members of which were engaged in manufacture of covered buttons, buckles, and novelties for use in manufacture of wearing apparel, and in sale thereof to dress manufacturers and those engaged in kindred industries, making and selling approximately ninety percent of all such products made in the United States, and, prior to acts and things hereinbelow set forth, in competition as to price with one another in sale of said products between and among the various States and territories and the District of Columbia; and the officers, directors, and members of aforesaid corporation, for the purpose of eliminating price competition among themselves—

Entered into and carried out an agreement, combination, understanding and conspiracy among themselves to fix and maintain, and did fix and maintain thereby, uniform minimum prices for the sale of covered buttons, buckles, and novelties and maximum discounts to be allowed by said members to their purchasers of said products, and prices thereof entering into interstate commerce; and pursuant to and for the purpose of carrying out aforesaid agreement, combination, understandings, and conspiracy—

- (a) Fixed and maintained, by agreement among themselves, (1) uniform minimum prices for sale of said products sold by them and each of them, and (2) uniform maximum discounts for said products thus sold;
- (b) Inserted in a trade paper of wide circulation among those engaged in dress manufacturing and kindred industries a "notice" to such manufacturers and industries to the effect that, on and after date therein named, "a uniform policy of dealing with customers" would be adhered to "by manufacturers pursuant to the fair trade practice rules recently approved by the Federal Trade Commission for the covered button and buckle manufacturing industry," and that "rules" in said notice set forth would be "strictly enforced";
- (c) Sent to manufacturers and industries in question copy of said notice and advertisement; and
- (d) Falsely stated, represented, and implied, thereby and otherwise, that Commission had approved rules for industry in question (1) regulating prices for products in question or authorizing the fixing thereof, (2) prohibiting, without qualification, sale of said products below cost and approving or authorizing so-called basic cost formula, (3) prohibiting the granting or allowing of price differentials, rebates, etc., to evade so-called established basic cost prices, (4) approving the fixing or authorizing as set forth in said notice, of maximum uniform discount, and (5) forbidding the giving of free samples or free duplicates, and that uniform policy set forth in said notice was initiated and carried out

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through said rules approved by the Commission and with its knowledge, sanction or authorization; and

- (e) Advised nonmember manufacturers, through said notice setting forth rules, as above indicated, would be "strictly enforced," that they would be held strictly accountable for any violation of said rules, as assertedly promulgated by Commission, and subject to legal action therefor, and dress manufacturers and others dealing with members that action against those receiving discrimination was contemplated under the Robinson-Patman Act, and that any member found selling merchandise at actual cost would be presumed to be engaged in unfair competition;

Facts being trade practice rules in question, as approved by Commission, did not permit or authorize acts and practices stated, represented, expressed and implied as hereinabove indicated and noted, said combination, understanding, agreement and conspiracy were not entered into with sanction, authorization, permission, or knowledge of the Commission, and aforesaid letter to dress manufacturers and others enclosing said notice was false and misleading for reasons above set forth, in that purported rights as claimed in notice in question were not protected by trade practice rules approved by Commission;

With result that said acts and practices had a dangerous tendency to, and actually did, hinder and prevent price competition in sale by them, and among various States and Territories and District of Columbia, of covered buttons, buckles, and novelties, increased prices of such products paid by dress manufacturers and those engaged in kindred industries, prices of dresses and similar commodities and prices paid by purchasing public therefor increased, created in aforesaid members a monopoly in the sale in interstate commerce of said various products, and unreasonably restrained interstate commerce in such various products, dresses and other articles of wear:

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

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

Mr. Edward L. Smith for the Commission.

Mr. M. D. Mosessohn and *Mr. A. Furman Greene*, of New York City, for respondents, with whom also appeared *Mr. Maxwell M. Flamm*, of Brooklyn, N. Y., for Samuel Brown.

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 Covered Button and Buckle Creators, Inc., its officers, Max Pearlstein, president, Abraham Avin, vice president, Isidore Feldman, treasurer, Irving Schwartz, secretary; its directors, Jack Kinsler, Murray Horner, Isidore Nechim, Max Goldfeder, Ben Block, Jacob Neiderbach, Samuel Brown, Isidore Spier; and its following members, indi-

vidually and as representative members of the Covered Button and Buckle Creators, Inc.; Regal Trimming & Button Co., Inc., Rapid Button Co., Inc., Unity Button Works, Inc., N. B. Button Works, Inc., International Button Co., Inc., Max Goldfeder, doing business under the trade name, Grand Button Works; Ben Block, Louis Rosenfeld, and Sam Wiener, doing business as Mitrose Button Works; Jacob Neiderbach, trading as Novelty Button Works; Samuel Brown, doing business under the trade name, Brown Button Works; Isidore Spier, and Harry Gardner, copartners trading as Ideal Button Works; Abraham Avin, trading as Practical Button & Trimming Co., and Irving Schwartz, David M. Schwartz, and Ida Schwartz, copartners trading as Cosmopolitan Button Co., all 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 Covered Button and Buckle Creators, Inc., is a New York membership, non-profit corporation, organized in 1934. Its officers are now and since its organization have been the following respondents:

Max Pearlstein, president,
 Abraham Avin, vice president,
 Isidore Feldman, treasurer,
 Irving Schwartz, secretary.

Its directors are now and since its organization have been the following respondents: Jack Kinsler, Murray Horner, Isidore Nechim, Max Goldfeder, Ben Block, Jacob Neiderbach, Samuel Brown, and Isidore Spier. Among its members are now and since its organization have been the following respondents: Regal Trimming & Button Co., Inc., a New York corporation; Rapid Button Co., Inc., a New York corporation; Unity Button Works, Inc., a New York corporation; N. B. Button Works, Inc., a New York corporation; International Button Co., Inc., a New York corporation; Max Goldfeder, doing business under the trade name Grand Button Works; Ben Block, Louis Rosenfeld, and Sam Wiener, doing business as Mitrose Button Works; Jacob Neiderbach, trading as Novelty Button Works; Samuel Brown, doing business under the trade name, Brown Button Works; Isidore Spier and Harry Gardner, copartners trading as Ideal Button Works; Abraham Avin, trading as Practical Button & Trimming Co., and Irving Schwartz, David M. Schwartz, and Ida Schwartz, copartners trading as Cosmopolitan Button Co. The above named

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respondent members of respondent Covered Button and Buckle Creators, Inc., do not constitute the entire membership of respondent Covered Button and Buckle Creators, Inc., but are representative members thereof. There are approximately 150 members of respondent Covered Button and Buckle Creators, Inc., and they constitute a class so numerous as to make it impractical to name them all as parties respondent herein. All members of respondent Covered Button and Buckle Creators, Inc., are made parties respondent herein as a class, of which those specifically named are representative of the whole.

PAR. 2. The respondent members of respondent Covered Button and Buckle Creators, Inc., are engaged at their respective places of business chiefly in the city of New York, State of New York, in the manufacture of covered buttons, buckles, and novelties for use in the manufacture of wearing apparel, and in the sale thereof to dress manufacturers and to those engaged in kindred industries. In the course and conduct of their businesses, respondent members of respondent Covered Button and Buckle Creators, Inc., cause such articles when sold by them to be transported from their respective places of business to the purchasers thereof, some located in the city of New York, State of New York, and others located in various other States of the United States, the territories thereof, and the District of Columbia, and there is now and has been for more than two years last past, a constant current of trade and commerce by respondent members of respondent association in such covered buttons, buckles, and novelties, between and among the various States of the United States, the Territories thereof, and the District of Columbia.

The amount of covered buttons, buckles, and novelties for use by dress manufacturers and manufacturers of kindred lines, manufactured and sold by the respondent members of respondent Covered Button and Buckle Creators, Inc., constitutes, and for more than two years last past has constituted, approximately 90% of all of the covered buttons, buckles, and novelties manufactured in the United States.

The said respondent members of respondent Covered Button and Buckle Creators, Inc., were prior to April 1937, or thereabouts, in competition, as to price, with one another in the sale of covered buttons, buckles, and novelties, between and among the various States of the United States, the Territories thereof, and the District of Columbia, and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since April 1937, or thereabouts, and would now be in such competition with one another.

PAR. 3. In April 1937 or thereabouts, respondent Covered Button and Buckle Creators, Inc., its respondent officers, directors, and its respondent members, for the purpose of eliminating price competition among the members of respondent Covered Button and Buckle Creators, Inc., 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 uniform minimum prices in the sale of covered buttons, buckles, and novelties, and to fix and maintain and by which they have fixed and maintained uniform maximum discounts to be allowed by the respondent members of respondent Covered Button and Buckle Creators, Inc., to their purchasers of covered buttons, buckles, and novelties, and thus to fix the prices of covered buttons, buckles, and novelties entering into interstate commerce. Pursuant to and for the purpose of carrying out the said agreement, combination, understanding, and conspiracy, the said respondents have done, among other things, the following:

(a) By agreement among themselves have fixed and maintained and still fix and maintain uniform minimum prices for the sale of covered buttons, buckles and novelties sold by the respondent members of respondent Covered Button and Buckle Creators, Inc., and by each of them;

(b) By agreement among themselves have fixed and maintained and still fix and maintain uniform maximum discounts for covered buttons, buckles and novelties sold by the respondent members of respondent Covered Button and Buckle Creators, Inc., and by each of them;

(c) Caused to be inserted in the May 26, 1937, issue of Women's Wear, a trade paper of wide circulation among those engaged in dress manufacturing and kindred industries, notice of which the following is a copy:

NOTICE

TO DRESS MANUFACTURERS

and Kindred Industries

ON AND AFTER JUNE 1, 1937, PRICES FOR COVERED BUTTONS AND BUCKLES WILL BE REGULATED AND A UNIFORM POLICY OF DEALING WITH CUSTOMERS WILL BE ADHERED TO BY MANUFACTURERS PURSUANT TO THE FAIR TRADE PRACTICE RULES RECENTLY APPROVED BY THE FEDERAL TRADE COMMISSION FOR THE COVERED BUTTON AND BUCKLE MANUFACTURING INDUSTRY.

THE FOLLOWING RULES WILL BE STRICTLY ENFORCED:

1—THE SALE OF GOODS BELOW COST IS PROHIBITED. A basic cost formula for the industry has been established by taking into consideration all

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elements recognized by good accounting practice as proper elements of such cost.

2—Granting or allowing secretly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits, or other allowances for the purpose of evading the established basic cost prices is absolutely prohibited.

3—A UNIFORM DISCOUNT OF 2% will be allowed to customers, and no more.

4—NO FREE SAMPLES AND NO FREE DUPLICATES will be given; samples and duplicates will be furnished at cost.

5—No commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, will be allowed to a customer or to anyone in the employ or under the control of the customer.

Attention is called to the fact that the Fair Trade Practice Rules above mentioned have been incorporated into the By-Laws of the Covered Button & Buckle Creators, Inc., as rules which will hereafter govern the business conduct of its members. An ADMINISTRATIVE BOARD has been set up to hear complaints, to enforce compliance and to impose penalties for violations. Members of this Association have pledged their united support and their full cooperation in this movement, the purpose of which is to stabilize the industry, to prevent destructive competition and therefore to insure its members a fair return from their business.

Manufacturers of covered buttons and buckles *who are not members* of the undersigned Association are hereby notified that they will be held strictly accountable for any violation of the rules as promulgated by the Federal Trade Commission and will be subject to legal action for any such violations.

Dress Manufacturers and others dealing with members of the industry are reminded of the provisions of the *Robinson-Patman Act* which make it unlawful to receive a price discrimination or other rebate as well as to grant it. It is therefore the purpose of the Association to invoke the laws against those who receive unlawful favors as well as those who grant them.

While the fair trade practice rules prohibit the sale of merchandise below cost, members of the industry are advised that *it is unethical to sell merchandise at mere cost and that they are legally entitled to fair profits upon their sales*. Therefore, any member who is found to be selling merchandise at actual cost will be presumed to be engaged in unfair competition.

The above rules are now actually in force but in order to enable manufacturers to adjust themselves to the new price regulation, which will result from the adoption of the code, a short period of grace has been established, but **THE NEW PRICES WILL ABSOLUTELY GO INTO EFFECT ON AND AFTER JUNE 1, 1937.**

Members of the Covered Button and Buckle Industry are urged to report violations promptly to the undersigned Association or to its attorneys.

Dated, New York City, May 26, 1937.

COVERED BUTTON & BUCKLE CREATORS, INC.
MAX PEARLSTEIN, *President*.

M. D. MOSESSEHN,
A. FURMAN GREENE,
Counsel.

570 Seventh Avenue, New York City.

(d) Caused to be sent, on May 26, 1937, or thereabouts, to dress manufacturers and kindred industries, a false and misleading letter,

enclosing a copy of the notice described in subparagraph (c) of this paragraph, a copy of which said letter is as follows:

Tel. Lackawanna 4-5727

COVERED BUTTON & BUCKLE CREATORS, INC.

570 SEVENTH AVENUE,

New York City, May 26, 1937.

To Dress Manufacturers and Kindred Industries:

We are enclosing herewith copy of page advertisement which appeared in the *Women's Wear* May 26, 1937, announcing new prices for covered buttons and buckles and new regulations for the industry.

Please notify your department which deals with the manufacturers of this industry to cooperate fully as the producers in this industry are protected in their rights both by the Fair Trade Practice Rules approved by the Federal Trade Commission and the Robinson-Patman Act.

It is the purpose of this organization to prosecute all infractions to the limit.

We trust that we may have your constructive cooperation.

Very truly yours,

COVERED BUTTON & BUCKLE CREATORS, INC.

(Sgd) MAX PEARLSTEIN.

By MAX PEARLSTEIN, *President.*

M. D. MOSESSEN,

A. FURMAN GREENE,

Counsel.

(e) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means, that the Federal Trade Commission has approved Fair Trade Practice Rules for the Covered Button and Buckle Manufacturing Industry regulating prices for covered buttons, buckles and novelties or authorizing the fixing of such prices.

(f) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means that Trade Practice Rules for the Covered Button and Buckle Manufacturing Industry, approved by the Federal Trade Commission, prohibit, without qualification or limitation, the sale of covered buttons, buckles and novelties below cost, and that in and by Trade Practice Rules for the said industry, approved by the Federal Trade Commission, a basic cost formula is provided therein or authorized thereby.

(g) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph, and by other means that the Federal Trade Commission has approved Fair Trade Practice Rules for the said industry, prohibiting the granting or allowing, secretly, directly, or indirectly, any price differentials, rebates, refunds, discounts, credits or other allowances for the purpose of evading what the said respondents, in and by the said notice, term "established basic cost prices."

(*h*) Falsely stated, represented and implied, in and by the notice described in subparagraph (*e*) of this paragraph and by other means that the Federal Trade Commission has approved Fair Trade Practice Rules for this industry, fixing a maximum uniform discount of 2% or authorizing the fixing of a maximum uniform discount.

(*i*) Falsely stated, represented and implied, in and by the notice described in subparagraph (*e*) of this paragraph and by other means, that the Federal Trade Commission has approved Fair Trade Practice Rules for the said industry, forbidding the giving of free samples or free duplicates.

(*j*) Falsely stated, represented and implied, in and by the notice described in subparagraph (*e*) of this paragraph, and by other means, that the uniform policy described in said notice was initiated and carried out by and through the means of Trade Practice Rules for the said industry, approved by the Federal Trade Commission.

(*k*) Falsely stated, represented and implied, in and by the notice described in subparagraph (*e*) of this paragraph, and by other means, that the aforesaid uniform policy described in said notice was initiated and carried out with the knowledge, sanction, approval or authorization of the Federal Trade Commission. .

PAR. 4. In truth and in fact, the Trade Practice Rules for the said industry, approved by this Commission, a copy of which said rules is annexed hereto and made a part hereof as Appendix One,¹ do not permit or authorize the acts and practices stated, represented, expressed and implied by the respondents as stated in subparagraphs (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), and (*k*) of paragraph 3 of this complaint; and in truth and in fact, the combination, understanding, agreement, and conspiracy described in paragraph 3 hereof, was not enter into with the sanction, authorization, permission, or knowledge of the Federal Trade Commission.

PAR. 5. The letter described in subparagraph (*d*) of paragraph 3 of this complaint is false and misleading in that—

1. The enclosure with the said letter, being the notice described in subparagraph (*e*) of paragraph 3 of this complaint, is false and misleading for the reasons set out in paragraph 4 of this complaint.

2. The purported rights of Covered Button and Buckle Creators, Inc., as claimed by the respondents in the notice described in subparagraph (*e*) of paragraph 3 of this complaint, are not protected by Fair Trade Practice Rules approved by the Federal Trade Commission.

¹ See *infra*, p. 1003.

PAR. 6. The alleged acts and practices of respondents are all to the prejudice of the public and to the prejudice of the competitors of the respondent members of respondent Covered Button and Buckle Creators, Inc.; have a dangerous tendency to and have actually hindered and prevented price competition in the sale between and among the various States and Territories of the United States, and in the District of Columbia, of covered buttons, buckles, and novelties; have increased the prices of covered buttons, buckles, and novelties paid by dress manufacturers and those engaged in kindred industries; have increased the prices of dresses and similar commodities; have increased the prices paid by the purchasing public for dresses and other articles of wear; have created in the respondent members of respondent Covered Button and Buckle Creators, Inc., a monopoly in the sale in interstate commerce of covered buttons, buckles, and novelties; have unreasonably restrained interstate commerce in covered buttons, buckles, and novelties, dresses and other articles of wear, 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 24, 1937, issued and served its complaint in this proceeding upon respondents Covered Button and Buckle Creators, Inc., its officers, Max Pearlstein, president; Abraham Avin, vice-president; Isidore Feldman, treasurer; Irvin Schwartz, secretary; its directors, Jack Kinsler, Murray Horner, Isidore Nechim, Max Goldfeder, Ben Block, Jacob Neiderbach, Samuel Brown, Isidore Spier; and its following members, individually and as representative members of the whole membership of the respondent Covered Button and Buckle Creators, Inc., to wit: Regal Trimming & Button Co., Inc., Rapid Button Co., Inc., Unity Button Works, Inc., N. B. Button Works, Inc., International Button Co., Inc., Max Goldfeder, doing business under the trade name Grand Button Works; Ben Block, Louis Rosenfeld, and Sam Wiener, doing business as Mitrose Button Works; Jacob Neiderbach, trading as Novelty Button Works; Samuel Brown, doing business under the trade name Brown Button Works; Isidore Spier and Harry Gardner, copartners,

trading as Ideal Button Works; Abraham Avin, trading as Practical Button & Trimming Co., and Irving Schwartz, David M. Schwartz, and Ida Schwartz, copartners, trading as Cosmopolitan Button Co., charging them and each of them with the use of unfair methods of competition, in violation of the provisions of said act.

On August 25, 1937, the said respondents filed their substituted answer, in which said substituted answer they stated that they desired to and thereby waived hearing on the charges set forth in the complaint insofar as the same referred to alleged 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," 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 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 answer 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, without further evidence, and without any intervening procedure, 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 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 complaint and the said substituted 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 Covered Button and Buckle Creators, Inc., is a New York membership, non-profit corporation, organized in 1934. Its officers are now and since its organization have been the following respondents:

Max Pearlstein, president,
Abraham Avin, vice president,

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Isidore Feldman, treasurer,

Irving Schwartz, secretary.

Its directors are now and since its organization have been the following respondents: Jack Kinsler, Murray Horner, Isidore Nechim, Max Goldfeder, Ben Block, Jacob Neiderbach, Samuel Brown, and Isidore Spier. Among its members are now, and since its organization have been, the following respondents: Regal Trimming & Button Co., Inc., a New York corporation; Rapid Button Co., Inc., a New York corporation; Unity Button Works, Inc., a New York corporation; N. B. Button Works, Inc., a New York corporation; International Button Co., Inc., a New York corporation; Max Goldfeder, doing business under the trade name Brand Button Works; Ben Block, Louis Rosenfeld, and Sam Wiener, doing business as Mitrose Button Works; Jacob Neiderbach, trading as Novelty Button Works; Samuel Brown, doing business under the trade name Brown Button Works; Isidore Spier and Harry Gardner, copartners, trading as Ideal Button Works; Abraham Avin, trading as Practical Button & Trimming Co., and Irving Schwartz, David M. Schwartz, and Ida Schwartz, copartners, trading as Cosmopolitan Button Co. The above named respondent members of respondent Covered Button and Buckle Creators, Inc., do not constitute the entire membership of respondent Covered Button and Buckle Creators, Inc., but are representative members thereof. There are approximately 150 members of respondent Covered Button and Buckle Creators, Inc. All members of respondent Covered Button and Buckle Creators, Inc., are parties respondent herein as a class, of which those specifically hereinabove named are representative of the whole.

PAR. 2. The respondent members of respondent Covered Button and Buckle Creators, Inc., are engaged at their respective places of business chiefly in the city of New York, State of New York, in the manufacture of covered buttons, buckles and novelties for use in the manufacture of wearing apparel, and in the sale thereof to dress manufacturers and to those engaged in kindred industries. In the course and conduct of their businesses, respondent members of respondent Covered Button and Buckle Creators, Inc., cause such articles when sold by them to be transported from their respective places of business to the purchasers thereof, some located in the city of New York, State of New York, and others located in various other States of the United States, the Territories thereof, and the District of Columbia, and there is now, and has been for more than two years last past, a constant current of trade and commerce by respondent members of respondent association in such covered buttons,

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buckles and novelties, between and among the various States of the United States, the Territories thereof, and the District of Columbia.

The amount of covered buttons, buckles, and novelties for use by dress manufacturers and manufacturers of kindred lines, manufactured and sold by the respondent members of respondent Covered Button and Buckle Creators, Inc., constitutes, and for more than two years last past has constituted, approximately 90% of all of the covered buttons, buckles, and novelties manufactured in the United States.

The said respondent members of respondent Covered Button and Buckle Creators, Inc., were, prior to April 1937, or thereabouts, in competition, as to price, with one another in the sale of covered buttons, buckles, and novelties, between and among the various States of the United States, the Territories thereof, and the District of Columbia, and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since April 1937, or thereabouts, and would now be in such competition with one another.

PAR. 3. In April 1937, or thereabouts, respondent Covered Button and Buckle Creators, Inc., its respondent officers, directors and its respondent members, for the purpose of eliminating price competition among the members of respondent Covered Button and Buckle Creators, Inc., 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 uniform minimum prices in the sale of covered buttons, buckles, and novelties, and to fix and maintain and by which they have fixed and maintained uniform maximum discounts to be allowed by the respondent members of respondent Covered Button and Buckle Creators, Inc., to their purchasers of covered buttons, buckles, and novelties, and thus to fix the prices of covered buttons, buckles, and novelties entering into interstate commerce. Pursuant to and for the purpose of carrying out the said agreement, combination, understanding, and conspiracy, the said respondents have done, among other things, the following:

(a) By agreement among themselves have fixed and maintained, and still fix and maintain, uniform minimum prices for the sale of covered buttons, buckles and novelties sold by the respondent members of respondent Covered Button and Buckle Creators, Inc., and by each of them;

(b) By agreement among themselves have fixed and maintained, and still fix and maintain, uniform maximum discounts for covered buttons, buckles and novelties sold by the respondent members of

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respondent Covered Button and Buckle Creators, Inc., and by each of them;

(c) Caused to be inserted in the May 26, 1937, issue of Women's Wear, a trade paper of wide circulation among those engaged in dress manufacturing and kindred industries, notice of which the following is a copy:

NOTICE

TO DRESS MANUFACTURERS

and Kindred Industries

ON AND AFTER JUNE 1, 1937, PRICES FOR COVERED BUTTONS AND BUCKLES WILL BE REGULATED AND A UNIFORM POLICY OF DEALING WITH CUSTOMERS WILL BE ADHERED TO BY MANUFACTURERS PURSUANT TO THE FAIR TRADE PRACTICE RULES RECENTLY APPROVED BY THE FEDERAL TRADE COMMISSION FOR THE COVERED BUTTON AND BUCKLE MANUFACTURING INDUSTRY.

THE FOLLOWING RULES WILL BE STRICTLY ENFORCED:

1. THE SALE OF GOODS BELOW COST IS PROHIBITED. A basic cost formula for the industry has been established by taking into consideration all elements recognized by good accounting practice as proper elements of such cost.
2. Granting or allowing secretly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits, or other allowances for the purpose or evading the established basic cost prices is absolutely prohibited.
3. A UNIFORM DISCOUNT OF 2% will be allowed to customers, and no more.
4. NO FREE SAMPLES AND NO FREE DUPLICATES will be given; samples and duplicates will be furnished at cost.
5. No commissions, brokerage, or other compensation, or any allowance or discount in lieu thereof, will be allowed to a customer or to any one in the employ or under the control of the customer.

Attention is called to the fact that the Fair Trade Practice Rules above mentioned have been incorporated into the By-laws of the Covered Button & Buckle Creators, Inc., as rules which will hereafter govern the business conduct of its members. An ADMINISTRATIVE BOARD has been set up to hear complaints, to enforce compliance and to impose penalties for violations. Members of this Association have pledged their united support and their full co-operation in this movement, the purpose of which is to stabilize the industry, to prevent destructive competition and therefore to insure its members a fair return from their business.

Manufacturers of covered buttons and buckles who are not members of the undersigned Association are hereby notified that they will be held strictly accountable for any violation of the rules as promulgated by the Federal Trade Commission and will be subject to legal action for any such violations.

Dress Manufacturers and others dealing with members of the industry are reminded of the provisions of the *Robinson-Patman Act* which makes it unlawful to receive a price discrimination or other rebate as well as to grant it. It is therefore the purpose of the Association to invoke the laws against those who receive unlawful favors as well as those who grant them.

While the fair trade practice rules prohibit the sale of merchandise below cost, members of the industry are advised that *it is unethical to sell merchandise at mere cost and that they are legally entitled to fair profits upon their sales*. Therefore, any member who is found to be selling merchandise at actual cost will be presumed to be engaged in unfair competition.

The above rules are now actually in force but in order to enable manufacturers to adjust themselves to the new price regulation, which will result from the adoption of the code, a short period of grace has been established, but **THE NEW PRICES WILL ABSOLUTELY GO INTO EFFECT ON AND AFTER JUNE 1, 1937.**

Members of the Covered Button and Buckle Industry are urged to report violations promptly to the undersigned Association or to its attorneys.

Dated, New York City, May 26, 1937.

COVERED BUTTON & BUCKLE CREATORS, INC.
MAX PEARLSTEIN, *President.*

M. D. MOSESSOHN,
A. FURMAN GREENE,
Counsel.

570 Seventh Avenue, New York City.

(d) Caused to be sent, on May 26, 1937, or thereabouts, to dress manufacturers and kindred industries, a false and misleading letter, enclosing a copy of the notice described in subparagraph (c) of this paragraph, a copy of which said letter is as follows:

Tel. Lackawanna 4-5727

COVERED BUTTON & BUCKLE CREATORS, INC.
570 SEVENTH AVENUE,
New York City, May 26, 1937.

To Dress Manufacturers and Kindred Industries:

We are enclosing herewith copy of page advertisement which appeared in the Women's Wear May 26, 1937, announcing new prices for covered buttons and buckles and new regulations for the industry.

Please notify your department which deals with the manufacturers of this industry to co-operate fully as the producers in this industry are protected in their rights both by the Fair Trade Practice Rules approved by the Federal Trade Commission and the Robinson-Patman Act.

It is the purpose of this organization to prosecute all infractions to the limit. We trust that we may have your constructive co-operation.

Very truly yours,

COVERED BUTTON & BUCKLE CREATORS, INC.
(Sgd.) MAX PEARLSTEIN.
By MAX PEARLSTEIN, *President.*

M. D. MOSESSOHN,
A. FURMAN GREENE,
Counsel.

(e) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means, that the Federal Trade Commission has approved Fair Trade Practice Rules for the Covered Button and Buckle Manufacturing Industry regulating prices for covered buttons, buckles and novelties, or authorizing the fixing of such prices.

(f) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means that Trade Practice Rules for the Covered Button and Buckle Manufacturing Industry, approved by the Federal Trade Commission, prohibit, without qualification or limitation, the sale of covered buttons, buckles and novelties below cost, and that in and by Trade Practice Rules for the said industry, approved by the Federal Trade Commission, a basic cost formula is provided therein or authorized thereby.

(g) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph, and by other means that the Federal Trade Commission has approved Fair Trade Practice Rules for the said industry, prohibiting the granting or allowing, secretly, directly, or indirectly, any price differentials, rebates, refunds, discounts, credits or other allowances for the purpose of evading what the said respondents, in and by the said notice, term "established basic cost prices."

(h) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means that the Federal Trade Commission has approved Fair Trade Practice Rules for this industry, fixing a maximum uniform discount of 2%, or authorizing the fixing of a maximum uniform discount.

(i) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means, that the Federal Trade Commission has approved Fair Trade Practice Rules for the said industry, forbidding the giving of free samples of free duplicates.

(j) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph and by other means, that the uniform policy described in said notice was initiated and carried out by and through the means of Trade Practice Rules for the said industry, approved by the Federal Trade Commission.

(k) Falsely stated, represented and implied, in and by the notice described in subparagraph (c) of this paragraph, and by other means, that the aforesaid uniform policy described in said notice was initiated and carried out with the knowledge, sanction, approval or authorization of the Federal Trade Commission.

PAR. 4. In truth and in fact, the Trade Practice Rules for the said industry, approved by this Commission, a copy of which said rules is annexed hereto and made a part hereof as Appendix One,¹

¹ See, *infra*, p. 1003.

do not permit or authorize the acts and practices stated, represented, expressed and implied by the respondents as stated in subparagraphs (e), (f), (g), (h), (i), (j), and (k) of paragraph 3 hereof; and in truth and in fact, the combination, understanding, agreement and conspiracy described in paragraph 3 hereof, was not entered into with the sanction, authorization, permission or knowledge of the Federal Trade Commission.

PAR. 5. The letter described in subparagraph (d) of paragraph 3 hereof is false and misleading, in that—

1. The enclosure with the said letter, being the notice described in subparagraph (c) of paragraph 3 hereof, is false and misleading for the reasons set out in paragraph 4 hereof.

2. The purported rights of Covered Button and Buckle Creators, Inc., as claimed by the respondents in the notice described in subparagraph (c) of paragraph 3 hereof, are not protected by Fair Trade Trade Practice Rules approved by the Federal Trade Commission.

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 between and among the various States and Territories of the United States, and in the District of Columbia, of covered buttons, buckles, and novelties; have increased the prices of covered buttons, buckles, and novelties paid by dress manufacturers and those engaged in kindred industries; have increased the prices of dresses and similar commodities; have increased the prices paid by the purchasing public for dresses and other articles of wear; have created in the respondent members of respondent Covered Button and Buckle Creators, Inc., a monopoly in the sale in interstate commerce of covered buttons, buckles, and novelties; have unreasonably restrained interstate commerce in covered buttons, buckles, and novelties, dresses and other articles of wear.

CONCLUSION

The aforesaid acts and practices of respondents are all to the prejudice of the public, and to the prejudice of the competitors of the respondent members of respondent Covered Button and Buckle Creators, Inc., 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 thereto filed herein by all of the respondents on August 25, 1937, in which said substituted answer they stated that they desired to and thereby waived hearing on the charges set forth in the said complaint insofar as the same referred 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 protesting the proceeding, and that they and each of them consented that all of the material facts alleged in said 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 said 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 have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That respondents, Covered Button and Buckle Creators, Inc., its agents, servants, and employees, its officers, to wit:

Max Pearlstein, president, Abraham Avin, vice president, Isidore Feldman, treasurer, Irving Schwartz, secretary, and Jack Kinsler, Murray Horner, Isidore Nechim, Max Goldfeder, Ben Block, Jacob Neiderbach, Samuel Brown, and Isidore Spier, directors, and their agents, servants, and employees, and its following members, to wit:

Regal Trimming & Button Co., Inc., Rapid Button Co., Inc., Unity Button Works, Inc., N. B. Button Works, Inc., International Button

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Co., Inc., Max Goldfeder, doing business under the trade name Grand Button Works; Ben Block, Louis Rosenfeld and Sam Wiener, doing business as Mitrose Button Works; Jacob Neiderbach, trading as Novelty Button Works; Samuel Brown, doing business under the trade name, Brown Button Works; Isidore Spier and Harry Gardner, copartners trading as Ideal Button Works; Abraham Avin, trading as Practical Button & Trimming Co., and Irving Schwartz, David M. Schwartz and Ida Schwartz, copartners trading as Cosmopolitan Button Co., their officers, agents, representatives, and servants, in connection with the sale and offering for sale of covered buttons, buckles and novelties in interstate commerce, and in the District of Columbia, forthwith cease and desist from:

Carrying out and engaging in, and from entering into any further agreement, combination, understanding and conspiracy among themselves or between and among any of them, or with any other person, firm, corporation, or partnership, to fix and maintain uniform minimum prices or to fix and maintain uniform maximum discounts in the sale of covered buttons, buckles, and novelties, or to fix the prices of covered buttons, buckles, and novelties, and for the purpose of carrying out any such agreement, combination, understanding, and conspiracy, or for any other purpose, from doing any of the following, to wit:

(a) Fixing and maintaining uniform prices for the sale of covered buttons, buckles and novelties;

(b) Fixing and maintaining uniform discounts for the sale of covered buttons, buckles and novelties;

(c) Inserting or causing to be inserted in Women's Wear or any other trade paper or in any other publication the following notice or any other notice of similar import, tenor or substance:

NOTICE

TO DRESS MANUFACTURERS

and Kindred Industries

ON AND AFTER JUNE 1, 1937, PRICES FOR COVERED BUTTONS AND BUCKLES WILL BE REGULATED AND A UNIFORM POLICY OF DEALING WITH CUSTOMERS WILL BE ADHERED TO BY MANUFACTURERS PURSUANT TO THE FAIR TRADE PRACTICE RULES RECENTLY APPROVED BY THE FEDERAL TRADE COMMISSION FOR THE COVERED BUTTON AND BUCKLE MANUFACTURING INDUSTRY.

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THE FOLLOWING RULES WILL BE STRICTLY ENFORCED:

1—THE SALE OF GOODS BELOW COST IS PROHIBITED. A basic cost formula for the industry has been established by taking into consideration all elements recognized by good accounting practice as proper elements of such cost.

2—Granting or allowing secretly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits, or other allowances for the purpose of evading the established basic cost prices is absolutely prohibited.

3—A UNIFORM DISCOUNT OF 2% will be allowed to customers, and no more.

4—NO FREE SAMPLES AND NO FREE DUPLICATES will be given; samples and duplicates will be furnished at cost.

5—No commissions brokerage, or other compensation, or any allowance or discount in lieu thereof, will be allowed to a customer or to anyone in the employ or under the control of the customer.

Attention is called to the fact that the Fair Trade Practice Rules above mentioned have been incorporated into the By-Laws of the Covered Button & Buckle Creators, Inc., as rules which will hereafter govern the business conduct of its members. An ADMINISTRATIVE BOARD has been set up to hear complaints, to enforce compliance and to impose penalties for violations. Members of this Association have pledged their united support and their full cooperation in this movement, the purpose of which is to stabilize the industry, to prevent destructive competition and therefore to insure its members a fair return from their business.

Manufacturers of covered buttons and buckles *who are not members* of the undersigned Association are hereby notified that they will be held strictly accountable for any violation of the rules as promulgated by the Federal Trade Commission and will be subject to legal action for any such violations.

Dress Manufacturers and others dealing with members of the industry are reminded of the provisions of the *Robinson-Patman Act* which make it unlawful to *receive* a price discrimination or other rebate as well as to *grant* it. It is therefore the purpose of the Association to invoke the laws against those who receive unlawful favors as well as those who grant them.

While the fair trade practice rules prohibit the sale of merchandise below cost, members of the industry are advised that *it is unethical to sell merchandise at mere cost and that they are legally entitled to fair profits upon their sales*. Therefore, any member who is found to be selling merchandise at actual cost will be presumed to be engaged in unfair competition.

The above rules are now actually in force but in order to enable manufacturers to adjust themselves to the new price regulation, which will result from the adoption of the code, a short period of grace has been established, but **THE NEW PRICES WILL ABSOLUTELY GO INTO EFFECT ON AND AFTER JUNE 1, 1937.**

Members of the Covered Button and Buckle Industry are urged to report violations promptly to the undersigned Association or to its attorneys.

Dated, New York City, May 26, 1937.

COVERED BUTTON & BUCKLE CREATORS, INC.
MAX PEARLSTEIN, *President.*

M. D. MOSESSEHN,
A. FURMAN GREENE,
Counsel.

570 Seventh Avenue, New York City.

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(d) Sending or causing to be sent to dress manufacturers and kindred industries, or to anyone else, the following letter, alone or with an enclosure described in "c" hereof, or any other letter of similar import, tenor or substance:

Tel. Lackawanna 4-5727.

COVERED BUTTON & BUCKLE CREATORS, INC.

570 SEVENTH AVENUE,

New York City, May 26, 1937.

To Dress Manufacturers and Kindred Industries:

We are enclosing herewith copy of page advertisement which appeared in the Women's Wear May 26, 1937, announcing new prices for covered buttons and buckles and new regulations for the industry.

Please notify your department which deals with the manufacturers of this industry to cooperate fully as the producers in this industry are protected in their rights both by the Fair Trade Practice Rules approved by the Federal Trade Commission and the Robinson-Patman Act.

It is the purpose of this organization to prosecute all infractions to the limit. We trust that we may have your constructive cooperation.

Very truly yours,

COVERED BUTTON & BUCKLE CREATORS, INC.
(Sgd.) MAX PEARLSTEIN.
By MAX PEARLSTEIN, *President.*

M. D. MOSESSEHN,
A. FURMAN GREENE,
Counsel.

(e) Stating, representing or implying by any other means whatsoever, that the Federal Trade Commission has approved Fair Trade Practice Rules for the Covered Button and Buckle Manufacturing Industry regulating prices for covered buttons, buckles and novelties or authorizing the fixing of such prices;

(f) Stating, representing or implying by any other means whatsoever, that Trade Practice Rules for the Covered Button and Buckle Manufacturing Industry, approved by the Federal Trade Commission, prohibit, without qualification or limitation, the sale of covered buttons, buckles and novelties below cost, or that in and by Trade Practice Rules for the said Industry, approved by the Federal Trade Commission, a basic cost formula is provided therein or authorized thereby.

(g) Stating, representing or implying by any other means whatsoever, that the Federal Trade Commission has approved Fair Trade Practice Rules for the said Industry, prohibiting the granting or allowing, secretly, directly, or indirectly, any price differentials, rebates, refunds, discounts, credits or other allowances for the purpose of evading what the said respondents, in and by the notice described in "c" hereof, termed "established basic cost prices."

(h) Stating, representing or implying by any other means whatsoever, that the Federal Trade Commission has approved Fair

Trade Practice Rules for the said Industry, fixing a maximum uniform discount of 2%, or any other discount or authorizing the fixing of a maximum uniform or other discount;

(i) Stating, representing or implying by any other means whatsoever, that the Federal Trade Commission has approved Fair Trade Practice Rules for the said Industry, forbidding the giving of free samples or free duplicates;

(j) Stating, representing or implying by any other means whatsoever, that any policy of price fixing has been initiated and carried out by and through the means of Trade Practice Rules for the said Industry, approved by the Federal Trade Commission;

(k) Stating, representing, or implying by any other means whatsoever, that any policy of price fixing has been initiated and carried out with the knowledge, sanction, approval or authorization of the Federal Trade Commission.

And it is further ordered, That all the respondents hereinabove mentioned 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.

APPENDIX ONE

TRADE PRACTICE RULES

COVERED BUTTON AND BUCKLE MANUFACTURING INDUSTRY

These rules promulgated by the Commission are designed to foster and promote fair competitive conditions in the interest of industry and the public. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

Group I

The unfair trade practices which are embraced in Group I rules are considered to be unfair methods of competition or other illegal practices within the statutes and the decisions of the Federal Trade Commission and the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use of such unlawful practices in or directly affecting interstate commerce.

Rule 1.—The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

Rule 2.—Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring or embarrassing competitors in their businesses, is an unfair trade practice.

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Rule 3.—the defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies or services with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 4.—The imitation of the trade-marks, trade names, brands, labels or other marks of identification of competitors, having the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 5.—(a) *Prohibited discriminatory Differentials, Rebates, Refunds, Discounts, Credits and other Allowances.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits or other allowances which effectuate a discrimination in price between different purchasers of goods of like grade and quality where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ or to injure, destroy or prevent competition with any person who either grants¹ or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however,*

(1) That the goods involved in any such transaction are sold for use, consumption or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerages and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or

¹ See footnote page 1005.

contract for the payment of advertising or promotion allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of any products or commodities manufactured, sold or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress, approved June 19, 1936, (Public No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

Rule 6.—Wilfully inducing or attempting to induce, by any false or deceptive means whatsoever, the breach of any lawful contract or contracts existing between competitors, and their customers or their suppliers, or wilfully interfering with or obstructing the performance of any such contractual duties or services, with the purpose and effect of unduly hampering, injuring or embarrassing competitors in their business, is an unfair trade practice.

Rule 7.—The making, or causing or permitting to be made or published, any false, untrue or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size or preparation of any product of the industry, or in any other material respect, with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 8.—The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

Rule 9.—Offering merchandise for sale at prices purported to be reduced from what are in fact fictitious prices, or offering merchandise for sale at a purported reduction in price when such purported reduction is in fact fictitious, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

¹As herein used, the word "commerce" means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States; *Provided*, That this shall not apply to the Philippine Islands.

Rule 10.—The use of the word “free” where not properly or fairly qualified when the article is in fact not free, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 11.—The practice of shipping or delivering products which do not conform to the samples submitted or representations made prior to securing the orders, without the consent of the purchasers to such substitutions, and having the tendency, capacity or effect of deceiving or misleading purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 12.—Directly or indirectly to give or permit to be given or offer to give money or anything of value to agents, employees or representatives of customers or prospective customers, or to agents, employees or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer, or to influence such employers or principals to refrain from dealing or contracting to deal with competitors is an unfair trade practice.

Rule 13.—Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority, and the wrongful use thereof to unduly hinder or stifle the competition of such competitors, is an unfair trade practice.

Rule 14.—In connection with the sale or offering for sale of products of the industry, representing through advertising or otherwise that such products conform to any standards recognized in or applicable to the industry when such is not the fact, with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 15.—For any person, firm or corporation to hold himself or itself out to the public as a manufacturer or wholesaler when such is not the fact, or in any other manner to misrepresent the character, extent or type of his or its business, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Rule 16.—The false or deceptive marking or branding of products of the industry for the purpose or with the tendency, capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture or distribution of such products, or in any other material respect, is an unfair trade practice.

Rule 17.—Withholding from or inserting in invoices or sales tickets any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices or sales tickets, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers or the consuming public, is an unfair trade practice.

Syllabus

IN THE MATTER OF
PASCAL 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 2945. Complaint, Oct. 15, 1936—Decision, Sept. 8, 1937

Where a corporation engaged in manufacture of "Breatheasy," preparation, and atomizer or "nebulizer" for treatment of asthma, hay fever, and kindred diseases, and in the sale and distribution thereof through distributors and drug stores in the various States, in substantial competition with those engaged in interstate sale and distribution of other preparations recommended for, and useful in, treatment of such diseases, and of atomizers for use in connection therewith; in extensively advertising its said product through various newspapers of interstate circulation and through radio broadcasts having interstate transmission, and through booklets and circulars issued and distributed by it—

Represented that said preparation was a cure or remedy for asthma, hay fever, and kindred diseases, which could be used successfully without following any particular form of diet, and constituted a harmless remedy which would return the user to vigorous, buoyant health, had therapeutic value also in chronic bronchitis and numerous other specified ailments and conditions, including heart diseases and cardiac distress, various skin diseases, and inflammations of the nose and throat, etc., and in neuralgia and neuritis, and was the one sure relief available for treatment of asthma, and a new medicament for such treatment, through such statements, among others, as "For Asthma * * * the greatest discovery. Created by a physician to successfully cure his own asthma * * *," "only one Remedy for Asthma And that Remedy is Breatheasy," "* * * beneficial, according to authorities, in asthma and chronic bronchitis, in heart disease and cardiac distress, in gastric ulcer, * * *," " * * * the one, sure asthmatic relief available today * * * gives a sense of well-being, a return to vigorous, buoyant health * * *," " * * * no diet is necessary. You may eat anything you may desire." "Introduces a new medicament of scientific formula which applies synthetic adrenal gland extract vaporized * * *," etc.;

Facts being asthma, as classified by medical profession, may result from many varying causes, no specific cure for asthma is recognized by said profession, and such preparation is not cure therefor nor for hay fever, and, while preparation in question, as well as many other remedies containing adrenalin, may in some cases temporarily relieve asthma, it does not constitute treatment therefor, and use thereof will not bring about or restore vigorous, buoyant health or give absolute and instant relief to sufferers therefrom, should not be taken at all in many cases in which diet is essential, and is no less dangerous to user because taken through "nebulizer" than if taken through hypodermic injection, and is not beneficial in treatment of chronic bronchitis, heart disease, and various other ailments and conditions specified, and, as equivalent, through epinephrin content, of synthetic adrenalin, is not new medicament;

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With capacity and tendency to mislead and deceive public into erroneous belief that said "Breatheasy" was in truth and in fact a remedy and cure for asthma, hay fever and kindred diseases, and that in use thereof it was not necessary to follow any particular diet, and to induce such purchasing public to buy said "Breatheasy" in preference to other preparations designed for treatment of aforesaid diseases and offered for sale by manufacturers, retailers and distributors, and with result of unfairly diverting trade to it from such manufacturers, retailers, and distributors of such other preparations who do not misrepresent the character and quality of their respective products or the results to be obtained in 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. Henry M. White*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Mr. Clarence L. Gere, of Seattle, Wash., 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 Pascal Company, Inc. has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Pascal Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1014 American Bank Building, Second Street at Madison, in the city of Seattle, within the State of Washington. Said respondent is now and for more than one year last past has been engaged in the manufacture and sale of a product known as "Breatheasy" for the treatment of asthma, hay fever and kindred diseases, and of an atomizer or so-called "nebulizer" for administering the preparation "Breatheasy," and in the distribution thereof in commerce between and among the various States of the United States. It causes said "Breatheasy" and the nebulizer, when sold by it, to be transported to purchasers thereof located in the State of Washington and in various States of the United States other than the State of Washington. There is now and has been for a long time, to wit, for more than one year last past, a constant current of trade and commerce by respondent in said "Breatheasy" and said nebulizer, between and among the various States of the United States.

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In the course and conduct of its said business, said respondent is now and for a long time, to wit, for more than one year last past, has 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 preparations recommended for the treatment of asthma, hay fever, and kindred diseases, and of atomizers or nebulizers for use in connection therewith.

PAR. 2. The preparation "Breatheasy" and the atomizer or nebulizer used in connection therewith are manufactured by said respondent and are sold and distributed by said respondent through distributors and drug stores located in the various States of the United States.

PAR. 3. Said respondent, in the course and conduct of its said business as hereinbefore set out in paragraphs 1 and 2, has been and now is engaged in extensive advertising of its said products as a means of furthering and aiding in the interstate sale and distribution of "Breatheasy" and the atomizer or nebulizer for use in connection therewith, and as media of such advertising it has been and now is using various newspapers of interstate circulation, and broadcasts over radio stations having interstate reception. Said respondent also issues booklets and circulars describing the said product "Breatheasy."

Said respondent in its said advertisements of the preparation "Breatheasy" and the atomizer or nebulizer used in connection therewith, manufactured and distributed by it, has made and is now making various false, deceptive, and misleading statements concerning said products. Among the statements which said respondent has used and is now using in its advertisements in newspapers and over the radio and in its booklets and circulars distributed with its said products, are the following:

WANTED: A distributor for a nationally known remedy for asthma. Would rather have somebody that has had experience in similar lines, or who is an asthmatic. This does not require a great deal of capital and is a money maker.

FOR ASTHMA

"Breatheasy"

(trade mark)

THE GREATEST DISCOVERY

Created by a physician to successfully cure his own asthma, "Breatheasy" is now sold on money-back guarantee.

REMEMBER

There is only one

Remedy for

ASTHMA

And that Remedy is

Breatheasy

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Breatheasy is a creation of a physician, who himself suffered from asthma, and was developed until now it gives absolute, instant and complete relief. For asthmatics who seek relief, they will find this remedy their "doctor," ever ready to relieve them.

BREATHEASY means exactly what the name implies. It is the one, sure asthmatic relief available today. In working its wonders, BREATHEASY gives a sense of well-being, a return to vigorous, bouyant health. BREATHEASY was developed by a physician who suffered from asthma, and, in striving for relief, he evolved this marvelous remedy. If YOU suffer from asthma or if any of your friends are afflicted with the symptoms, stop in at the West End Drug Store, First and Monroe, and ask to have this thoroughly marvelous treatment demonstrated. Remember, there is no charge.

Asthmatics everywhere hail the BREATHEASY method as the one remedy that can be relied upon.

During the use of "Breatheasy", no diet is necessary. You may eat anything you may desire.

In truth and in fact, "Breatheasy" is not a remedy for and it does not cure asthma. In any treatment for asthma the proper diet is essential, as mucus-forming foods are injurious in cases of asthma.

Respondent in its said advertising has created and is now creating upon the public the false impression and erroneous belief that "Breatheasy" is a reliable and dependable remedy and cure for asthma, hay fever, and kindred diseases, and that in the use of the same it is not necessary to follow any particular diet. In fact, "Breatheasy" is not a reliable and dependable cure for asthma, hay fever, or kindred diseases.

PAR. 4. The use by the said respondent, Pascal Company, Inc., 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 "Breatheasy" is in truth and in fact a remedy for and will cure asthma, hay fever and kindred diseases, and that in using the same it is not necessary to follow any particular diet. Acting in such erroneous belief, the consuming public, and especially that portion of the public suffering from asthma, hay fever, or kindred diseases, have been induced and are now induced to purchase "Breatheasy" in preference to other preparations designed for the treatment of asthma, hay fever and kindred diseases, and offered for sale by manufacturers, retail dealers, and distributors. As a result of such false, deceptive and misleading representations on the part of said respondent, trade is unfairly diverted to respondent from such manufacturers, retail dealers, or distributors of other preparations for treating asthma, hay fever, and kindred diseases, who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof.

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PAR. 5. Said false, deceptive, and misleading representations of said respondent, contained in its advertisements, have resulted in injury to respondent's competitors and to retail dealers, and in prejudice to the buying 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 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, issued and on October 20, 1936, served its complaint in this proceeding upon the respondent, Pascal Company, Inc., charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission, before Henry M. White, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Clarence L. Gere, 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 oral argument having been heard, 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, Pascal Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 1014 American Bank Building, Second Street at Madison, in the city of Seattle, within the State of Washington. Said respondent is now, and has been since July 19, 1936, engaged in the manufacture and sale of a preparation known as "Breatheasy" for

the treatment of asthma, hay fever, and kindred diseases, and of an atomizer or so-called "nebulizer" for administering the preparation "Breatheasy," and in the distribution thereof in commerce between and among the various States of the United States. It causes said "Breatheasy" and the "nebulizer" when sold by it to be transported to purchasers thereof located in the State of Washington and in various States of the United States other than the State of Washington. There is now, and has been for more than one year last past, a constant current of trade and commerce by respondent in said "Breatheasy" and said "nebulizer" between and among the various States of the United States. In the course and conduct of its said business, respondent is now, and since July 19, 1936, has been in substantial competition in commerce between and among the various States of the United States with sundry other corporations, and with partnerships, firms, and individuals engaged in the interstate sale and distribution of other preparations recommended for the treatment of asthma, hay fever, and kindred diseases, and of atomizers or "nebulizers" for use in connection therewith, which said preparations are useful in the treatment of said diseases.

PAR. 2. The preparation "Breatheasy" and the atomizer or "nebulizer," used in connection therewith, are manufactured by said respondent and are sold and distributed by said respondent through distributors and drug stores located in the various States of the United States.

PAR. 3. The respondent, in the course and conduct of its said business has been, and now is engaged in extensive advertising of its said products as a means of furthering and aiding in the interstate sale and distribution of "Breatheasy" and the atomizer or "nebulizer" for use in connection therewith, and as media of such advertising it has been, and now is using various newspapers of interstate circulation and broadcasts over radio stations having interstate transmission. Said respondent also issues and distributes booklets and circulars describing the said preparation "Breatheasy."

PAR. 4. The respondent, in its said advertisements of the preparation "Breatheasy" and the atomizer or "nebulizer" used in connection therewith manufactured and distributed by it, has made, and is now making, various statements regarding efficacy of said preparation known as "Breatheasy" in the treatment of asthma, hay fever, and kindred diseases. Among the statements which said respondent has used, and is now using, in its advertisements in newspapers and over the radio, and in its booklets and circulars distributed with its said products are the following:

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For ASTHMA
 "Breatheasy"
 (trade mark)

THE GREATEST DISCOVERY

Created by a physician to successfully cure his own asthma, "Breatheasy" is now sold on money-back guarantee.

REMEMBER

there is only one

Remedy for
 ASTHMA

And that Remedy is
 Breatheasy

Breatheasy is a creation of a physician who himself suffered from asthma, and was developed until now it gives absolute, instant and complete relief. For asthmatics who seek relief, they will find this remedy their "doctor," ever ready to relieve them.

BREATHEASY is beneficial, according to authorities, in asthma and chronic bronchitis, in heart disease and cardiac distress, in gastric ulcer, in serum rashes, urticaris (hives) and other skin diseases of the erythematous and eczematous types, in hay fever, in inflammation of the nose, throat, tonsils, larynx and lungs; and in neuralgia and neuritis. This by no means completes the list, but it suffices to show the enormous value of this substance elaborated by the adrenal glands and what may happen if they are deficient.

BREATHEASY means exactly what the name implies. It is the one, sure asthmatic relief available today. In working its wonders, BREATHEASY gives a sense of well-being, a return to vigorous, bouyant health. BREATHEASY was developed by a physician who suffered from asthma, and in striving for relief, he evolved this marvelous remedy. If YOU suffer from asthma or if any of your friends are afflicted with the symptoms, stop in at the West End Drug Store, First and Monroe, and ask to have this thoroughly marvelous treatment demonstrated. Remember, there is no charge.

Asthmatics everywhere hail the BREATHEASY method as the one remedy that can be relied upon.

During the use of "Breatheasy," no diet is necessary. You may eat anything you may desire.

Doctors had the only relief
 for
 ASTHMA

thirty years ago . . . but they did not know how to use it. Finally a physician who was an asthmatic, took the remedy and discovered how it could be used to give absolute, instant and complete relief. He called it BREATHEASY—
 Write today for complete information.

STOP
 Suffering from
 ASTHMA

"Breatheasy"
 (Trade Mark)

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Introduces a new medicament of scientific formula which applies synthetic adrenal gland extract vaporized thru the

"Breatheasy"
NEBULIZER

"Vapor, not a spray"

Now available, with money-back guarantee.

ASTHMA
"Breatheasy"
(Trade Mark)
with
SPECIAL NEBULIZER
is your best answer
for
ASTHMA

Supplies adrenal deficiency which is the prime cause of Asthma, thru special Nebulizer that delivers 10 times the vapor (not spray) possible with ordinary means. Not habit forming, not a drug.

All asthmatics will find BREATHEASY the one, sure relief available on the market today. Write for full complete details. There is no obligation.

Of course you know that epinephrin is the only specific remedy for asthma and hay fever, and that it has been in the hands of the medical profession for the past twenty years. Only two things prevented its coming into popular use for all sufferers at all times. They were, its high cost and the difficulty of its administration, we have overcome both of these obstacles in BREATHEASY.

The use of BREATHEASY in the treatment of asthma will conclusively prove to you that at last asthmatic sufferers have found the one, sure relief for this painful affliction.

that no other person, firm or corporation has any right to manufacture or in any manner deal in this vaporizer or any imitation thereof.

BREATHEASY
Gives you swift, sure relief
for
ASTHMA

All asthmatics will find BREATHEASY the one, sure relief on the market today. Write for full, complete details. There is no obligation.

PAR. 5. The respondent corporation is owned by Dr. Benjamin S. Paschall and other members of his family. Dr. Paschall is a physician and Chief Chemist of the respondent corporation. The respondent is engaged in the business of making pharmaceuticals and its principal product is epinephrin. The product epinephrin, together with the "nebulizer", an apparatus for administering the epinephrin, constitutes the commodity sold to the public in interstate commerce by the respondent under the trade name of "Breatheasy." The respondent maintains a laboratory in which the product ephinephrin is manufactured. The product epinephrin is a solution of epinephrin hydrochlorides, at least 2½ percent, put up in physiological salt solu-

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tion containing traces of carminatives and preservatives of chemically pure grade. Its structure is racemic.

PAR. 6. Epinephrin may be obtained in two ways, namely, by synthetically building it up in the laboratory, and also by extracting it from the glands of animals. The epinephrin sold by the respondent is obtained synthetically. The epinephrin is put into the "nebulizer" and by means of the "nebulizer" is breathed into the lungs of the user. The epinephrin is not injected into the user by means of a hypodermic needle.

The "nebulizer" sold and distributed by the respondent is an instrument which turns liquid into vapor and is the means by which the user takes the medicine into the body. The "nebulizer" is manufactured by the respondent for use in connection with its product epinephrin and the epinephrin, together with the "nebulizer," constitutes the commodity sold as "Breatheasy." The chemical ingredients used by respondent in manufacturing its epinephrin are purchased by the respondent in the open market for use in respondent's laboratory. Epinephrin contains the same properties as adrenaline and is synthetic adrenaline. The preparation "Breatheasy" is sold by the respondent for the purpose of treatment of asthma, hay fever, and kindred diseases. Adrenaline has been constantly used by the medical profession in the treatment of asthma for thirty years and has been customarily administered to the patient hypodermically.

PAR. 7. True asthma is defined as a "A condition of shortness of breath caused by the constriction of the bronchial muscles and by the exudation of mucous into the narrow bronchial passages, the reason for which is a reflex due to the ingestion or inhalation of substances to which the patient is hypersensitive." There are many various forms of asthma or physical conditions which are generally classified by the medical profession as asthma. The basic causes of the ailments classified by the medical profession as asthma are not yet known to the medical profession, and asthma may result from many varying causes:

PAR. 8. There is no specific cure for asthma generally recognized by the medical profession. "Breatheasy" is not a cure for asthma nor is it a cure for hay fever. Asthma may be, and often is, cured when the cause of the asthma is known and eliminated. The elimination of the cause of asthma may sometimes be produced by surgery and by other methods, but it cannot be eliminated by "Breatheasy." "Breatheasy" as well as many other remedies containing adrenaline, may in some cases temporarily relieve asthma.

"Breatheasy" does not constitute a treatment for asthma, and its use will not bring about or restore vigorous buoyant health.

PAR. 9. "Breatheasy" will not give "absolute, instant and complete relief" to sufferers from asthma and is not a sure relief for persons suffering with asthma. The use of "Breatheasy" is not harmless in all cases, and there are cases where its use would be distinctly dangerous. The use of "Breatheasy" is not beneficial in the treatment of chronic bronchitis, heart disease, cardiac distress, gastric ulcer, hives, inflammation of the nose, throat, tonsils, larynx, lungs, neuralgia, or neuritis.

PAR. 10. In many cases of asthma, proper diet is very important and may become the means of effecting a cure. Many persons suffer from asthma due to being allergic to certain foods. In such cases diet is essential as only by refraining from using the particular food to which the sufferer is allergic may a cure be effected. In such cases diet is essential and "Breatheasy" will not give relief in these cases independent of the proper diet. In many of such cases "Breatheasy" should not be used at all. Epinephrin is no less dangerous to the user because it is taken by means of a "nebulizer" than it would be if taken by means of a hypodermic injection.

PAR. 11. The advertisements and representations made to the purchasing public by the respondent, as hereinbefore set out in paragraph 4, are false and misleading. They have had, and do now have, the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that "Breatheasy" is in truth and in fact a remedy for, and will cure, asthma, hay fever, and kindred diseases, and that in the use of the same it is not necessary to follow any particular diet, and to induce such purchasing public to purchase "Breatheasy" in preference to other preparations designed for the treatment of asthma, hay fever, and kindred diseases and offered for sale by manufacturers, retail dealers and distributors. The result of such false, deceptive, and misleading representations on the part of said respondent is to unfairly divert trade to said respondent from such manufacturers, retailers, or distributors of other preparations for treating asthma, hay fever, and kindred diseases, who do not misrepresent the character and quality of their respective products or the results to be obtained from the use thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, Pascal Company, Inc., are to the prejudice of the public and competitors of the respondent and constitute unfair methods of competition in com-

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merce 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 Henry M. White, 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 oral arguments having been heard, and the Commission having made its findings as to the facts and its conclusion that said respondent, Pascal Company, Inc., has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is ordered, That the respondent, Pascal Company, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of the preparation now known as, and sold under the name "Breatheasy," or any preparation under whatever name sold, composed of the same or similar ingredients and possessing similar therapeutic properties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing that

(a) Said preparation is a cure or remedy for asthma, hay fever, or kindred diseases;

(b) Said preparation can be successfully used without following any particular form of diet;

(c) Said preparation is a harmless remedy which will return the user to vigorous, buoyant health;

(d) Said preparation has a therapeutic or beneficial value in the treatment of asthma, chronic bronchitis, heart diseases, cardiac distress, gastric ulcer, serum rashes, uticaris (hives) and other skin diseases of the erythematous and eczematous types, hay fever, inflammation of the nose, throat, tonsils, larynx and lungs, and in neuralgia and neuritis;

(e) Said preparation is the one sure relief available for the treatment of asthma;

(f) Said preparation is a new medicament for the treatment of asthma;

(g) Said preparation has any therapeutic or medicinal value other than to afford temporary relief in some instances in cases of asthma;

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(h) and from making any other similar representations of like import or effect as to the therapeutic or medicinal value of said preparation unless and until said representations are true in fact.

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

Complaint

IN THE MATTER OF
MAY HOSIERY MILLS, INC.

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

Docket 3172. Complaint, July 15, 1937—Decision, Sept. 9, 1937

Where a corporation engaged in manufacture, sale, and distribution of textile products, including hosiery for men and women, in substantial competition with others engaged in manufacture, sale, and distribution of like and similar products in commerce among the various States and in the District of Columbia—

Made use of such statements and representations as "Pure Thread Silk and Rayon," "Creptone with Silk Wrap," and "Genuine Wrap Pure Thread Silk and Rayon," with words "and Rayon" on a separate line and in small capital letters, as contrasted with preceding words in large conspicuous capital letters, in the advertisements of its said commodities in trade papers, price lists, etc., and on transfers appearing on the merchandise in question, and led purchasers and prospective purchasers into mistaken and erroneous belief that commodities involved were made largely from materials entirely different from those contained therein, and contained finer materials of manufacture than actually was the case, and that silk was major material used in merchandise made and sold by it, facts being hosiery designated as aforesaid was not made entirely of silk of the silk-worm, and silk was not major component of hosiery upon which transfers bearing such legends, as above set forth, appeared, but silk used in such instances varied from infinitesimal proportions in such "Creptone" brand product to far less than major proportion in the other two;

With tendency and capacity to lead distributors and purchasing public into belief that said statements and representations were true, and with result of inducing members of public to purchase its said products on account of such erroneous beliefs, to resultant damage and injury of manufacturers and distributors, and to injury of general public, and of unfairly diverting trade to it from 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.

Mr. S. Brogdyn Teu II 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 May Hosiery Mills, 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, May Hosiery Mills, Inc., is a North Carolina corporation, having its principal office and place of business in the city of Burlington, State of North Carolina. It has been for more than one year last past, and still is, engaged in the manufacture, sale, and distribution of hosiery to jobbers and retail dealers. In the course and conduct of its business it offers said products for sale and sells the same in commerce between the State of North Carolina and the several States of the United States and the District of Columbia.

PAR. 2. When said products are sold, respondent transports or causes the same to be transported from its place of business in the State of North Carolina to purchasers thereof located in the various States of the United States 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 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 one year last past has been engaged in substantial competition with other individuals, firms, partnerships, and corporations engaged in the manufacture, 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. 3. Respondent, in soliciting the sale, and in the selling of its commodities and for the purpose of creating a demand upon the part of the consuming public for said commodities, has advertised its commodities through the media of advertisements inserted in trade papers, price lists, and other printed matter published and circulated through the United States mails to its customers and prospective customers in the various States of the United States and in the District of Columbia.

PAR. 4. Representative of such statements and representations above referred to and made by respondent on the articles of merchandise manufactured and sold by it are the following:

1. PURE THREAD SILK AND RAYON

The first three words of the quoted statement are in large conspicuous capital letters making up a single line. The last two words of this phrase, "and Rayon," are in a line below the above three words and appear in small inconspicuous capital letters.

2. Creptone with Silk Wrap

3. GENUINE WRAP PURE THREAD SILK AND RAYON

The words "Genuine Wrap Pure Thread Silk" appear in large conspicuous capital letters, while the words "and Rayon" appear on another line underneath in small capital letters.

PAR. 5. In the aforesaid ways and by the aforesaid means respondent makes and has made to the general public false and misleading statements with reference to the commodities offered for sale by it. Many articles and items of merchandise described in the said advertisements, price lists, and other printed matter above referred to, and on transfers appearing on the merchandise, are so described and made up as to mislead purchasers and prospective purchasers into the mistaken and erroneous belief that the said commodities are made largely from materials entirely different from that contained in the merchandise, and to mislead and deceive said purchasers and prospective purchasers into the mistaken and erroneous belief that the said merchandise contains finer materials of manufacture than the articles of merchandise actually contain.

PAR. 6. The use by the respondent of the words "Pure Thread Silk" and others of like import used in conjunction with the words "and Rayon" appearing anteriorly to the words "and Rayon," and being composed of large capital letters, while the words "and Rayon" appear in small capital letters about one-half the size of the letters in the preceding line in a separate line below, serves to lead purchasers and prospective purchasers into the erroneous and mistaken belief that silk is the major material used in the manufacture of the merchandise made and sold by the respondent.

PAR. 7. Likewise, by the use of the phrase "Silk Wrap" in conjunction with the words "Creptone with," said purchasing and consuming public is led into the mistaken and erroneous belief that the major component of the hosiery whereon this descriptive phrase is used is silk.

PAR. 8. In truth and in fact, in each and every instance cited above, and in other instances, the silk used in the manufacture of respondent's merchandise varies from an infinitesimal proportion in the hosiery branded and sold as "Creptone with Silk Wrap" to far less than a major proportion used in the hosiery manufactured and sold under the brand name of "Pure Thread Silk and Rayon."

PAR. 9. The aforesaid false and misleading advertising, branding, and representations on the part of the respondent place in the hands of retailers buying for resale an instrument and means whereby said retailers may commit and do commit a fraud upon a substantial portion of the consuming public by enabling such retailers to represent and offer for sale and sell respondent's hosiery as being a

genuinely superior product made from all silk or a majority of silk material.

PAR. 10. There are among the competitors of the respondent in commerce as described in paragraph 1 above manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and value of their respective products.

There are also among the competitors of respondent manufacturers and distributors of like and similar products who refrain from advertising or representing, through their advertisements, price lists, or other advertising media, and brand marks on their products, that the merchandise offered for sale by them has a merit and value that it does not have, or that it was manufactured from material other than actually contained in said merchandise.

PAR. 11. The effect of the foregoing false and misleading representations and acts of respondent in selling and offering for sale such items of merchandise as hereinbefore referred to is to mislead a substantial portion of the purchasing and consuming public in the several States of the United States by inducing them to believe:

1. That the various items of hosiery described in respondent's advertisements, price lists, and other advertising media, and brand marks on said merchandise, were and are manufactured for the most part from silk;

2. That the said products, because of the representations made thereon, are composed of superior materials, and that therefore the purchasers thereof are buying a superior product.

PAR. 12. The foregoing false and misleading statements and representations on the part of the respondent have induced and still induce a substantial number of consumer purchasers of said commodities to buy the products offered for sale, sold, and distributed by respondent on account of the aforesaid mistaken and erroneous beliefs.

As a result thereof trade has been diverted from those competitors of respondent engaged in similar businesses referred to in paragraph 10 above. As a consequence thereof substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 13. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on July 15, 1937 issued, and on July 16, 1937 served, its complaint in this proceeding upon respondent May Hosiery Mills, Inc., a corporation, charging it with use of unfair methods of competition in commerce in violation to the provisions of said act. On August 16, 1937 the respondent filed its answer, in which answer it 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 in that, without further evidence or 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 violation 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, May Hosiery Mills, Inc., is a corporation organized and doing business under the laws of the State of North Carolina.

PAR. 2. The respondent has been for more than one year last past engaged in the manufacture, sale, and distribution of a variety of textile products, among them hosiery for both men and women.

PAR. 3. In the sale of said products respondent has transported or caused the same to be transported from its principal place of business in the State of North Carolina to purchasers thereof located in States of the United States other than the State from which the shipment originated, and in the District of Columbia.

The respondent is engaged in substantial competition with individuals, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution of like and similar products, and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in soliciting the sale, and in the selling, of its commodities, and for the purpose of creating a demand upon

the part of the consuming public for said commodities, has advertised its commodities through the media of advertisements, inserted in trade papers, price lists, and other printed matter, published and circulated through the United States mails to its customers and prospective customers in the various States of the United States and in the District of Columbia.

PAR. 5. Representative of such statements and representations referred to in paragraph 4 and made by respondent on the articles of merchandise manufactured and sold by it are the following:

1. PURE THREAD SILK AND RAYON

The first three words of the quoted statement are in large conspicuous capital letters making up a single line. The last two words of the phrase, "and Rayon," are in a line below the above three words and appear in small inconspicuous capital letters.

2. Creptone with silk Wrap

3. GENUINE WRAP PURE THREAD SILK AND RAYON

The words "Genuine Wrap Pure Thread Silk" appear in large conspicuous capital letters, while the words "and Rayon" appear on another line underneath in small capital letters.

PAR. 6. In the aforesaid ways and by the aforesaid means respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by it. Many articles and items of merchandise described in its advertisements, price lists, and other printed matter, and herein referred to, and on transfers appearing on the merchandise are so described and made up as to lead purchasers and prospective purchasers into the mistaken and erroneous belief that the said commodities are made largely from materials entirely different from that contained in the merchandise, and to lead purchasers and prospective purchasers into the mistaken and erroneous belief that the said merchandise contains finer materials of manufacture than the articles of merchandise actually contain.

PAR. 7. The use by the respondent of the words "Pure Thread Silk" and others of like import in conjunction with the words "and Rayon," and appearing anteriorly to the words "and Rayon," and being composed of large capital letters, and the words "and Rayon" appearing in small capital letters about one-half the size of the letters in the preceding line in a separate line below, serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that silk is the major material used in the manufacture of the merchandise made and sold by the respondent.

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PAR. 8. The hosiery of the respondent on which appear the phrases heretofore set out in paragraph 5 above is not made entirely of the silk of the silkworm.

By the use of the phrases "Pure Thread Silk and Rayon," "Creptone with Silk Wrap," "Genuine Wrap Pure Thread Silk and Rayon," in the manner herein set out in paragraph 5 the purchasing and consuming public is led into the erroneous and mistaken belief that the major component of the hosiery whereupon these transfers appear is silk.

PAR. 9. In fact, in each and every instance cited in paragraphs 5, 6, and 7 above, and in other instances, the silk used in the manufacture of respondent's merchandise varies from an infinitesimal proportion in the hosiery branded and sold as "Creptone with Silk Wrap" to far less than a major proportion used in the hosiery manufactured and sold under the brand names of "Pure Thread Silk and Rayon" and "Genuine Wrap Pure Thread Silk and Rayon."

PAR. 10. The use of each and all of the foregoing false and misleading statements and representations by the respondent as herein set out has had, and now has, a tendency and capacity to lead distributors and the purchasing public into the belief that said statements and representations are true, and has induced and now induces members of the public to purchase the products of said respondent on account of such erroneous beliefs, to the resultant damage and injury of manufacturers and distributors, and to the injury of the general public. Said representations have thereby unfairly diverted trade to said respondent from competitors, and substantial injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent May Hosiery Mills, 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

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allegations of the complaint to be true, and states that it waives hearing on the charges set forth in the said complaint, and that, without further evidence or other intervening procedure, the Commission may issue and serve upon it its findings as to the facts and conclusion and an order to cease and desist from the violation of law charged in the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

It is ordered, That the respondent, May Hosiery Mills, Inc., its officers, agents, representatives, and employes, in connection with the offering for sale, sale, and distribution of hosiery in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Using the word "silk" to designate and describe the material from which said hosiery is made, until and unless such material is composed entirely of silk, the product of the cocoon of the silk worm, or unless such material contains a substantial percentage of silk, the product of the cocoon of the silk worm, and the word "silk" is accompanied by a word or words, in equally conspicuous type and in close conjunction therewith, aptly and truthfully naming and describing such other yarn or yarns.

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

HEIDELBERGER CONFECTIONERY COMPANY

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

Docket 1772. Complaint, Aug. 25, 1937¹—Decision, Sept. 10, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve, or which were designed to, or might, involve, use of a lottery scheme when sold and distributed to ultimate consumers thereof, and which included assortments composed of (1) number of one-pound boxes of candy, together with push card, for sale under a plan, and in accordance with said card's explanatory legend, pursuant to which purchaser pushing by chance number concealed under card's perforated disk paid for box of candy in accordance with such number pushed by chance; (2) number of penny chocolate covered candies of uniform size and shape, together with number of larger pieces and other articles of merchandise, to be given as prizes to purchasers of said pieces of uniform size, etc., selecting by chance one of a small number of said pieces, colored centers of which differed from those of the majority; and of (3) similar assortment, but without larger pieces or other merchandise, of uniform pieces, majority, but not all, of which had centers of same color, through which dealers were enabled to select from their stock other pieces for sale and distribution along with aforesaid assortment as a lottery or game of chance—

Sold, to wholesalers and retailers for display and resale to purchasing public in accordance with aforesaid sales plans, said assortments, and thereby supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products, in accordance with aforesaid plans, enabling purchasing public, through game of chance, to procure said boxes at varying prices, or to procure larger pieces or other articles of merchandise, 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, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said products in preference to candy offered and sold by its competitors and with result that many dealers in and ultimate purchasers of candy were attracted by said methods and manner of packing said product and by element of chance involved in sale thereof as above set forth, and thereby induced to purchase said 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 and custom from its said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not

¹ Amended and supplemental complaint herewith followed the vacating on August 24, 1937 of the original findings and order which issued on April 3, 1934 (18 F. T. C. 281).

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use such or equivalent methods as unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors as use same or equivalent methods, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and 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 for the Commission.

Gartner & Lemisch, of Philadelphia, Pa., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on March 11, 1930, issue its complaint herein charging and alleging that respondent was and had been guilty of 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"; 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 Heidelberger Confectionery Company, a corporation, 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 and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 1720 North Second Street, Philadelphia, Pa. Respondent is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States. Respondent causes and has caused its said products when sold to be transported from its principal place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof in Pennsylvania and in other States of the United States at their respective points of location.

There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers assortments of candy so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof.

(a) One of said assortments is composed of 24 one-pound boxes of candy, together with a device commonly called a "push card." The boxes of candy contained in said assortment are sold and distributed to the consuming public by means of said push card in the following manner: The push card is a paper card having 24 partially perforated discs. Concealed within each disc is a number. The numbers concealed within each disc are 39 or lower. Customers push or separate one of the discs from the card, and when such disc is separated the number is disclosed, and such customers pay in cents the amount of such number. Each purchaser receives one of the said boxes of candy. The numbers under the discs are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for one of the boxes of candy until a selection has been made and the disc removed from the card. The amount which customers pay for said boxes of candy is thus determined wholly by lot or chance. The push card bears legends informing purchasers and prospective purchasers of the plan or method by which said candy is being sold or distributed.

(b) Another of said assortments of candy is composed of a number of boxes of chocolate covered 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 chocolate covered candies in the following manner: The majority of the said chocolate covered candies in said assortment have centers of the same color, but a small number of said chocolate covered candies have centers of a different color. The said pieces of candy of uniform size and shape in said assortment retail at the price of 1¢ each, but the purchaser who procures one of the said candies having a center of a color different from the majority of the said pieces of candy 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. The aforesaid purchasers of said candy who procure a piece of candy having a center colored differently from the majority of said pieces of candy thus procure one of the said larger pieces of candy or one of the other articles of merchandise wholly by lot or chance.

(c) Another assortment of candy manufactured, sold and distributed by respondent is composed of a number of pieces of chocolate covered candy of uniform size and shape, the majority of which have centers of the same color but a small number of which have centers of a different color, similar to the pieces of candy of uniform size and shape in subparagraph (b) above but with which respondent does not pack and assemble the larger pieces of candy or the other articles of merchandise to be given as prizes. The said assortment, however, enables dealers to select other pieces of candy from their stock, to be sold along with said assortment containing pieces of candy of uniform size and shape, and to distribute the candy purchased from respondent and the candy taken from their stock as a lottery or game of chance.

PAR. 3. The wholesale dealers to whom respondent sells and has sold its assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose and have exposed said assortments for sale and sell and have sold 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. Said sales plans have the capacity and tendency 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) boxes of candy at varying prices, or (b) and (c) larger pieces of candy or other articles of merchandise. The use by respondent of said methods in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said methods, 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 methods 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 candy trade competitors who do not adopt and use the same methods or equivalent or

similar methods involving the same or equivalent or similar elements of chance or lottery schemes. 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 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. 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 equivalent methods; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said candy trade and to tend to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods by respondent has the tendency and capacity 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.

PAR. 6. The aforementioned methods, acts, and practices of 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, 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 25, 1937, issued and on August 26, 1937, served its amended and supplemental complaint in this proceeding upon the respondent Heidelberg Confectionery

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 amended and supplemental complaint, the respondent filed answer thereto admitting the averments of said amended and supplemental complaint and waived hearing on the said charges contained therein. Thereafter this proceeding regularly came on for final hearing before the Commission on the said amended and supplemental 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation organized and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 1720 North Second Street, Philadelphia, Pa. Respondent is now, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States. Respondent causes and has caused its said products when sold to be transported from its principal place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof in Pennsylvania and in other States of the United States at their respective points of location.

There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers assortments of candy so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof.

(a) One of said assortments is composed of 24 one-pound boxes of candy, together with a device commonly called a "push card." The boxes of candy contained in said assortment are sold and dis-

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tributed to the consuming public by means of said push card in the following manner: The push card is a paper card having 24 partially perforated discs. Concealed within each disc is a number. The numbers concealed within each disc are 39 or lower. Customers push or separate one of the discs from the card, and when such disc is separated the number is disclosed, and such customers pay in cents the amount of such number. Each purchaser receives one of the said boxes of candy. The numbers under the discs are concealed from purchasers and prospective purchasers, and they do not know how much they will have to pay for one of the boxes of candy until a selection has been made and the disc removed from the card. The amount which customers pay for said boxes of candy is thus determined wholly by lot or chance. The push card bears legends informing purchasers and prospective purchasers of the plan or method by which said candy is being sold or distributed.

(b) Another of said assortments of candy is 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 other articles of merchandise, which larger pieces of candy and other articles of merchandise are to be given as prizes to purchasers of said chocolate covered candies in the following manner: The majority of the said chocolate covered candies and said assortment have centers of the same color, but a small number of said chocolate covered candies have centers of a different color. The said pieces of candy of uniform size and shape in said assortment retail at the price of 1¢ each, but the purchaser who procures one of the said candies having a center of a color different from the majority of the said pieces of candy 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. The aforesaid purchasers of said candy who procure a piece of candy having a center colored differently from the majority of said pieces of candy thus procure one of the said larger pieces of candy or one of the other articles of merchandise wholly by lot or chance.

(c) Another assortment of candy manufactured, sold, and distributed by respondent is composed of a number of pieces of chocolate covered candy of uniform size and shape, the majority of which have centers of the same color but a small number of which have centers of a different color, similar to the pieces of candy of uniform size and shape in subparagraph (b) above but with which respondent does not pack and assemble the larger pieces of candy or the other articles of merchandise to be given as prizes. The said assortment, however, enables dealers to select other pieces of candy

from their stock, to be sold along with said assortment containing pieces of candy of uniform size and shape, and to distribute the candy purchased from respondent and the candy taken from their stock as a lottery or game of chance.

PAR. 3. The wholesale dealers to whom respondent sells and has sold its assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose and have exposed said assortments for sale and sell and have sold 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. Said sales plans have the capacity and tendency 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 described involves a game of chance or the sale of a chance to procure (a) boxes of candy at varying prices, or (b) and (c) larger pieces of candy or other articles of merchandise. The use by respondent of said methods in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said methods, 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 methods 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 candy trade competitors who do not adopt and use the same methods or equivalent or similar methods involving the same or equivalent or similar elements of chance or lottery schemes. Many persons, firms and corporations who make and sell candy in competition with respondent are unwilling to offer for sale or sell candy so packed and assembled 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 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. The use of said methods by respondent has the tendency and capacity, because of said game of

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chance 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 because the same are unlawful; to lessen competition in said candy trade and to tend to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods by respondent has the tendency and capacity 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.

CONCLUSION

The aforesaid acts and practices of the respondent Heidelberg Confectionery 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 amended and supplemental complaint of the Commission and the answer filed herein on September 2, 1937, by the respondent admitting all the averments contained in said amended and supplemental complaint and the respondent having waived hearing on the charges contained in said amended and supplemental complaint and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent Heidelberg Confectionery Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of candy in interstate commerce, do forthwith cease and desist from:

1. Selling and distributing to wholesale dealers for resale to retail dealers or to retail dealers direct candy so packed and assembled

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that sales of such candy are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers or retail dealers assortments of candy which are used or which may be used without alteration or rearrangement of the contents of such assortments to conduct a lottery, gaming device or gift enterprise in the sale or distribution of the candy 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 packages of candy together with a device commonly called a push card which push card is for use or which may be used in distributing or selling said candy to the public at retail.

4. Packing or assembling in the same package or assortment of candy for sale to the public at retail pieces of candy of uniform size 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 having a center 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 and shape but having centers of different colors which said package or assortment of candy by reason of the difference in the colors of the centers of said pieces of candy is used or may be used without alteration or rearrangement of the contents of such package or assortment to conduct a lottery, gaming device, or gift enterprise.

It is further ordered, That the respondent Heidelberg Confectionery Company, a corporation, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
BERNARD M. WOLF, TRADING AS KODICON PRODUCTS
COMPANY

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

Docket 2910. Complaint, Aug. 26, 1936—Decision, Sept. 14, 1937

Where an individual engaged in distribution and sale, in interstate commerce, of "Kodicon" medicinal preparation for relief, or asserted relief, of arthritic and rheumatic pains, etc., in substantial competition with those likewise similarly engaged in distribution and sale of medicinal preparations and treatments similar to it for same ailments for which said individual represented it as an effective remedy, in advertising his said "Kodicon" in newspapers and pamphlets of general circulation through the United States, and through various circulars, advertising folders, and literature distributed to customers and prospective customers, and through testimonial reproduction of purported purchaser thereof, and through leaflets, as case might be—

Represented that said "Kodicon" constituted an effective and reliable remedy or treatment for arthritis, neuritis, neuralgia, and gout, and for rheumatism, rheumatic fever, and other rheumatic ailments, and was a competent treatment for prevention of head colds and would stop pain, facts being product in question, principle ingredient of which was aspirin, recognized analgesic for temporary relief of minor forms of pain, was not a remedy or competent or effective treatment for said various ailments, and would not prevent head colds nor stop pain, and representations made by said individual with respect thereto were grossly exaggerated, false, misleading and untrue;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into the erroneous belief that all of said representations were true, and with result that a number of the consuming public, by reason of such mistaken and erroneous belief thus engendered, purchased substantial volume of his said product, and trade was unfairly diverted to him from those likewise engaged in sale of similar preparations and treatments for same ailments for which said individual represented said "Kodicon" as an effective remedy, and who truthfully advertise their products; to the substantial injury of competition in commerce;

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

Before *Mr. Edward M. Averill* and *Mr. Robert S. Hall*, trial examiners.

Mr. George Foulkes for the Commission.

Mr. Harold Singer of *Jacobs & Jacobs*, of Boston, 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 Bernard M. Wolf, trading as Kodicon Products Company, hereinafter referred to as respondent, has been, and is, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Bernard M. Wolf, is an individual trading as Kodicon Products Company, with his principal office and place of business located at 5 Bromfield Street, Boston, Mass. Respondent is now and has been for sometime engaged in the business of distributing and selling in commerce, as herein set out, a medicinal preparation which respondent designates as "Kodicon."

PAR. 2. Said respondent being engaged in business as aforesaid caused said preparation, when sold, to be transported from his office and place of business in the State of Massachusetts to purchasers thereof located at various points in States of the United States other than the State from which such shipments were made. Respondent now maintains a constant current of trade in commerce in said preparation, distributed and sold by him 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, firms, and corporations likewise engaged in the business of distributing, and selling medicinal preparations and treatments similar to that of "Kodicon," and preparations and treatments for the same ailments for which respondent represents "Kodicon" to be an effective remedy, in commerce among and between the various States of the United States and in the District of Columbia.

In the course and operation of his business and for the purpose of inducing individuals to purchase "Kodicon" respondent has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States, and has caused to be prepared and printed circulars, advertising folders, and literature which are circulated and distributed to customers and prospective customers located in the various States of the United States.

Certain advertising matter used by respondent is herein set out as illustrative of the claims respondent makes concerning the curative and remedial qualities of "Kodicon," but is not all inclusive. Such advertisements are as follows:

KODICON—For relief of pains incident to Arthritis, Rheumatism, Neuritis, Neuralgia, Gout, Nervousness, loss of sleep. The relief of pain and discomfort in simple headaches; relief for muscular aches and pains.

RHEUMATISM—KODICON for safe internal remedy. For relief of pain in arthritis, rheumatism, neuralgia, neuritis, loss of sleep, and nervousness. Stops the pains, radiates relief—makes life worth living. * * * Kodicon your pains away. * * *

Rheumatic Fever * * * Subacute Rheumatism * * * Chronic Rheumatism * * * Muscular Rheumatism * * * Rheumatoid Arthritis * * * Arthritis * * * Gout * * * Kodicon has brought great relief to sufferers from these ills.

* * * the prevention and relief of head colds.

In all of its advertising literature, respondent represents, through statements and representations as herein set out, and through statements of similar import and effect, that,

1. Kodicon is a competent treatment for the prevention of head colds.

2. Kodicon is an effective treatment for rheumatism, arthritis, neuritis, neuralgia, loss of sleep, rheumatic fever, nervousness, and gout.

3. Kodicon will "stop" pain.

PAR. 4. The representations made by respondent with respect to the effect of his product when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact "Kodicon" is not a competent treatment for the prevention of head colds, nor will said treatment prevent head colds. Kodicon is not an effective treatment for rheumatism arthritis, neuralgia, neuritis, loss of sleep, rheumatic fever, nervousness, and gout, and in such cases will do no more than afford temporary relief from pain. Kodicon will not "stop" pain.

PAR. 5. Each and all of the false and misleading statements and representations made by respondent, as hereinabove set forth, in his advertising in newspapers, magazines, pamphlets, and other advertising literature in offering for sale, and selling his product, had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. Further, as a direct consequence of this mistaken and erroneous belief, induced by advertisements and misrepresentations of respondent, as hereinabove enumerated, a number of the consuming public purchased a substan-

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tial volume of respondent's product with the result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of selling medicinal preparations similar to "Kodicon," and preparations and treatments for the same ailments for which respondent represents "Kodicon" to be an effective remedy, and who truthfully advertise their products. As a result thereof, substantial injury has been done, and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on August 26, 1936, issued and served its complaint in this proceeding upon respondent, Bernard M. Wolf, trading as Kodicon 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 George Foulkes, attorney for the Commission before Edward M. Averill and Robert S. Hall, Examiners of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Harold Singer, 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 allegations of the complaint, respondent having filed no brief and having not requested oral argument; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding

is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Bernard M. Wolf, is an individual trading as Kodicon Products Company, with his principal office and place of business located at 5 Bromfield Street, Boston, Mass.

The respondent, Bernard M. Wolf, doing business as aforesaid, is now, and has been since the month of September 1934, engaged in the business of distributing and selling in interstate commerce a medicinal preparation which respondent designates as "Kodicon."

PAR. 2. The respondent being engaged in business as aforesaid, caused the medicinal preparation "Kodicon," when sold to be transported from his office and place of business in the State of Massachusetts to purchasers thereof located at various points in States of the United States other than the State from which such shipments were made.

Respondent has since the month of September 1934, maintained, and now maintains, a constant current of trade and commerce in said product "Kodicon" distributed and sold by him between and among the various States of the United States.

PAR. 3. During the conduct of his business, respondent has been, and is now, in substantial competition with other individuals, firms, and corporations likewise engaged in the business of distributing and selling medicinal preparations and treatments similar to that of "Kodicon," and preparations and treatments for the same ailments for which respondent represents "Kodicon" to be an effective remedy, in commerce among and between the various States of the United States.

Respondent, in an effort to create a market for his product and to cause the purchasing public to buy "Kodicon," caused advertisements to be inserted in newspapers and pamphlets of general circulation throughout the United States.

Respondent also caused to be prepared and printed various circulars, advertising folders and literature concerning his product "Kodicon" and circulated and distributed, and now circulates and distributes to customers and prospective customers said circulars and folders.

In said advertisements referred to above, respondent made the following representations concerning the product "Kodicon,"

Kodicon for relief of pains incident to arthritis, rheumatism, neuritis, neuralgia, gout, nervousness and loss of sleep * * *

The following testimonial of a reputed purchaser of "Kodicon" appeared in the Boston Daily Record, a newspaper with general interstate circulation, April 9, 1936:

"Had suffered for over 12 years. Had X-rays of my limbs. Have taken other medicines with no avail. Took KODICON. That was the answer to my prayers. I took it faithfully and my pains are gone." Take KODICON—The amazing remedy for arthritis, rheumatism, neuritis, neuralgia, gout. Price \$1.00.

On a leaflet or small advertising circular, which respondent uses in advertising "Kodicon," the following heading appears:

WHY KODICON IS SO EFFECTIVE.

Immediately under the foregoing heading, respondent enumerates the following ailments and gives a definition of each ailment:

Rheumatism; rheumatic fever; sub-acute rheumatism; chronic rheumatism; muscular rheumatism; rheumatoid arthritis; arthritis; gout; neuralgia; and neuritis.

Following the foregoing list of ailments and their definitions, the respondent sets forth the following statement:

Kodicon has brought great relief to sufferers from these ills.

In all of his advertising literature, respondent represents through statements and representations as herein set out, and through statements of similar import and effect, that

1. "Kodicon" is a competent treatment for the prevention of head colds;
2. "Kodicon" is an effective treatment for rheumatism, arthritis, neuritis, neuralgia, loss of sleep, rheumatic fever, nervousness and gout;
3. "Kodicon" will Stop pain.

PAR. 4. Respondent's product "Kodicon" consists of acetyl salicylate, 5 grains, and colchicin 1/250ths of a grain.

Acetyl salicylate is commonly known as aspirin and is recognized by the medical profession as an analgesic for the temporary relief of minor forms of pain.

Colchicin is also an analgesic, and is prescribed by many of the medical profession for the relief of pains associated with some ailments. The amount of colchicin in "Kodicon", however, is so negligible as to render it impotent as an analgesic for the various ailments set forth in respondent's advertising statements. Medical testimony was given to the effect that in some instances "Kodicon" might act as an analgesic in relieving mild or superficial pains.

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The representations made by respondent with respect to the effect of his product, when used, are grossly exaggerated, false, misleading, and untrue.

In truth and in fact, "Kodicon" is not a remedy, or a competent or effective treatment for arthritis, rheumatism, neuritis, neuralgia, gout, rheumatic fever, sub-acute rheumatism, chronic rheumatism, muscular rheumatism, or rheumatoid arthritis. In truth and in fact "Kodicon" will not prevent head colds, nor will it "stop" pain.

PAR. 5. Each and all of the false and misleading statements and representations made by respondent, as hereinabove set forth in his advertising in newspapers, pamphlets, and other advertising literature in offering for sale, and selling his product, 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 representations are true.

As a direct result of this mistaken and erroneous belief induced by advertisements and misrepresentations of respondent, as hereinabove enumerated a number of the consuming public purchased a substantial volume of respondent's product with a result that trade has been unfairly diverted to respondent from individuals, firms, and corporations likewise engaged in the business of selling medicinal preparations similar to "Kodicon," and preparations and treatments for the same ailments for which respondent represents "Kodicon" to be an effective remedy, and who truthfully advertise their products.

As a result thereof, substantial injury has been done, and is now being done by respondent to competition in commerce among and between the various States of the United States, and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, Bernard M. Wolf, trading as Kodicon 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

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ent, testimony and other evidence taken before Edward M. Averill and Robert S. Hall, examiners of the Commission theretofore duly designated by it in support of the allegations of the complaint and in opposition thereto, and brief in support of the complaint, respondent having filed no brief and having not 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, Bernard M. Wolf, individually, and trading as Kodicon Products Company or under any other trade name, his representatives, agents, and employees in connection with the offering for sale, sale and distribution of a medicinal product now known as "Kodicon," or any product containing the same, or substantially the same, ingredients sold under that name or under any name, in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing that said product:

1. Is an effective and reliable remedy or treatment for arthritis, neuritis, neuralgia, or gout;
2. Is a competent treatment for the prevention of head colds;
3. Will "stop" pain;
4. Is an effective and reliable remedy or treatment for rheumatism, rheumatic fever, sub-acute rheumatism, chronic rheumatism, or muscular rheumatism, or any other rheumatic ailment.

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

Syllabus

IN THE MATTER OF

BERENICE COHN, TRADING AS BERGO LABORATORIES

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

Docket 2744. Complaint, Mar. 14, 1936—Decision, Sept. 17, 1937

Where an individual engaged in sale of "Nu-Nail," toilet preparation composed of American red vegetable dye, pure castor oil, and oil of sweet orange scent, and bottled and labeled by her for sale through department stores, drug jobbers, and beauty supply jobbers in half-ounce and four-ounce bottles, after purchase from manufacturer thereof in fifty gallon drums, and, as thus engaged, in substantial competition with others engaged in interstate sale of toilet preparations for use on the nails, in extensively advertising said preparation on a national scale through newspapers in various cities throughout the United States, through various periodicals of national circulation, through pamphlets, circulars, and folders, and through counter displays and newspaper advertising copy, etc., furnished to distributors and retail dealers in said preparation—

- (a) Represented that said preparation was a nail food and effective conditioner and nail rejuvenator, use of which would bring new life and vitality to the nails and keep the cuticle strong and healthy, and would eliminate brittleness, breaking, etc., ridging, white spots, and ingrown toe nails, and prevent nail biting; and
- (b) Represented, through use of word "laboratory" as a part of her trade name, that she conducted, operated, or maintained a laboratory for the purpose of manufacturing, testing, or experimenting with her said preparation;

Facts being defective nails and ordinary nails containing imperfections are due to systemic factor, application of said preparation to exterior of nail will not cause any radical change in physiology thereof, and will not eliminate breakage, etc., nor have other effects attributed to it as above set forth, but can only soften the epidermis and oil and polish the nail, and preparation in question is not a nail food nor an effective conditioner, and individual in question maintained no laboratories for manufacture of said product or for testing or experimenting therewith;

With capacity and tendency to mislead purchasing public into erroneous and untrue belief that said preparation will affect the nails as represented in such advertisements, and into purchase thereof on account of such erroneous belief, and to divert trade unfairly to her from competitors selling similar products in commerce who do not misrepresent the same:

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. Reuben J. Martin for the Commission.

Mr. Henry Haves, of Los Angeles, Calif., 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 Berenice Cohn, trading as Bergo Laboratories, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Berenice Cohn, is an individual trading and doing business under the name and style of Bergo Laboratories, with her office and principal place of business located at 270 South Windsor Boulevard in the city of Los Angeles, within the State of California. Said respondent is now and for more than two years last past, has been engaged in the sale of a toilet preparation for the nails, under the trade name of "Nu-Nail" and in the distribution thereof between and among the various States of the United States. Respondent causes said toilet preparation for the nails when sold by her to be transported to the purchasers thereof located in the State of California and in various other States of the United States. There is now and for more than two years last past has been, a constant current of trade and commerce by respondent in such nail preparation between and among the various States of the United States. In the course and conduct of her business the said respondent is now, and for more than two years last past has been, in substantial competition in commerce between and among the various States of the United States with various other individuals, firms, partnerships, and corporations engaged in the interstate sale of toilet preparation for the nails.

PAR. 2. Said toilet preparation for the nails, "Nu-Nail," is a liquid composed of American red vegetable dye, pure castor oil, and oil of sweet orange scent and is manufactured for said respondent by the E. S. Miller Laboratories, Inc., of Los Angeles, Calif., and is purchased by said respondent in fifty-gallon drums. Said respondent causes the preparation to be removed from the fifty-gallon drum and placed in one-half ounce and four-ounce bottles which are then labelled and sold by respondent through department stores, drug jobbers, and beauty supply jobbers. In making sales of the said toilet preparation for the nails, "Nu-Nail," respondent uses direct solicitation and also traveling salesmen who handle the said product on a commission basis.

PAR. 3. In the regular course and conduct of her business, as hereinbefore set out in paragraph 1, said respondent has been and now is engaged in extensive advertising on a national scale as a means of furthering and aiding in the interstate sale and distribution of her said toilet preparation for the nails, "Nu-Nail." As mediums of advertising said respondent has used and is now using newspapers located in various cities throughout the United States, various magazines with national circulation such as Vogue and Harper's Bazaar, pamphlets, circulars, and folders.

In addition to the advertising which has been and now is being done by said respondent in newspapers, magazines, pamphlets, circulars, and folders, as hereinabove set forth, said respondent has been and now is furnishing to the distributors of and retail dealers in her said toilet preparation for the nails, "Nu-Nail" located in cities throughout the various States of the United States, pamphlets, circulars, folders, counter display, and copy for newspaper advertising, and space has been and is left at the bottom of all advertising copy for the insertion of the name and address of the particular dealer using the advertising and various distributors and retail dealers have used and are using said advertisements furnished to them by said respondent. All of said advertisements were and are intended by said respondent, Berenice Cohn, trading as Bergo Laboratories, to be read by the general public and in particular by the purchasers of toilet preparations for the nails and to cause and induce said purchasers to buy nail preparations sold and distributed by said respondent.

PAR. 4. Said respondent in her said advertisement of the toilet preparation for the nails known as "Nu-Nail" and sold by her, has made and is now making various false, deceptive, and misleading statements concerning said preparation. Among the said statements which said respondent has used and is now using in her advertisements in newspapers, magazines, pamphlets, circulars, folders, counter displays, and copy for newspaper advertising furnished to distributors and retail dealers with space at the bottom for insertion of the name and address of the particular dealer using the advertisement, are statements that "Nu-Nail" is a nail food, an effective conditioner, a nail rejuvenator and that it eliminates brittleness, breaking of the nails, splitting, peeling, ridging, white spots, and ingrown toenails; that it prevents nail-biting; and that it brings new life and vitality to the nails and keeps the cuticle strong and healthy.

The above statements made by said respondent in her said advertisements and in the advertising copy and pamphlets, circulars, folders, and counter display furnished by said respondent to distributors

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and retail dealers, is false, deceptive and misleading because, in truth and in fact, said "Nu-Nail" is not a nail food, is not an effective conditioner, is not a nail rejuvenator; it does not eliminate brittleness, breaking of the nails, splitting, peeling, ridging, white spots, and ingrown toenails; it does not prevent nail-biting; it does not bring new life and vitality to the nails and it does not keep the cuticle strong and healthy.

Said respondent, Berenice Cohn, in the regular course and conduct of her business, trades under the name of Bergo Laboratories and advertises as Bergo Laboratories, whereas in truth and in fact said respondent does not maintain any laboratory, does not manufacture her own product, and does not test the same, but simply bottles and labels the preparation which is bought by her in bulk.

PAR. 5. The use by the said respondent, Berenice Cohn, trading as Bergo Laboratories, of the foregoing false, deceptive, and misleading misrepresentations alleged to be used by the said respondent in paragraph 4 hereof, have had and do now have the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that "Nu-Nail" is in truth and in fact a nail food, an effective conditioner, a nail rejuvenator; that it eliminates brittleness, breaking of the nails, splitting, peeling, ridging, white spots, and ingrown toenails; that it prevents nail-biting; that it brings new life and vitality to the nails and keeps the cuticle strong and healthy; and that said respondent maintains and operates a laboratory where "Nu-Nail" is manufactured and tested by her, and has thereby induced and does now induce the consuming public and especially the users of toilet preparations for the nails, acting in said erroneous belief, to purchase "Nu-Nail" in preference to toilet preparations for the nails offered for sale by other manufacturers and distributors of toilet preparations for the nails who do not falsely, deceptively, and misleadingly advertise their said products. As a result of such false, deceptive, and misleading representations on the part of said respondent, trade has been diverted to respondent from such manufacturers and distributors of toilet preparations for the nails who do not falsely, deceptively, and misleadingly advertise their products, and thereby injury has been done and is being done by the said respondent.

PAR. 6. Said false, deceptive, and misleading representations of said respondent contained in its advertising have resulted in injury to respondent's competitors and to retail dealers and distributors and in prejudice to the buying 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, and entitled "An

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Findings

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 March 1936, issued and served its complaint in this proceeding upon the respondent, Berenice Cohn, an individual, trading as Bergo Laboratories, charging said respondent with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission, before Charles P. Vicini, an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Henry Haves, 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 brief in support of the complaint (the said respondent having failed to file brief, and not having requested oral argument), and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Berenice Cohn, is an individual trading and doing business under the name and style of Bergo Laboratories, with her office and principal place of business located at 270 South Windsor Boulevard in the city of Los Angeles, within the State of California. Said respondent is now, and for more than two years last past has been, engaged in the sale of a toilet preparation for use on the nails under the trade name of "Nu-Nail," and in the distribution thereof between and among the various States of the United States. The respondent causes said toilet preparation, when sold by her, to be transported from her aforesaid place of business in the State of California, to the purchasers thereof located in the State of California and in various other States of the United States. There is now, and for more than two years last past has

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been, a constant current of trade and commerce by said respondent in said nail preparation between and among the various States of the United States. In the course and conduct of her said business, the said respondent is now, and for more than two years last past has been, in substantial competition in commerce between and among the various States of the United States, with various other individuals, firms, partnerships, and corporations engaged in the interstate sale of toilet preparations for use on the nails.

PAR. 2. The toilet preparation for use on the nails, "Nu-Nail," sold by the respondent, is a liquid composed of American red vegetable dye, pure castor oil, and oil of sweet orange scent. Until February 1936, "Nu-Nail" was manufactured for the respondent by the E. S. Miller Laboratory, Inc., of Los Angeles, Calif. Since February 1936, it has been manufactured for the respondent by Brunswick Wholesale Drug Company of Los Angeles, California. Respondent purchases the preparation "Nu-Uail" from the manufacturer in 50 gallon drums. Said respondent then causes the preparation "Nu-Nail" to be removed from the 50 gallon drum and bottles it in one-half ounce and four ounce bottles which are then labeled and sold by the respondent through department stores, drug jobbers, and beauty supply jobbers. In making sales of the said toilet preparation for use on the nails, "Nu-Nail," respondent uses direct solicitation and also employs traveling salesmen who solicit the sale of the said product on a commission basis.

PAR. 3. In the regular course and conduct of her said business, the respondent has been, and now is, engaged in extensive advertising on a national scale as a means of furthering and aiding in the interstate sale and distribution of her said toilet preparation for use on nails, "Nu-Nail." Respondent has used and is now using as media of advertising, newspapers located in various cities throughout the United States, various magazines having national circulation, such as "Vogue" and "Harper's Bazaar" and also pamphlets, circulars, and folders. In addition to the advertising which has been and now is being done by said respondent in newspapers, magazines, pamphlets, circulars, and folders, the respondent has also been and now is furnishing to the distributors of and retail dealers in her said toilet preparation for use on the nails, "Nu-Nail," located in cities throughout the various States of the United States, pamphlets, circulars, folders, counter display, and copy for newspaper advertising. Space has been, and is now left at the bottom of all of said advertising copy for the insertion of the name and address of the particular dealer using the advertising, and various distributors and retail dealers have used and are using said advertisements, copy for which was and is so furnished to them by said respondent. All of such said advertise-

ments were and are intended by the respondent to be read by the general public and in particular by that portion of the general public which purchases toilet preparations for use on the nails and to cause and induce said purchasers to buy the preparation for use on the nails, "Nu-Nail," sold and distributed by said respondent.

PAR. 4. Respondent in her said advertisements of the preparation for use on the nails known as "Nu-Nail" which is sold by her, has made, and is now making various statements concerning the qualities of said preparation "Nu-Nail" and the benefits which will accrue to the users thereof. The representations which said respondent has used and is now using in her advertisements in newspapers, magazines, pamphlets, circulars, folders, counter displays and copy for newspaper advertising furnished by her to distributors and retail dealers contain the following statements:

"Nu-Nail," the scientific nail conditioner that eliminates breakage and brittleness, giving nails new life, new luster, new vitality.

"Nu-Nail" stops breakage of the nails.

"Nu-Nail" makes the nails hard, strong, pliable, thus eliminating that brittleness which too often results in split ends and breaking * * * positively stops nail biting.

"Nu-Nail" is not a polish, it is a food, an effective conditioner that enables every woman to have lustrously beautiful and shapeful nails.

Applying it (Nu-Nail) night and morning to the nails and cuticle will tend to prevent hang nails, nail splitting and breaking.

"Nu-Nail" made of pure essential oil * * * a scientifically compounded preparation to correct a tendency to hang nails and splitting.

"Nu-Nail" overcomes the habit of biting nails.

Use this fragrant orange tinted preparation night and morning and soon even the brittlest nails will become flexible.

Nails that break require "Nu-Nail." Nails become brittle and break when not properly nourished. To thoroughly discourage nails from such an annoying practice this very pleasant preparation is suggested.

This new preparation rejuvenates tired lifeless nails.

Take a vacation from broken nails. "Nu-Nail—the original nail rejuvenator—ends brittleness, peeling, splitting—ragged cuticle and nail biting."

Summertime is broken nail time unless you use "Nu-Nail."

"Nu-Nail" stops nail breakage.

PAR. 5. Defective nails and the ordinary nail containing imperfections are due to a systemic factor behind such condition. The application of respondent's preparation, "Nu-Nail," to the exterior of the nail will not cause any radical change in the physiology of the nail. The only effect produced and which can be produced by the use of respondent's preparation, "Nu-Nail," is to soften the epidermis. "Nu-Nail" will not eliminate breakage, brittleness, splitting, or peeling of the nails. "Nu-Nail" is not a nail tonic. "Nu-Nail" affects only the surface or exterior portion of the nail and such external

application does not and cannot affect the growing cells of the nail. "Nu-Nail" does not and cannot give new life to nails. Nails are deeply rooted and grow rapidly. The only portion of the nail which can be affected by the application of "Nu-Nail" is the portion which has grown into visibility.

PAR. 6. Nail brittleness is caused by many different disturbances. The application of respondent's preparation "Nu-Nail" to the exterior of the nail has no effect upon the causes of the brittleness, and "Nu-Nail," in cases where brittleness is due to disease, is powerless to rectify the causes and can do no more than to oil and polish the nail. "Nu-Nail" is not a nail food and the external application of "Nu-Nail" in nowise affects the growing cells or the formation or development of the nail. "Nu-Nail" is not an effective conditioner because it only affects the external portion of the nail. It does not affect the fundamental cause of defects in the nails. The biting of nails is due to nervousness in the individual, and respondent's preparation "Nu-Nail" does not affect the nervous condition of the user and cannot and will not prevent or stop the biting of the nails. "Nu-Nail" will not remove or eliminate white spots on the nails and the use of "Nu-Nail" will not affect nor promote the growth of the nails nor will it bring life and vitality to the nails.

PAR. 7. Respondent does not maintain any laboratories for the purpose of manufacturing the said product "Nu-Nail" nor of testing or experimenting with the same.

PAR. 8. The advertisements and recommendations of respondent as set out herein in paragraph 4 are false, misleading, and deceptive and have had and do now have the capacity and tendency to mislead the purchasing public into the erroneous and untrue belief that "Nu-Nail" will affect the nails as represented in such advertisements, and into the purchase of respondent's said product on account of such erroneous belief. The misstatements and misrepresentations in such advertisements have had and do now have the capacity and tendency to unfairly divert trade to respondent from competitors selling similar products in commerce among and between the various States of the United States, who do not misrepresent their products.

CONCLUSION

The aforesaid acts and practices of the respondent, Berenice Cohn, trading as Bergo Laboratories, are to the prejudice of the public and 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 approved September 26, 1914, entitled "An

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Order

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the brief filed herein (respondent having filed no brief and not having requested oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondent Berenice Cohn, an individual, trading as Bergo Laboratories, 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 Berenice Cohn, an individual trading as Bergo Laboratories, or trading under any other name, her representatives, agents, and employees in connection with the offering for sale, sale and distribution of the toilet preparation now known as and sold under the name “Nu-Nail” or any preparation under whatever name sold, composed of the same or similar ingredients and possessing similar properties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

- (a) Representing that said preparation is a nail food;
- (b) Representing that said preparation is an effective conditioner;
- (c) Representing that said preparation is a nail rejuvenator;
- (d) Representing that the use of said preparation will eliminate brittleness, breaking of the nails, splitting, peeling, ridging, white spots on the nails, and ingrown toe nails;
- (e) Representing that the use of said preparation will prevent nail biting;
- (f) Representing that the use of said preparation will bring new life and vitality to the nails and will keep the cuticle strong and healthy;
- (g) Representing, by the use of word “laboratory,” or any other term of similar meaning or like import, as a part of her trade name or in any other manner, that she conducts, operates, or maintains a laboratory for the purpose of manufacturing, testing, or experimenting with her said toilet preparation, until and unless she actually owns, operates, or directly and absolutely controls a laboratory maintained for said purposes.

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(h) And from making any other similar representations of like import or effect as to the therapeutic or medicinal value of said preparation or the benefits accruing from the use thereof, unless and until said representations are true in fact.

It is further ordered, That the respondent, Berenice Cohen, trading as Bergo Laboratories, 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 the order hereinabove set forth.

Complaint

IN THE MATTER OF

RICHARD I. STEWART, TRADING AS AVOCADO SOAP
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 3183. Complaint, July 22, 1937—Decision, Sept. 17, 1937

Where an individual engaged in manufacture, sale, and distribution of soap to purchasers thereof in the States of the United States and in the District of Columbia, in substantial competition with those similarly engaged—

- (a) Represented, through use of the word "Avocado," together with depictions of said fruit, and through such statements as "Contains the Oil of Sun Ripe Avocados," etc., and "AVOCADO TISSUE SOAP Nature's Aid to Beauty," in advertisements, price lists and labels and otherwise, that his said soap contained a substantial amount of oil of avocado; and
- (b) Made such statements as "* * * Highly recommended by beauty specialists. * * * Not just a soap but a distinct beauty aid";

Facts being amount of said oil contained in soap in question, thus described, was infinitesimal compared to total of other ingredients used in manufacture thereof, and was not sufficient to warrant claim that such soap was made from avocado oil, and soap in question was not a natural aid to beauty nor recommended by beauty specialists, and had no beneficial effect different from any other soap;

With tendency and capacity to lead distributors and purchasing public into belief that said statements and representations were true, and with effect of inducing members of the public to purchase his said product on account of such erroneous beliefs, and with result of thereby unfairly diverting trade to him from competitors who do not make similar misleading representations concerning the ingredients or value of 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. S. Brogdyne Teu II 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 Richard I. Stewart, an individual doing business under the trade name of Avocado Soap Products 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, Richard I. Stewart, is an individual doing business under the trade name of Avocado Soap Products Company, and has his principal office and place of business in the city of Anaheim, State of California. He is now, and for more than one year last past has been, engaged in the manufacture, sale, and distribution of soap. He causes said soap, when sold, to be transported from his principal place of business in the State of California to purchasers thereof 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 in said soap so prepared, distributed, and sold by the respondent 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 respondent is now and has been in substantial competition with other individuals, partnerships, firms, and corporations likewise engaged in the business of manufacturing, distributing, and selling soap or other products designed, intended, and sold for the same purposes for which respondent's products are sold in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course of the conduct of said business, and for the purpose of inducing the purchase of said soap, respondent has printed and circulated through the United States mails, and otherwise, to customers and prospective customers in the several States of the United States, descriptions of his said product. The following statements are representative of those made by respondent in describing the said products:

1.

AVOCADO

(pictorial representation
of an Avocado)

TISSUE SOAP**REG. U. S. PAT. OFFICE**

Contains the oil of
Sun Ripe Avocados
A California Fruit

2.

AVOCADO TISSUE SOAP**Nature's Aid to Beauty**

Made in California. Contains the oil of sun-ripe
California Avocados (Alligator Pears). **AVOCADO**

TISSUE SOAP is made of the purest ingredients
obtainable. Highly recommended by beauty specialists.

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Contains no animal fats. Leaves skin soft, smooth and velvety. Not just a soap but a distinct beauty aid

A PRODUCT OF
AVOCADO SOAP PRODUCTS—ANAHEIM, CALIF.

Avocado Beauty Guild Hollywood, Calif.

The name "AVOCADO" which appears on Avocado Tissue Soap is protected by Trade Mark Registered in the U. S. Pat. Office. Infringers will be prosecuted

PAR. 4. In the aforesaid ways and by the aforesaid means respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by him. The articles and items of merchandise described in the said advertisements, price lists, and on labels appearing on the merchandise, and otherwise, above referred to are so described as to lead purchasers and prospective purchasers into the mistaken and erroneous belief that the said soap contains a large amount of oils of the Sun Ripe Avocados, and further that respondent's soap is a natural aid to beauty and highly recommended by beauty specialists.

PAR. 5. The use by the respondent of the phrase "Contains the Oil of Sun Ripe Avocados" serves to lead purchasers and prospective purchasers into the erroneous and mistaken belief that the above referred to oil is a major ingredient used in the manufacture of the soap so made and sold by respondent.

PAR. 6. In truth and in fact, in each and every instance wherein the above set out words and phrases are used, the amount of Avocado oil appearing in respondent's said soap is infinitesimal when compared to the amount of other ingredients used in the manufacture of said soap, and is not sufficient to warrant the claim that said soap is made from Avocado oil.

Further, in truth and in fact, respondent's product is not a natural aid to beauty, nor is respondent's product recommended by beauty specialists.

PAR. 7. There are among the competitors of the respondent in commerce as described in paragraph 1 above, manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and value of their respective products, and who refrain from advertising or representing, through their advertisements, price lists, or other advertising media, and brand marks on their products, that the merchandise offered for sale by them has a merit and value that it does not have, or that it contains ingredients in substantial portions other than actually contained in said merchandise.

PAR. 8. The effect of the foregoing false and misleading representations and acts of respondent in selling and offering for sale such items of merchandise as hereinbefore referred to is to mislead a substantial portion of the purchasing and consuming public by inducing them to believe:

1. That the soap manufactured, sold, and distributed by respondent contains a substantial amount of Avocado oil;
2. That the soap manufactured, sold, and distributed by respondent is "Nature's Aid to Beauty";
3. That respondent's product is highly recommended by beauty specialists.

PAR. 9. The foregoing false and misleading statements and representations on the part of respondent have induced and still induce a substantial number of consumer purchasers of said commodities to buy the products offered for sale, sold, and distributed by respondent on account of the aforesaid mistaken and erroneous beliefs.

As a result thereof trade has been diverted from those competitors of respondent engaged in similar businesses referred to in paragraph 7 above. As a consequence thereof substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States.

PAR. 10. The aforementioned methods, acts, and practices of respondents are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on July 22, 1937, issued and served its complaint in this proceeding upon respondent, Richard I. Stewart, trading as Avocado Soap Products Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent filed his answer in which he 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 that without further evidence or intervening procedure the Commission may issue and serve upon him findings as to

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Findings

the facts and conclusion and an order to cease and desist from the violation of law charged in the complaint. Thereafter, this 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. The respondent, Richard I. Stewart, trading as Avocado Soap Products Company, is an individual doing business under the laws of the State of California.

PAR. 2. The respondent has been for more than one year last past engaged in the manufacture, sale, and distribution of soap.

PAR. 3. In the sale of said product, respondent has transported or caused same to be transported from his principal place of business in the State of California to purchasers thereof located in States of the United States other than the State from which the shipment originated, and in the District of Columbia.

There is now, and has been for more than one year last past, a constant current of trade and commerce in said soap so prepared, distributed, and sold by the respondent between and among the various States of the United States and in the District of Columbia.

The respondent is engaged in substantial competition with individuals, partnerships, firms, and corporations engaged in the manufacture, sale, and distribution of like and similar products, and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, in soliciting the sale, and in the selling, of his commodity, and for the purpose of creating a demand upon the part of the consuming public for said commodity, has printed and circulated through the United States mails and otherwise, to customers and prospective customers in the several States of the United States, descriptions of his said commodity. The following statements are representative of those made by respondent in describing the said commodity:

1.

AVOCADO
 (pictorial representation
 of an Avocado)
 TISSUE SOAP
 REG. U. S. PAT. OFFICE
 Contains the Oil of
 Sun Ripe Avocados
 A California Fruit

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2.

AVOCADO TISSUE SOAP

Nature's Aid to Beauty

Made in California. Contains the oil of sun-ripe California Avocados (Alligator Pears). AVOCADO TISSUE SOAP is made of the purest ingredients obtainable. Highly recommended by beauty specialists. Contains no animal fats. Leaves skin soft, smooth and velvety. Not just a soap but a distinct beauty aid

A PRODUCT OF

AVOCADO SOAP PRODUCTS-ANAHEIM, CALIF.
Avocado Beauty Guild Hollywood, Calif.

PAR. 5. The respondent, by the aforesaid ways and means, has made and still makes to the general public false and misleading statements with reference to the commodity offered for sale by him. The articles of merchandise described in the said advertisements, price lists, and labels appearing on the merchandise, and otherwise, are so described as to lead purchasers and prospective purchasers into the belief that the said soap contains a large amount of oils of the Sun-Ripe Avocado, and further that respondent's soap is a natural aid to beauty and highly recommended by beauty specialists.

In fact, in each and every instance wherein the above set out words and phrases are used the amount of Avocado Oil appearing in respondent's soap is infinitesimal when compared to the total amount of other ingredients used in the manufacture of the said soap, and is not sufficient to warrant the claim that said soap is made from Avocado oil.

In fact, the respondent's product is not a natural aid to beauty, nor is respondent's product recommended by beauty specialists. Said soap does not have any beneficial effect different from any other soap.

PAR. 6. The use of each and all of the foregoing false and misleading statements and representations by the respondent as herein set out has had, and now has, a tendency and capacity to lead distributors and the purchasing public into the belief that said statements and representations are true, and has induced and now induces members of the public to purchase the product of said respondent on account of such erroneous beliefs.

Said representations have thereby unfairly diverted trade to said respondent from competitors who do not make similar misleading representations respecting the ingredients or value of their respective products, and 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.

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Order

CONCLUSION

The aforesaid acts and practices of the respondent, Richard I. Stewart, trading as Avocado Soap 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, 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 that without further evidence or other intervening procedure the Commission may issue and serve upon him its findings as to the facts and conclusion and an order to cease and desist from the violation of law charged in the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Richard I. Stewart, an individual, trading as Avocado Soap Products Company, or trading under any other name, his agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of soap in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Representing, through the use of the word "Avocado," or any other word of similar import and meaning, as descriptive of said products, that his soap contains a substantial amount of oil of avocados;

Representing that Avocado Tissue Soap is nature's aid to beauty or has any beneficial effect different from any other soap;

Representing that his soap is highly recommended by beauty specialists; and

Representing that his soap is a distinct aid to beauty.

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
PARCO PRODUCTS, INC., AND SOLOMON L. GOLDBERG

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

Docket 2558. Complaint, Sept. 23, 1935—Decision, Sept. 21, 1937

Where a corporation engaged in sale and distribution of a lithopone casein paint, under brand or trade names "Artwall" and "Partwall," principally to and through dealers for resale, but also to members of the public in various other States, in substantial competition with others engaged in the manufacture, sale, and distribution of casein and oil paints to dealers and to the public in other States, as above set forth, and including among aforesaid competitor manufacturers of casein paint, those whose product was sold and resold at substantially lower prices and was freely available to dealers and consumers in any quantity; and an individual, manager thereof and sales executive in charge and control of its agents and salesmen and of methods employed in sale and distribution of paints sold by it; in pursuance of a fraudulent plan, fraudulently conceived by said individual and fraudulently carried out by him and officers of said corporation, through it as instrumentality of such fraud and deception, and directed to the sale, in as large quantities as could be contrived, of said inferior and commercially unsalable paint to dealers, preferably and if possible, inexperienced in sale of paints, under scheme involving enlistment, in first instance, of their interest, and the disarming of their natural skepticism through holding out to them, by means of salesmen and representatives employed for such purpose, chance of being selected at corporation's home office as exclusive distributor in their territory of asserted new and valuable product, but in fact similar to that against sale of which, through methods employed, order of Commission had theretofore issued, as known to said individual and officers, and inducing prospects, as incident to so-called distributor's franchise, at home office, to commit themselves to as large an amount of said paint as aforesaid individual could bring about through misrepresentation of one sort or another, and to obligate themselves to payment therefor preceding opportunity to become fully apprized of the facts respecting the same—

- (a) Represented, in soliciting interest and securing commitments of prospects, as hereinabove indicated, that their aforesaid paint was a one coat paint which was a new discovery and was washable after use, left no disagreeable odor, and was not followed by hot spots on surfaces painted therewith, and could be used by amateurs or inexperienced persons as successfully as by experienced painters, and would give a finish to painted surfaces that could be obtained with other paints by experienced painters only, facts being it was not a one coat paint, left a very disagreeable odor, could not be successfully applied by inexperienced persons, and other representations above set forth were each and all false;
- (b) Represented, as aforesaid, that its vice-president had been associated in paint industry before his connection with aforesaid corporation, and that said corporation was backed by well-known financiers and was a sub-

sidiary of a large oil paint concern, facts being said individual was not at any time thus associated with aforesaid industry, nor was such corporation thus backed by any well-known financiers, nor a subsidiary of any large or small oil paint corporation, and there was no financial interest connected or associated with it outside of its own officers and stockholders;

(c) Represented as aforesaid, to dealers, that territory assigned or to be assigned to distributor was virgin territory, and that the dealer, as distributor, would have exclusive sale of paint therein, and that it would organize and instruct a competent sales force for the dealers who entered into contracts with it as distributors of its paint, facts being, in many instances, dealer later learned that others before him had entered into similar contracts, had been unable to dispose of the paint acquired by them, and had left on their hands, as unsalable and unreturnable to said corporation, most of the paint acquired by such other prior dealers, corporation's representatives usually spent only one or two days in selecting, organizing and instructing a sales force consisting of only one or two, or at most six or eight, salesmen, who left their employment due to lack of demand for paint in question and its lack, in other respects, of sale, thereafter made no further efforts to assist distributors in selling paint in question, which could not be sold under prices exacted from dealer who bought for resale, promise to organize and instruct competent sales force was not in good faith, and aforesaid representations were false; and

(d) Represented, as aforesaid, to dealers thus solicited, that its paint was in large demand for purchase and use by large industrial or institutional organizations or others, and exhibited to dealers, prospective distributors or others, purchase orders of large users or others for small quantities of paint sold to them by it, but so prepared as to omit amounts of paint purchased and amounts of purchase price thereof, facts being none of the large concerns, among many others who were induced by them to buy comparatively small or trial quantities of said paint, were ever in any position, by reason of their purchase and use thereof, to recommend its purchase and use to others, at least two of such concerns requested them not to refer prospective purchasers, and photographs of such orders as recommendations or testimonials of the proven success of said paint and consequent large existing demand therefor, bound up and exhibited by agents and salesmen, were reproduced in part only, with figures and amounts, as aforesaid, omitted, and paint in question was confronted with competitive sale, as aforesaid, of lower priced and generally available casein paint and was unsalable on basis of price charged dealers and price fixed to them as resale price thereof to consumers, under penalty of having further supplies cut off, and there was no large demand for purchase and resale and use of its said paint at such higher prices;

With result, by reason of such false representations, that dealers, more or less inexperienced in the paint business, were induced erroneously to believe that their said paint was a new discovery, successful use of which was demonstrated by large industrial users and discriminating purchasers, and that there was a large existing and potential demand for purchase and sale thereof, and, in reliance upon such erroneous belief, to enter into so-called distributor's franchise or agreement and, incident thereto and in connection therewith, to commit themselves to the purchase of large

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quantities of paint in question, and with result further that dealers thus purchased for resale and distribution large quantities of aforesaid paint in preference to that of competitors and were unable to resell same at prices which would be profitable, and many dealers who thus bought their said paint were caused to, and did, sell same as distress merchandise at prices greatly under those at which similar paint of competitors was offered and sold, and in some cases gave same away without charge; to the prejudice and injury of 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 L. Hornor*, trial examiner.

Mr. Edward E. Reardon for the Commission.

Mr. Herbert S. Vogel, 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 Parco Products, Inc., and Solomon L. Goldberg, 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 Parco Products, Inc., is a corporation, incorporated on or about March 4, 1930, under the laws of the State of New York, having its principal place of business in the city of New York and a place of business in Jersey City, N. J.

PAR. 2. Respondent Solomon L. Goldberg is an individual residing in the city of New York and at all times since in or about the year 1932 he has been and still is the manager of the business of respondent Parco Products, Inc., and during all said times he held and still holds the office or position of sales executive of the corporate respondent. As such sales executive he was and still is in charge and control of the sale and distribution of the corporate respondent's paints, hereinafter mentioned, and of the methods employed by it and its agents in their sale and distribution.

PAR. 3. Respondent Parco Products, Inc., is and has been, since in or about the year 1932, engaged in the sale and distribution of a lithopone casein paint under the brand or trade names "Artwall" and "Partwall" which it has sold principally to dealers for resale as well as to members of the public for use, purchasers thereof, located in various States of the United States other than New York or New

Jersey, or the State of origin of the shipment. Respondent Parco Products, Inc., has caused its "Artwall" and "Partwall" paints when so sold by it to be transported from New York or New Jersey, or the State of origin of the shipment, to the purchasers of said products located in States other than the State of origin of said shipments.

PAR. 4. Prior to and during all the times above mentioned or referred to, other individuals, firms, and corporations, located in the various States of the United States, hereinafter referred to as sellers, are and have been engaged in the manufacture, sale, and distribution of oil paints and casein paints and the sellers have sold and distributed their paints to dealers for resale and to the public for use, purchasers thereof, located in States other than the State of the seller, or the State of origin of the shipment. The sellers, respectively, have caused the paints when so sold by them to be transported from the State of the seller, or from the State of origin of the shipment, to the purchasers of said products located in States other than the State of origin of said shipments.

PAR. 5. Respondent Parco Products, Inc., during all the times mentioned or referred to in paragraph 3 hereof, is and has been in substantial competition in interstate commerce with the other individuals, firms, and corporations referred to as sellers in paragraph 4 hereof in the sale of its "Artwall" and "Partwall" paints.

PAR. 6. Respondent Parco Products Incorporated was caused to be organized by one Phillip Jeffay, who at the time of its organization was in the employ of Duralith Corporation, a corporation organized in 1928 and existing under the laws of the State of New York, and at all times subsequent to its organization, including the time of its employment of said Jeffay, engaged in the sale of a casein paint under the brand name Duralith and under substantially the same plan or scheme for its sale as the plan or scheme employed by the respondents herein. The attorney whose services were employed by said Jeffay in the organization of Parco Products, Incorporated, was the same attorney who similarly acted in the organization of Duralith Corporation. He was also counsel and legal advisor to the latter corporation. By reason of his relation as attorney and counsel to the Duralith Corporation he had knowledge of the plan or scheme employed by it in the sale of its casein paint and of the objects and results of the sale of its paint.

For a certain period of time beginning at the time the respondent corporation became engaged in the sale of its casein paints and subsequently while it was so engaged under the plan or scheme mentioned and described hereinafter, the said Jeffay was and continued to be one of the officers of respondent corporation until he was suc-

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ceeded as such in or about March 1933 by one Norman W. Englehart, who then purchased from said Jeffay 35% of the capital stock of the respondent corporation and became and since continues to be its president.

One Lester P. Van Duzer purchased 65% of the capital stock of the respondent corporation from said Jeffay in or about February 1932 and he then became and has since continued to be vice president of respondent corporation. The entire capital stock of respondent corporation, including that in the name of or held by Norman W. Englehart, is under the control of said Lester P. Van Duzer. Prior to his connection with respondent corporation the said Lester P. Van Duzer was not at any time associated or connected with the paint industry or the sale of paint.

One Benjamin H. Cappe is the secretary and treasurer of respondent Parco Products Incorporated. He has had experience in the sale of roofing materials and paint to dealers throughout the United States who have been engaged in the resale of such products. He has been connected or associated during all the times since long prior to his connection with respondent corporation, with the sale of roofing materials and paints to dealers throughout the United States who have been engaged in the resale of such products.

On January 23, 1934, the Federal Trade Commission issued its complaint against Duralith Corporation, above referred to, and others, Docket No. 2157, stating its charges to the effect that Duralith Corporation was employing unfair methods of competition in commerce in the sale of casein paint substantially the same as the methods now charged in the complaint herein were employed by respondents.

On March 29, 1935, the Federal Trade Commission made and issued its findings as to the facts concerning the methods of the sale of its casein paints by the Duralith Corporation and its conclusion that they were 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," and the Commission on the 29th day of March 1935 upon its said findings of fact and conclusion issued its order to cease and desist restraining the Duralith Corporation and its co-respondents, William and Harry Weiner, from the use of methods employed by them in the sale of the Duralith Corporation's said paints, which the Commission had found were unfair methods of competition in interstate commerce.

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The respondents herein at all times mentioned in paragraph 3 hereof knew, or with the exercise of reasonable care should have known, that the methods employed by the respondents mentioned and described in the complaint herein were unfair methods of competition employed by them in the sale of the corporate respondent's casein paint.

PAR. 7. Paints having a casein base, or casein paints, sometimes referred to as cold water paints, have a limited use and are in small demand when sold at fair prices in comparison with oil paints or other paints which are in large demand and in general use at the prices at which they have been sold by competitors of the respondents prior to and during the times above mentioned.

During all the times mentioned and referred to in paragraph 3 hereof, the respondents, for the purpose of fraudulently obtaining large sums of money respectively from dealers in various lines of merchandise throughout the United States, employed a plan or scheme, more particularly hereinafter mentioned and referred to, by means of which they fraudulently induced the dealers to enter into alleged contracts to be the sole distributors, respectively, of the respondents' paints in their respective communities, or within certain defined territory and as a principal purpose and result of such alleged contractual arrangement, such dealers in merchandise were fraudulently induced to buy large stocks of "Artwall" and "Partwall" paints for which there was no dealer or consumer demand and at excessive dealer prices fixed by respondents far above the regular market prices to dealers for such or other kinds of paints, prices not only excessive as prices to dealers for resale but prices which were excessive as retail prices for the purchase of the paints by consumers or others for use, and at which the paints could not be resold to consumers or others for use, except in occasional inconsiderable quantities.

PAR. 8. Pursuant to respondents' plan or scheme and as a part thereof, the corporate respondent's officers and respondent Goldberg, taking casein paints sold by them under the names "Artwall" and "Partwall" as the subject matter, means or device, fraudulently to obtain large sums of money from the dealers referred to, from the sale to them of large stocks of the paints under the pretense that the dealers were made sole distributors thereof in their respective localities, as above stated, adopted and made use of the corporate form, Parco Products Incorporated, as an instrumentality to represent them as well as to conceal them as individuals as the sellers of the said paints, and to aid more effectively to accomplish the object and purpose of the said plan or scheme.

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In further pursuance of the plan or scheme and as a part thereof, the respondents employed agents or salesmen to make surveys of the dealers in various lines of merchandise in communities or localities in the various States to discover and to contact such dealer or dealers in such places who were established, successful, and of sound financial rating or standing sufficient to perform any agreements or obligations into which they might be induced by respondents to enter and preferably those dealers who were not then carrying paint for sale, and to offer to make such dealer or dealers, as they contacted of said financial rating or standing, the sole distributor or distributors in their respective communities or in certain territory for the sale and distribution of respondents' paints, on the understanding, however, that the contract, making the dealer the sole distributor of respondent corporation, was subject to the approval of the respondents and to be made at the office of the respondent corporation in New York City which the dealer prospect so contacted was invited and urged to visit, at respondents' expense, to discuss the final arrangements and closing of the contract.

In further pursuance of the plan or scheme of respondents referred to and as a part thereof and with the knowledge of the respondents, the respondents' agents and salesmen, in the usual course of their employment and in contacting the dealers, were to make many representations purporting and represented to be matters of fact concerning the corporate respondent, its officers and management and its and their financial ability to perform their obligations, and concerning its and their financial and business connections with other persons, firms, and corporations; and were to make demonstrations of the use of respondents' paints and representations concerning the nature, quality, and uses thereof, the dealer and consumer demand therefor and the marketability of the paints and the terms and conditions under which they would be sold to the dealers as respondents' sole distributors thereof, all in such manner, form and substance that as a natural consequence thereof the dealer or dealers who were so contacted and to whom the demonstrations of the paints and representations above referred to were made, would credit and rely upon them as facts reliably supported to such extent that the dealers would not respond to the natural thought or impulse, usually occurring to them when dealing with persons previously unknown, to make ordinary and prudent inquiry or further investigation of the facts and things so demonstrated and represented which involved future financial and other responsibilities on their part.

In further pursuance of the plan or scheme of respondents referred to and as a part thereof, the corporate respondent's officers and more

particularly its sales executive, respondent Goldberg, were to receive the dealer so contacted by respondent's agents, as above set forth, upon his visit to the New York office of the corporate respondent and then and there to make similar demonstrations and statements purporting to be facts and representations concerning the proposed undertaking of the dealer to become the sole distributor of the respondents' paints and the making of a distributor's contract therefor with the respondent corporation. Such representations made to the dealer by the corporate respondent's officers and respondent Goldberg were in the general nature of a summary and confirmation, variously when the occasion arose, of the demonstrations, statements, and representations previously made to the dealer by the respondents' agents or salesmen and were in general devoted to statements and representations concerning the financing of the dealer distributor under the contract and details stated in general terms of what the contract would include as obligations of the corporate respondent as a party thereto.

The respondents relying upon the trust and confidence of the proposed dealer distributor, inspired and developed by the demonstration, statements and representations of their agents and salesmen, above mentioned and referred to, prior to his visit to respondents' New York office, were prepared to make adroit statements and arguments to the dealer of the advisability of closing or executing the contract, all tending to prove that the dealer as a distributor would make large sales of respondents' paints which the respondents would assist in financing and represented were in enormous demand, so that there would be no risk to the dealer in assuming the relation of distributor and that as such distributor he would enjoy large profits in the sale of the respondents' paints which he otherwise would not have.

PAR. 9. The fraudulent plan or scheme employed by the respondents above described and referred to was one briefly described as high pressure salesmanship, an euphony employed with respect to questionable methods or practices generally beyond the accepted boundaries of fair and honorable salesmanship, and consisting, for example, on the part of respondents in the instant case, among other things, principally of misrepresentation of facts to prospective distributors and false implications arising therefrom and depending upon the psychological reaction of dealers to such salesmanship in such manner that his confidence was obtained and he was lulled into such condition that he was prevented as intended thereby, from applying the rule of caveat emptor and was in consequence subject to being meretriciously and fraudulently hurried into executing a one-

sided alleged contract, unfair and burdensome in its obligations only to him and profitable to the respondents only, and an instrument useful in compelling or extorting payment of money from him, alleged to be due under its terms, because of the trouble and expense of interposing legal defense thereto.

PAR. 10. In pursuance of the plan or scheme of the respondents above set forth, the respondents employed agents or salesmen and caused them to make and they made surveys of the wholesale and retail dealers in various localities throughout various states, such as dealers in hardware, lumber, plumbing, and building supplies, builders and contractors, machine and supply companies, dealers in refrigerating and heating equipment, distributors of groceries and beer, and of coal, coke, and oil, dealers engaged in the sale of hay and seed and in other lines of merchandise, including individuals and firms engaged in the occupation of plasterers, and principally such dealers, in preference to dealers in paints who might have knowledge thereof and be acquainted with market conditions for the same. The respondents' agents or salesmen thereupon contacted among such dealers those who were considered of the sound financial rating and standing above mentioned and proposed to them that they become sole distributors in their respective localities for the respondents' paints, and by demonstrations of respondents' paints and various representations, more particularly referred to in paragraph eleven hereof, induced many of the dealers to visit at respondents' expense the respondents' offices in New York City for the purpose of considering and negotiating a contract as sole distributor for respondent corporation.

PAR. 11. The salesmen of the respondents employed to survey and contact the dealers as above set forth, in the course of their employment, and the officers and agents of the corporate respondent including respondent Goldberg at the offices of the corporate respondent in New York City, among other things, demonstrated the application of respondents' paints on various surfaces, to some slight extent, to dealers who were induced to visit respondents' offices at New York City and in connection with such demonstrations stated and represented, among other things, that the paint was an unusual and successfully used casein or cold water paint for practically all interior painting, implying that it was a new discovery in paints that had been successfully introduced and was in substantial demand by consumers and by dealers for resale; that the formula for the paint was the creation of a famous chemist; that it was washable after being applied to surfaces painted by it; that a gallon of the paint when mixed with $\frac{1}{2}$ of a gallon of water and applied or

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painted was washable; that it can be cleaned with water after thoroughly drying for approximately 30 days; that it requires only one coat and leaves no disagreeable odor; that it stands up under exposure to light; that the paint is indestructible under normal usage; that finishes can be obtained by amateurs that require experts with other materials; that it is a revolutionary product in the paint industry; that there is no concern that can make a material as good as "Artwall," sell it for less money, do what respondents do, and make a fair profit; that "Artwall" or "Partwall" paste mixed with two quarts of water to the gallon gives satisfactory results in painting and gives coverage with one coat; and respondents, and their salesmen and agents exhibited photostatic copies of parts of small trial orders of the paints by some of the largest business organizations in the United States and stated that such purchasers were large and regular users of the paints.

Respondents' salesmen, officers of the corporate respondent, and its agents represented to the dealers, among many other things, that Lester P. Van Duzer, respondent's vice president, had been associated in the paint business for many years; that the corporate respondent was backed by extremely well known financiers who did not wish to have their names disclosed; that it was the subsidiary of a large paint concern and therefore financially able to carry on its business and perform all its obligations.

The respondents, their salesmen, officers and agents represented to the dealers, respectively, among many other things, that under the contract made between them and the corporate respondent they would be the sole distributors in their respective territories which it was represented to them would be virgin territory, including the implication that respondents' paints had never been previously sold in such territory; that respondents would organize a competent sales force for such distributors and instruct them in soliciting orders for the paints in the territories of the dealers and would turn over to them all inquiries and orders received for the paints by the respondents, implying that such inquiries and orders had been and were being frequently received by the respondents with respect to orders for substantial quantities of the paints; and respondents made representations as to various advertising matter which they were to furnish to the dealers and regarding the financing of the business done by the dealers in the sale of the paints to the effect that dealers, acting as sole distributors, were merely to warehouse the material and distribute it as orders came in to them from purchasers; that there were distributors of respondents' paints who would not sell

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their distributorships for \$50,000; that there were only two other water-mixed paints in paste form on the market and that these two products were inferior to respondents' paints and were selling at approximately the same price as respondents' paints, namely \$3.15 per gallon, and the respondents made it a practice in enforcing payments of monies due for the sale of the paints to dealers in consequence of the above demonstrations, statements and representations, to assign to others their rights to the amounts claimed by them to be due from the dealers in order that the dealers might be compelled through legal process to make payment, without the opportunity of raising defenses to legal action brought by the assignee of the claim that they would have been enabled to interpose had the claims been sued upon by the respondents.

PAR. 12. The statements and representations made by respondents, their agents and salesmen mentioned and referred to in paragraph eleven hereof, were each and all false and fraudulent statements and representations of various facts and conditions to which they applied; the respondents' "Artwall" and "Partwall" paints were not newly discovered or unusual paint products; they were not products made after the formula of a famous chemist but were made after a formula of the respondents which was submitted to a certain chemist to revise, for the reason that paints produced and which had been sold by the respondents under such formula had proved to be unfit for use and unmarketable by reason of the composition of the paints in certain respects; said paints were not washable after being applied to surfaces and could not be cleaned with water or otherwise after thoroughly drying for thirty days and required more than one coat to cover surfaces painted.

The statements and representations that the paints when used left no disagreeable odor, that they stood up under exposure to light and were indestructible under normal usage and that finishes could be obtained by amateurs that required experts with other materials, were each and all false statements and representations in that over some surfaces to be painted more than one coat of respondents' paint was required and in that respondents' paints had a disagreeable odor and did not stand up to exposure to light, were not indestructible under normal usage and finishes could not be obtained by amateurs that experts with other materials could obtain.

The statements and representations that the respondents' paints were revolutionary products in the paint industry and that there was no other concern that could make a material as good as "Artwall" or "Partwall" paints and sell it for less money and make a fair profit were each and all false in that respondents' product was

not a new or revolutionary product in the paint industry and in that there were concerns in existence long prior to the organization of the corporate respondent that were making cold water paints, known as casein paints, and who were selling them for less money than the respondents offer for sale and have sold their said paints and who made a profit in the sale of such paints.

The statements and representations of the respondents, their salesmen and agents in connection with the exhibition of photostatic parts of orders of the paints received by respondents by large business organizations were false statements and representations in that the photostatic copies of the orders referred to were carefully made by the respondents so as not to show the quantities of the paints ordered and in that said orders of the business organizations referred to were only trial orders and involved only small quantities of respondents' paints and most of the business organizations referred to were not and are not large and regular users of the paints.

The statements and representations that the corporate respondent was backed by well known financiers were false as well as the statement that it was the subsidiary of a large paint concern.

The statements of the respondents, their salesmen and agents, that the exclusive territory offered to the dealers as sole distributors in their respective territories was virgin territory and territory in which the respondents' paints had never been previously sold were false in that the territory referred to was not virgin territory as to the sale of respondent's paints but was territory in which such paints had previously been sold by others, either the respondents themselves or those who had previously been made distributors of the paints by the respondents.

The statements and representations that the respondents would organize a competent sales force and instruct it in soliciting orders for the paints in the territory of the dealers who contracted to be sole distributors of the respondents, were false statements in that the respondents did not make competent efforts to organize such sales forces and to instruct them in soliciting orders and these statements and representations were made to so many dealers who entered into distributors' contracts with the respondents and were in so many instances not kept or observed by the respondents that the respondents knew when making such statements and representations that they never intended to make more than a formal performance of such promises such as would be sufficient as an effort to keep the matter of performance in suspense pending the time when the obligations of the distributors to make payments for the paints they were induced to purchase would become due.

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The statement of representations that inquiries and orders received by the respondents from the respective territories of the dealer distributors would be turned over to the dealers were false and fraudulent in their implication that such inquiries and orders in substantial number had been and were being received by the respondent which was not the fact.

The statements and representations made that the respondents would furnish the dealer distributors with advertising matter and regarding the financing of the business done by the dealers in the sale of the paints and that the dealer distributors were merely to act as warehousemen for the material and distribute it as orders came in to them from purchasers were each and all false statements and representations both as to the facts themselves and to the implications arising from the statements in that the respondents did not furnish the advertising matter to the dealers which they had represented they would furnish nor do the financing of the business done by dealers, and in that the distributors were not merely to act as warehousemen, in that the amount of advertising matter which they in most instances furnished dealers was inadequate to the decent performance of the respondents' promises in that respect and such failures to furnish the advertising referred to were so numerous that respondents well knew at the time such representations were made that they would not perform the promises to the extent that they knew they had led the dealer distributors to expect. The statement that there were distributors of respondents' paints who would not sell their distributorships for \$50,000 was wholly false in that there was no such distributor who would not sell his distributorship for much less and in that most of respondents' distributors endeavored to return respondents' paints and cease being respondents' distributors and were willing to do so even though they sustained considerable loss in their transactions with the respondents.

The statements of the respondents that other water mixed paints in paste form on the market were inferior to respondents' said paints and were selling at approximately the same price as respondents' paints, were false statements and representations in that the products referred to were not inferior to respondents' paints and were selling at lower prices than respondents' paints.

PAR. 13. In consequence of the statements and representations made by the respondents, their agents and salesmen, many dealers among those above referred to were fraudulently induced to enter into distributor contracts with the respondents as a result of which large quantities of respondents' paints were delivered into the hands of the dealer distributors respectively under their alleged contractual

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liability to pay for the same. The paints so delivered to the dealers were not as represented as to their marketability and demand for use by consumers and in consequence thereof the dealers were unable to sell, or move, more than inconsiderable quantities thereof and the said stocks of paints were and became known as "distress merchandise," meaning thereby that it was merchandise that was offered on the market in competition with oil paints and other casein paints at prices much below the prices paid for the competing paints referred to and at which they were sold.

PAR. 14. The above statements and representations made by the respondents' agents and salesmen had the capacity and tendency to deceive and mislead dealers in various lines of merchandise to whom they were made into entering into alleged contracts to act as distributors of the respondents' paints and to accept deliveries of large stocks of respondents' paints at exorbitant prices as above stated; and also the capacity and tendency to deceive and mislead such dealers in merchandise into the belief that the statements regarding the use and application of the respondents' paints were true and into causing the dealers to pass on such representations to members of the public who bought respondents' paints, on occasions, from the dealers. In consequence thereof the dealers who were so deceived and misled, acquired large stocks of respondents' paints which they could not sell or move at the prices at which they allegedly contracted to pay for the same and in order to move or close out the whole or parts of such stocks of paint the dealers were compelled to offer or throw the same upon the market for sale at prices much less than those they had allegedly contracted to pay respondents therefor, or at any price or prices at all which they could obtain for it, thereby causing the market for both oil and casein paints to be demoralized and the trade of dealers in oil and casein and other paints to be injured and trade in paint was thereby diverted to respondents from their competitors. As a result of the deception of the public by means of the statements and representations of the respondents above mentioned and referred to members of the public were deceived and misled into purchasing respondents' paints in the belief that they were purchasing paints which were washable and had no disagreeable odor, among others of the representations and statements of the respondents above mentioned and referred to, and trade in paints was thereby diverted to respondents from their competitors.

PAR. 15. 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 the 23rd day of September, 1935, issued its complaint in this proceeding and thereafter caused it to be served upon the respondents, Parco Products, Inc., and Solomon L. Goldberg, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents filed their answer to the complaint on December 4, 1935, and thereafter testimony and evidence in support of the allegations of the complaint were introduced by Edward E. Reardon, Esq., attorney for the Commission, before John L. Hornor, Esq., an examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Herbert S. Vogel, Esq., attorney for the respondents; and the 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 upon the complaint and the answer thereto, the testimony and evidence, and the brief in support of the complaint; and, the Commission, having duly considered the same, and being now fully advised in the premises, finds that the 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, Parco Products, Inc., is a corporation, organized March 4, 1930, under the laws of the State of New York and having its principal place of business in the city of New York.

PAR. 2. The respondent, Solomon L. Goldberg, is an individual residing in the city of New York and at all times since on or about February 1, 1932, he has been and still is the manager of the business of the respondent, Parco Products, Inc., and its sales executive in charge and control of its agents and salesmen and of the methods employed in the sale and distribution of the paint sold by Parco Products as hereinafter mentioned.

PAR. 3. The respondent Parco Products, Inc., is and has been, since sometime in April 1932, engaged in the sale and distribution of a lithopone casein paint under the brand or trade names "Artwall" and "Partwall" which it has sold principally to dealers for resale, as well as to members of the public for use, purchasers of the paint, located in various States of the United States other than New York, or the State of origin of the shipment.

Respondent Parco Products, Inc., has caused its "Artwall" or "Partwall" paint, when so sold by it, to be transported from New York, or the State of origin of the shipment to the purchasers located in said other States.

PAR. 4. Prior to and during all the times above mentioned or referred to, other individuals, firms, and corporations, located in various States of the United States, hereinafter referred to as sellers, are and have been engaged in the manufacture, sale, and distribution of casein paints and oil paints and the sellers have sold and distributed their paints to dealers for resale and to the public for use, purchasers thereof, located in States other than the State of the seller, or the State of origin of the shipment.

The sellers, respectively, have caused the paints when so sold by them, to be transported from the State of the seller, or from the State of origin of the shipment, to the purchasers located in said other States.

PAR. 5. The respondent Parco Products, Inc., during all the times mentioned and referred to in paragraph 3 hereof, is and has been in substantial competition in interstate commerce with the other individuals, firms, and corporations, referred to as sellers in paragraph 4 hereof, in the sale of its "Artwall" or "Partwall" paints.

PAR. 6. The following individuals were connected with Parco Products, Inc., prior to the issuance of the complaint by the Commission in this proceeding:

Philip Jeffay, a British citizen, 44 years of age, born in Scotland, who has been in this country 15 years. At his instance the respondent Parco Products was incorporated as set forth later herein.

The respondent Solomon L. Goldberg, above mentioned, who promoted taking over of Parco Products, from Jeffay, up to that time an inactive corporation, and its employment in the business of the sale of paint, including the casein paint called "Artwall" or "Partwall."

Goldberg and Jeffay, during the 15 years that the latter has been in the United States, were intimately acquainted with each other and have visited at each other's homes.

Lester P. Van Duzer, who was persuaded by respondent Goldberg to put money into the project to engage Parco Products, Inc., in the business of the sale of paint, and who became, on or about February 1932, and still is, the vice president of Parco Products.

Norman W. Englehart, who became president of Parco Products.

Benjamin H. Cappe, who was secretary and treasurer of Parco Products, Inc., and had had experience in the sale of roofing materials and paint.

PAR. 7. The Commission in a proceeding under its complaint issued on January 23, 1934, against the Duralith Corporation and its president and another, Docket No. 2157, found that the Duralith Corporation had employed unfair methods of competition in the sale of a casein paint and issued its order to the Duralith Corporation, its officers and agents to cease and desist from the said methods.¹ The methods of competition employed by respondents Parco Products and Solomon L. Goldberg, hereinafter described were, substantially, methods that were employed by the Duralith Corporation and restrained by the Commission's above order.

PAR. 8. Philip Jeffay knew the president of the Duralith Corporation quite a few years, and had visited his office quite a few times, prior to March 4, 1930. He knew that the Duralith Corporation was engaged in the sale of a casein paint in powder form to which, when used as a paint, water was added.

On March 4, 1930, Jeffay had just left employment with the Sterling Materials Company and was out of work. Because he wanted a job, he caused the respondent Parco Products to be incorporated on that date. To incorporate Parco Products, Jeffay employed the attorney who was counsel to the Duralith Corporation, and shared its suite of offices and the services of its stenographer. The attorney for the Duralith Corporation had engaged in the prosecution of suits for the collection of money due from dealers on commercial paper given for the purchase price of paint sold by the Duralith Corporation. He knew the paint was a casein paint.

He knew the nature of the defenses interposed by the defendants in those suits, one of which was that the Duralith paint had been misrepresented as washable.

PAR. 9. After the organization of the respondent Parco Products, Inc., Jeffay took a job with the Duralith Corporation and allowed Parco Products, Inc., to lie dormant without ever having been engaged in business. He was employed by the Duralith Corporation as sales manager in charge of a lot of its salesmen who, as was the case with the salesmen of Parco Products in the sale of its paint, were

¹ See 20 F. T. C. 256.

engaged in appointing dealers as distributors of Duralith paint. He remained in the employ of the Duralith Corporation as sales manager until the end of 1933. In the meantime he also remained as president of Parco Products, Inc., until March 1933, notwithstanding he transferred to Solomon L. Goldberg all of the books and effects and all of the capital stock of Parco Products on or about February 2, 1932, as hereinafter set forth. At the end of 1933, Jeffay left the employ of the Duralith Corporation. The time when he left the employ of the Duralith Corporation was only a few weeks before January 23, 1934, when the Federal Trade Commission issued its complaint against the Duralith Corporation after a usual preliminary investigation. Shortly thereafter, Jeffay, in or before March 1934, entered the employ of Parco Products, Inc., as sales manager at a salary of \$125 a week, in charge of ten salesmen. In 1933, the stenographer named as an incorporator of Parco Products and whose services were shared jointly by the Duralith Corporation and by its attorney, who was employed to incorporate Parco Products, Inc., had become assistant secretary of the Duralith Corporation.

PAR. 10. Respondent Solomon L. Goldberg, on or about February 1, 1932, was out of work and vitally interested in getting a job. He solicited the interest of Mr. Lester P. Van Duzer in Parco Products. He told him that it was a corporation that had been formed by a man who had the roofing business in mind and could be bought very reasonably. Thereupon, Mr. Van Duzer put some money into the proposition and Mr. Goldberg, on or about February 1, 1932, negotiated the transfer of the books and seal and the capital stock of Parco Products, Inc., from Philip Jeffay for the sum of \$150, of which \$100 was paid Jeffay in cash. Mr. Van Duzer acquired 65% of the stock of Parco Products and became and since then has been its vice president. Mr. Goldberg retained custody of the remaining stock for the account of Jeffay until the balance of \$50 owing to him was paid, and Jeffay, while acting as sales manager for the Duralith Corporation, remained as president of Parco Products until March 1933, even while it was engaged in selling its casein paint as above stated.

PAR. 11. Parco Products, Inc., was organized as a corporation primarily to engage in the sale of a roofing paint. On or about February 1, 1932, when control of it was acquired by respondent Goldberg and Lester P. Van Duzer, Parco Products did not have a formula for the successful manufacture of casein paint. It engaged for a short time in the sale of a roofing paint called Sealpor or Lockpor. In a transaction on February 4, 1932, it sold a quantity of Sealpor or Lockpor to a concern in Massachusetts and in another transaction it sold Sealpor or Lockpor, on February 23, 1932, to a concern at

Elmira, N. Y. It made one or more other sales of such roofing paint between February 1 and April 1932.

PAR. 12. Substantially the same practices that were later employed by the respondents in the sale of its Artwall or Partwall casein paint, as hereinafter set forth, and that are alleged to be unfair methods of competition, were employed by the respondents in the few sales of its roofing paint above referred to. For example, a salesman of Parco Products approached the concern at Elmira, N. Y., above referred to. It was never before in the paint business. The salesman stated to its president that he wanted a distributing center for the paint and thought that Elmira, N. Y., was the proper place for it; that he had looked up his concern and found it was just about the best one in that locality. The proposal of Parco Products was that they would furnish the Elmira concern with a stock of roofing paint called Sealpor or Lockpor and that their agents would come on and sell it; that it was not to cost the Elmira concern anything until it was sold by the agents of Parco Products and then the Elmira concern was to pay for the paint; that the Elmira concern was to be the exclusive distributor and receive the paint and warehouse it. The Elmira concern signed a distributor's special franchise. The Parco Products salesman wrote into the signed franchise an order by the Elmira concern for 695 gallons of the paint for the price of \$799.25. When the Elmira concern received the bill for \$799.25, it objected to any further proceeding in the matter or to making payment, claiming it was not according to its agreement. Parco Products, Inc., threatened suit but later settled the claim of \$799.25 for \$400. The Elmira concern found no demand for the paint and sold it all off at a loss, obtaining about 60 cents a gallon for it instead of \$1.50, the selling price fixed by Parco Products.

PAR. 13. Artwall paint, sold by Parco Products, later named Partwall, and the Duralith paint sold by the Duralith Corporation above mentioned, were both casein paints.

The Duralith paint was in powder form, and required to be diluted with sufficient water to the proper consistency when used as paint.

The Artwall or Partwall paint, containing about 29% of water, was in paste form when sold by Parco Products, and required the addition of some water when used as paint.

Casein, a constituent of the paint of the Duralith Corporation and the basis of the Artwall or Partwall paint of Parco Products, is the ingredient in milk that forms cheese or curd. Casein in dry form, after a period of time, deteriorates, if improperly stored, until it is in a condition in which it is not fit to be used for all purposes. If water should be added to casein and it was permitted to stand for a

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few days, it would then develop an odor obnoxious to most persons, such as emanates from a certain cheese product or from stale milk long soured and rotted.

PAR. 14. In or about April 1932, Parco Products, Inc., began the sale of Artwall casein paint which it manufactured from a certain formula. At first it sold the Artwall paint so made direct to consumers, certain large corporations in or about New York City, whose names and businesses conducted by them are nationally known and who are readily recognized by the public to be large users and purchasers of paint. The quantities of Artwall paint that Parco Products sold to nine, among others, of such large corporations, varied from one quart on May 13, 1932, to the Bell Telephone Laboratories, to five gallons on May 3, 1932, sold to a large department store. It sold one gallon on May 11, 1932, to the Equitable Building Corporation.

The contents of one of the containers of the paint sold to the department store exploded, as did also the contents of the container of the gallon of Artwall purchased by the Equitable Building Corporation. The last mentioned paint exploded all over the ceiling, all over the employee examining it, all over the floor and "stunk out" the entire room where it was kept. It smelled like rotten eggs.

The nine large purchasers of Artwall paint above referred to included, besides the Bell Telephone Laboratories and The Equitable Building Corporation, the following, all of New York City: The Consolidated Edison Company, formerly The Consolidated Gas Co. of New York; The Singer Building Rental Department; The Chrysler Building Corporation; The Cross & Brown Co., real estate operators, managing large properties in mid-town New York; and, the Shattuck Co., operating Schrafft's Stores; also, L. Bamberger & Co., a large department store at Newark, New Jersey; and, The Solo-Horton Brush Co., which is not actually a user of paint and never used in the past more than $\frac{1}{2}$ gallon of paint in a period of one year. None of these nine concerns, among many other consumers who bought trial quantities of Artwall paint were ever in any position, by reason of the purchase and use of the paint, to recommend its purchase and use to others. At least two of the nine concerns mentioned above wrote to the respondents requesting them not to refer prospective purchasers to them concerning their use of the paint.

PAR. 15. Sometime shortly after Parco Products, Inc., made the first sales of Artwall paint above referred to, the formula for the paint was submitted by respondent Goldberg to a chemist for correction or revision and the chemist was engaged in that work for a period of a month or two. However, Artwall paint manufactured

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later under its revised formula and sold by Parco Products in 1933, was examined and analyzed. It was found to have "soft-settled" in its container and also to have a disagreeable odor such as above described. By "soft-settled" it is meant that the paint was getting into a condition where the liquid in its composition was coming to the top and the part of the paint which settled in the bottom of the container was becoming hard. Such soft-settling in casein paint is a condition that is objectionable in the use of the paint and to its sale commercially for, in some instances, that condition progresses until the paint becomes so hard it cannot be used. The respondents received complaints from purchasers, whom they induced to buy large quantities of Artwall and Partwall paint, that it had become so hard it could not be used or sold for use. One of these complaints was made in October 1934. A representative of Parco Products examined the paint complained of in this instance. He said it was useless and ordered it returned to Parco Products for a replacement.

PAR. 16. The respondents, having caused Artwall paint to be purchased by numerous large nationally known consumers, amongst others, in comparatively small or trial quantities, as above mentioned in paragraph 14 hereof, proceeded to use, and they used such sales as recommendations or testimonials of those purchasers, as hereinafter set forth, among other means to the same purpose, falsely to induce dealers to believe that the Artwall paint was in practical use a proven success, and that there existed a very large demand for its purchase and use in large quantities by large users of paint throughout the United States, such as large industrial and institutional organizations.

In order to use the purchases of those small or trial quantities, indicating the purchase and use of the paint by large and discriminating purchasers and users, as recommendations or testimonials of the proven success of Artwall paint and a consequent large existing demand for its purchase and sale by consumers, the respondents caused the purchasers' orders, bearing the names of those consumers, to be photographically reproduced in part, with the figures representing the amounts and prices of the paint omitted. The respondents assembled a great many of such photographs, bound in portfolio form, and exhibited and caused their agents and salesmen to exhibit them to dealers, prospective purchasers of Artwall paint, stating at the same time, and causing their salesmen and agents to state to the dealers that those concerns were large purchasers and users of Artwall paint.

PAR. 17. The unsatisfactory formula under which the respondents at first manufactured and sold Artwall paint was revised about

the middle of 1932, and the respondents were then prepared to manufacture the paint under the revised formula, under which the paint produced also was an inferior paint. In some instances it was found to be useless and unsalable, as above set forth.

The respondents began the business of the manufacture of Artwall paint under the revised formula and its sale in wholesale quantities to dealers about the middle of 1932. The selling price of the paint to dealers in wholesale quantities was fixed by the respondents at \$2.05 per gallon, regardless of the amount purchased. The price at which the dealers were to resell the paint to consumers was fixed by respondents at \$3.15 per gallon. Substantially all dealer-purchasers were required to make the price to consumers \$3.15, regardless of the amount purchased. The respondents warned dealers that they must sell to consumers at \$3.15 a gallon, otherwise they would be cut off by respondents from further purchases of the paint.

During all the times the respondents were engaged in the sale of Artwall or Partwall casein paint there were other manufacturers of paint, competitors of Parco Products, Inc., whose products were being, and for some time had been, successfully purchased and used by consumers. Casein paint was, and had been sold by such competitors to dealers at prices ranging from \$1.00 to \$1.29 a gallon, and resold by dealers to consumers at prices from \$1.75 to \$2.10 a gallon. Both dealers and consumers, respectively, could freely purchase such competing paint in any quantities, from one gallon upwards.

Prior to the time in 1932 when the respondents began the sale of Artwall paint in wholesale quantities, it sold the paint to a large number of consumers in gallon quantities, at from \$2.50 to as low as \$1.95, or in other words, at considerably less than the price at which they later sold it to dealers for resale, or at from 65 cents to \$1.20 a gallon less to consumers than the price of \$3.15 which they later suggested and required dealers to obtain from consumers, regardless of quantity. Indicative of the cost of production of Artwall paint to Parco Products is the fact that, an arbitration committee, acting under the arbitration clause in respondent's contract, decided the matter by directing that the balance of 1,750 gallons of paint which the dealer had on hand, should be returned to Parco Products at the price of \$2 a gallon or, in the alternative, that Parco Products was to pay the dealer \$1,250, the dealer to retain the 1,750 gallons of paint. Parco Products could thus have repossessed itself of 1,750 gallons of paint at the price of about 70 cents a gallon. The respondents paid the dealer the alternative award of \$1,250, rather than take back the 1,750 gallons at 70 cents a gallon.

PAR. 18. During all the times from about the middle of 1932 until up to the present time, the respondents, their agents and salesmen, have represented to dealers, for the purpose of inducing them to enter into contracts with Parco Products, Inc., which included orders for large wholesale quantities of Artwall or Partwall paint, among other things, that the vice president of Parco Products, Lester P. Van Duzer, had been associated in the paint industry before his connection with Parco Products; that Parco Products was backed by well-known financiers and was a subsidiary of a large oil paint corporation.

These representations were wholly false. Lester P. Van Duzer was not at any time associated with the paint industry before his connection with Parco Products. Parco Products was not backed by any well-known financiers. There was no financial interest connected with or associated with it outside of its own officers and stockholders. Parco Products was not a subsidiary of any large or small oil paint corporation.

The respondents, their agents and salesmen, represented among other things respecting the nature and quality of Artwall or Partwall paint, that it was a one coat paint, meaning that one coat of Artwall or Partwall paint would cover a surface to be painted, whereas in the case of oil or other paints, two or more coats would be required; that it was a new discovery in paint, an unusual casein or cold water paint; that when applied as paint it left no disagreeable odor; that it left no hot spots; that it could be used by amateurs or persons inexperienced in painting to obtain a finish that, with the use of other paints, could only be obtained by professional painters; and, that it was washable.

The above representations concerning the nature and quality of Artwall paint were each and all false. Artwall or Partwall paint is not and has not been a one coat paint. It leaves a very disagreeable odor, apparently from decomposing casein, an odor described by purchasers to be like the odor from certain cheese or rotten eggs; hot spots appeared on walls painted with it; it could not be successfully applied in painting walls or other surfaces by amateurs or persons inexperienced in painting. In many instances, professional painters found they could not successfully paint various surfaces with it that could be painted successfully with other paints.

The respondents, their agents, and salesmen, represented to dealers that the territory assigned or to be assigned to a distributor of Artwall or Partwall paint was virgin territory and that the dealers, as distributors, would have the exclusive sale of the paint in that territory; and, that Parco Products would organize and instruct a compe-

tent sales force for the dealers who entered into contracts with it as distributors of its paint.

The representations that the territory assigned to the distributor was virgin territory and that the distributor would have exclusive sale of the Artwall or Partwall paint therein, were false. In many instances where such representations were made, the dealer learned later that others before him had entered into similar contracts with Parco Products, were unable to dispose of the paint acquired similarly by them and ever since had most of the paint remaining on hand because it was unsalable and they were unable to sell it or to return it to Parco Products, Inc. The representations that Parco Products would organize and instruct a competent sales force for its distributors were not bona fide representations. Usually only one or two days was spent by the representatives of Parco Products in selecting organizing and instructing a sales force, consisting sometimes of only one or two, or at the most six or eight salesmen, who afterwards, in every instance from Massachusetts to Wisconsin, left their employment in the sale of the paint because there was no demand existing for the paint and it was otherwise unsalable. After such slight efforts to organize and instruct a sales force, the respondents made no further efforts to assist distributors in selling the paint and the circumstances in connection with the paint and its sale, on the whole, were such that no matter what efforts were put forth by the respondents, no sales force could be assembled that could possibly sell Artwall or Partwall paint at the prices to consumers that the respondents obtained per gallon from its dealers who bought it for resale.

PAR. 19. The respondents sold a total of 44,033 gallons of Artwall or Partwall paint from 1932 to 1935 to at least 61 dealers in eight States for substantially all of which they obtained \$2.05 a gallon, or a total amount of approximately \$90,267.

In selling the paint, the respondents furnished their salesmen with a governing sales talk containing representations which the salesmen were to make to the dealers whom they approached. The salesmen made statements and representations to dealers substantially in accordance with the sales talk in every instance of their transactions with the dealers. In the sales talk, the respondents' salesmen, in contacting the dealers, stated to them that they were not authorized by Parco Products to offer them the appointment to be a distributor of the paint but that the officials of Parco Products, who were in New York City, must first pass upon their selection to be distributors of the paint. Thereafter, substantially all the dealers who were appointed distributors visited the New York office of the respondents, and on such occasions the same representations mentioned and

referred to in paragraph 18 hereof, and those set forth or indicated in the sales talk, were made to the dealers, respectively, by the representatives of Parco Products in New York City, and on all such occasions particularly by respondent Solomon L. Goldberg. The sales talk referred to was in substance as follows:

I am here to place with one distributor in this territory a business proposition with a material that has very little competition, the nature of which is unusual, requires very little or no time or personal attention and is sold through an advertising campaign conducted by my company—a plan whereby the consumer is not asked to buy one penny's worth of merchandise until he has tried, at our expense, a generous sample which is furnished by us for the purpose of proving to the consumer's entire satisfaction that our merchandise is the best and most economical; the consumer is not asked to purchase until he has actually seen the demonstration or tested the product; a plan whereby every order or inquiry that comes to us from this territory is referred to the distributor; a plan whereby the distributor does not carry any dead stock on his shelves; a plan whereby my company assists the distributor in financing the business; a plan whereby we help build a selling organization for the distributor. If I could satisfy you that this material is an absolute necessity for which there is an enormous market, and if I could show you how it is possible to make a substantial turnover on a profitable basis and the plan contains all the features I have mentioned, would you be in a position to expand your business with additional lines? Now where is your desk, so I can tell you all about the famous, revolutionary one-coat paint and its distribution. (After being seated): Mr. Prospect, I tell you we have investigated a few concerns in this town in order to satisfy ourselves as to whom we shall offer the distribution of our paint, and your name appears on our list. This does not mean that I am authorized by my company to place it with you—My company must pass upon it.

PAR. 20. In making the false statements and representations above mentioned and referred to, including the statements and representations indicated in the sales talk of their salesmen and agents, referred to in paragraph 19 hereof, the respondents adopted and put in practice a systematic method or procedure which was designed to and did accelerate the decision of the dealers with respect to entering into the agreements while they were under the influence or dominance of the false statements and representations.

The essential features of the method and procedure referred to, consisted first in causing agents or salesmen to travel and make surveys of dealers in the various communities or trading centers, and to interview among those dealers one or more whose financial or credit standing was found to be satisfactory, and preferably those not engaged or experienced in the sale of paint and to make statements that tended to and did overcome the natural sales resistance on the part of dealers to purchase large quantities of paint, the merchandising of which was unfamiliar to them. To that end, the re-

spondents' agents and salesmen stated to the dealers they contacted that they were not interviewing them for the purpose of selling anything, and then, following the false representations concerning the respondent, and its paint and concerning its financial associations or connections, the demand for the paint and the possibilities of large profits in its sale, they stimulated the interest of the dealers so incited by stating that their appointment as exclusive distributor of the paint could only be made by the officials of Parco Products at its New York office; that they, the salesmen, having investigated and approved the selection of the dealer in question, would recommend his appointment, and they offered to pay his expenses to and from New York where he might, they said, if satisfactory to those officials, obtain the appointment as distributor in his territory.

PAR. 21. In the light of all the facts regarding the prices of competitive casein paints to dealers and to consumers and the prices paid for its products to Parco Products, Inc., by dealers who, respectively, from time to time, over a period of four years, entered into contracts to act as distributors of its paint and none of whom, to the respondents' knowledge at all times, were able to dispose of the paint except at great loss, if at all, and in the absence of any proof that any dealer-distributor purchased more of the paint after the initial shipment, it is reasonable to infer, and the Commission finds it is the fact, that the object of the respondents in securing distributor contracts from dealers was solely to include therein orders for as large an amount of the paint as was possible with no reasonable hope or expectation of their making any further sales to the same dealers. Outside of those one-time sales, and the receipt of payment for the paint, the respondents neither evinced nor had further interest in the dealers' contracts or their resale of the paint.

To succeed in making such sales to dealers the respondents caused the transactions with the dealers to be begun with a preliminary approach by agents, called salesmen, who were merely false propagandists or cappers, and to be concluded with the dealers at the New York City offices of Parco Products, invariably by respondent Goldberg in the name of the respondent company.

PAR. 22. The purpose of the respondents in sending salesmen or agents to make the first contact with dealers and the effect thereof was to break down the dealers' sales resistance and stimulate their interest sufficiently to cause them, or their representatives who had authority to execute contracts, to visit the offices of Parco Products in New York to consider, primarily, not the purchase of paint but the proposal to become a distributor of respondents' paint. At New

York the dealers were invariably met by respondent Goldberg, whose efforts were ostensibly directed to selling them the proposition of becoming distributors and securing their signatures to agreements to act as distributors of the paint. Up to the moment when the dealer appeared to agree to become a distributor, the matter of including an order for paint in the agreement, or the quantity was not mentioned. By such means and artifices, the false statements and method of approach above referred to, the salesmen first contacting dealers and respondent Goldberg later, largely overcame the dealer's sales resistance, his normal antagonistic, skeptical, and questioning attitude towards the purchase of respondents' paint, or other merchandise, particularly when approached by strangers, and shifted the dealer's interest to the proposition as to whether or not he would be approved by the respondent as a distributor, and it was in that mental attitude the distributors were caused to visit the offices of Parco Products and to discuss, invariably with respondent Goldberg, that proposition. Up to this time, and up to the time the dealer was persuaded by respondent Goldberg to become a party to a distributor's franchise, the purchase of the paint and the amount was only incidentally or subconsciously considered by the dealer. On the other hand, the sale of the paint to the dealer in as large an amount as possible, utterly regardless of any reasonable requirements of the dealer for its resale, was the principal objective of the respondents.

PAR. 23. By means of the false statements and representations above set forth, the respondent Goldberg succeeded in getting dealers to agree to accept a distributor's franchise. He thereupon took up with them the matter of the amounts of the paint in its several colors, that he stated would be the requisite quantities for them to have on hand to begin its sale. The dealers were, to his knowledge, without experience in the merchandising of paint. He falsely represented to them the amounts they would require. He cited to them statistics of the use and demand for paint in general in their territories that he knew were an impractical basis for his estimates of their need of the respondents' paint. He continued this practice of false representation of the amounts of respondents' paint that would be required by the dealers, notwithstanding that he knew for over a period of four years that dealers who previously entered into such franchises were unable to dispose of the paint. To hurry the dealers into accepting the amounts of the paint estimated by him as necessary for them to begin its sale, respondent Goldberg falsely represented, among other things, that the franchise was only an application for their appointment and would not be in effect until it was approved by the offices of Parco Products to whom it would be submitted; that

Parco Products, Inc., was having such a demand for its paint that it was unable immediately to fill the orders it received from distributors and that sometimes there was a delay of from one to two or three weeks in manufacturing and shipping the paint ordered by the dealers. Substantially in every instance where a dealer signed a distributor's franchise and left it with respondent Goldberg, the franchise was accepted and shipment of the paint by Parco Products followed within about two or three days and, in many instances, the shipment of its paint was started before the dealer was able to arrive at his home on his return from the office of Parco Products.

The Distributor's Franchise provided that the amount of the order for the paint included in it was payable ten days from date of shipment, less 2% discount, and that the purchaser had the option of remitting in equal payments at one and two months from date of shipment, provided settlement was made by notes (but without interest) upon arrival of merchandise at destination. Accordingly, payment for the paint was required to be made by the dealers to Parco Products in substantially all instances before the dealers were able to organize the business of its sale and before the sales organization promised in the franchise could be, and before it was, undertaken by Parco Products to be formed and before the advertising could be begun that Parco Products engaged to do under the terms of the franchise. Payment by the dealers for the paint was by the above means secured to respondents before the dealers, by reason of the resale of the paint by them, could receive and before they received complaints from purchasers that were later received from substantially all of their customers to the effect that the paint and its qualities and use were misrepresented and that they could not use it and, therefore, before the dealers discovered there was no demand for the paint; that it could not be resold by them except at a great loss, if at all, and the result in most instances was that having paid or given notes for the payment of the paint the dealers were without redress for the losses they sustained. Parco Products, Inc., refused in nearly all instances to accept return of paint or to make any money allowances to dealers on that account.

PAR. 24. As above set forth, the Artwall or Partwall paint sold by Parco Products, Inc., to dealers was a casein paint inferior to casein paint sold by competitors. Its qualities, its workability, and the results of its use by persons experienced or inexperienced in painting were severally and at all times misrepresented to dealers by respondents. If truthfully represented in the above respects, the circumstances or conditions under which the paint could satisfactorily be used, were so limited that there was not and could not be any

substantial demand for its purchase or use. For many purposes of its use, including the limited occasions last mentioned, it was also, in general, and to respondents' knowledge, commercially unsalable by dealers to consumers by reason of the prices at which it was sold by respondents to dealers for resale. At all times during the period of four years, to the knowledge of the respondents, it could not, except in occasional instances and in inconsiderable amounts, be resold by dealers even at prices to consumers substantially less than the dealers paid to respondents.

In soliciting dealers to enter into distributor contracts, they were falsely told by respondent Goldberg that Parco Products was a subsidiary of large oil paint manufacturers whose interests would be affected by the displacement of their products by respondents' paint and that their names could not be disclosed on that account until the distribution of its paint by Parco Products had made a certain amount of progress. Following that statement by respondent Goldberg, when dealers persisted in their inquiry as to the identity of such manufacturers and suggested the name or names of one or more of the largest oil paint manufacturers in the country as the interested party or parties, respondent Goldberg did not deny the truth of their suggestion. He remained silent and by his manner and by appropriate facial gestures and expression led the dealers to believe that they had shrewdly hit upon the truth as to the identity of the oil paint manufacturers referred to.

By reason of the false representations made to dealers by the respondents, their agents and salesmen, as above set forth, the respondents succeeded in inducing dealers more or less inexperienced in the paint business, erroneously to believe that the respondents' casein paint was a new discovery in casein paints; that its successful use was demonstrated by large industrial users of paint who were discriminating purchasers; that such large consumers were and had been large purchasers and users of the paint; and, in consequence that there was a large existing and potential demand for its purchase and sale. In reliance upon such erroneous belief, dealers were induced by respondents to enter into an agreement in writing, called a Distributor's Franchise, which purported to appoint the dealers sole distributors of respondents' paint in their respective localities. In all cases, there was included in the form of the Distributor's Contract, when executed by Parco Products and dealers, an order for the purchase of large quantities of the paint, amounting in the various transactions to from several hundred to several thousand gallons and in at least one instance, a carload lot, which at the price to the

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dealer of \$2.05 a gallon, for the latter amounted, approximately, to \$7,800.

In consequence of the premises, dealers purchased for resale and distribution large quantities of respondents' paint in preference to paint sold by competitors of Parco Products, Inc., with the further consequence that they were unable to resell respondents' paint at prices which would be profitable and it was left on the hands of the dealers as "distress merchandise" to be offered and sold, if at all, at prices greatly under the prices at which the similar paint of respondents' competitors was offered for sale and sold. Many of the dealers who bought respondents' paint were caused to and did sell it at such lower prices and, in some cases, gave it away without charge, to the prejudice and injury of respondents' competitors.

PAR. 25. The merchandising of the Artwall or Partwall paint of Parco Products, Inc., was pursuant to a fraudulent plan, fraudulently conceived by respondent Goldberg and fraudulently carried out by him and the officers of Parco Products, Inc., whereby respondents used the paint mentioned as the means or device, fraudulently to obtain large sums of money from the dealers as above set forth, and used the corporate form, Parco Products, Inc., as an instrumentality and more effectively to accomplish the object and purpose of the fraudulent plan or scheme by concealing the officers of Parco Products and respondent Goldberg individually as the sellers of the paint.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence taken before John L. Hornor, Esq., an examiner of the Commission, theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and the brief filed herein 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 provision of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent Parco Products, Inc., its officers, agents, and employees, and the respondent Solomon L. Goldberg, in connection with the sale and distribution, or the offering for sale of the Artwall or Partwall casein paint or any other paint product of Parco Products, Inc., in interstate commerce or in the District of Columbia, do forthwith and forever;

Cease and desist, From stating verbally or in writing or representing directly or indirectly:

1. That the Artwall or Partwall casein paint of Parco Products, Inc., or any casein paint sold by the respondents or either of them, of substantially the same composition and qualities in its application and use as paint:

(a) Is a one-coat paint; i. e., that surfaces, required to be painted with two coats in the case of oil or other paints, would require to be painted with only one coat of the Artwall or Partwall paint of Parco Products, Inc.

(b) Is washable on surfaces painted with it.

(c) Leaves no disagreeable odor.

(d) Is not followed by "hot spots" on surfaces painted with it.

(e) Can be used by amateurs or persons inexperienced in painting as successfully as when used by experienced painters.

(f) Will give a finish to painted surfaces that can be obtained with other paints only by experienced painters.

2. That Lester P. Van Duzer, vice president of respondent Parco Products, Inc., is or was at any time associated with the paint industry before he became connected with Parco Products, Inc.

3. That Parco Products, Inc., is or has been at any time a subsidiary of any other corporation, or that any person or persons other than its own proper officers, agents, and employees are or have been financially or otherwise interested in the sale or distribution of its Artwall or Partwall casein paint or of any other of its products; unless or until such representations shall hereafter, by change of circumstances, have their basis in fact and in truth.

4. That the territory offered a dealer as a distributor of the paint of Parco Products, Inc., is virgin territory, or that such dealer would be the exclusive seller of its paint therein, when previously Parco Products, Inc., had made other dealers its distributors in the same territory, who were at the time holding large stocks of its paint, whether or not the paint held by them was bought upon misrepre-

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sentation of respondents concerning its qualities and the demand for its purchase and use.

5. That Parco Products, Inc., would select, organize, and instruct a competent sales force for dealers acting as its distributors unless such representation of respondents is made in good faith to be thereafter fulfilled by substantial performance.

6. To dealers solicited by Parco Products to act as distributors, or for any purpose, that its paint is in large demand for purchase and use by large industrial or institutional organizations, or others, when, to the knowledge of respondents, such demand is purely hypothetical and there is no substantial basis therefor on actual purchases made by such users of paint.

7. That there is demand by large industrial or institutional organizations, or others, for the purchase and use of Artwall or Partwall casein paint or any paint product of Parco Products, Inc., by exhibiting to dealers, prospective distributors, or to others, purchase orders of large users, or others, for small quantities of paint sold to them by respondents prepared in such manner as to omit the amounts of the paint purchased and the amounts of its purchase price.

8. To dealers solicited to act as distributors of the paint of Parco Products, or to others, that there is a large demand for the purchase and resale and use of its paint at prices to dealers and consumers greater than the competitive prices for the same class of paints, when such is not the fact.

It is further ordered, That the respondents shall each, 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 each, respectively, have complied with this order.

IN THE MATTER OF

J. W. GIBSON, TRADING AS J. W GIBSON COMPANY

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

Docket 2932. Complaint, Sept. 29, 1936—Decision, Sept. 21, 1937

Where an individual engaged in sale and distribution of food flavoring, spices, toilet articles, and kindred merchandise, to distributors and house-to-house canvassers, in substantial competition with those engaged in sale of such products in commerce among and between the various States; in advertising, in periodicals or publications of interstate circulation, to facilitate the sales of such products and to obtain distributors for purchase of his said merchandise for resale, usually, through house-to-house canvassing, to members of the purchasing public—

- (a) Represented, to prospective distributors and purchasers, that, on becoming distributors, they would receive free sales kits, and that they could earn up to \$24.00 a day, and would earn \$35.00 a week, and that they would be given new automobiles as a bonus in addition to their regular earnings, through such statements as "Free Sales Kit * * * filled with 5 full size Samples * * * at Absolutely NO COST to workers * * *," "Up to \$24 a day," etc., "MEN AND WOMEN needing up to \$35 a WEEK Operate one of my New Kind of Cut-Rate Store-on-Wheels * * *," "I average between \$40.00 and \$50.00 EACH WEEK," "BRAND NEW TUDOR FORD SEDAN FURNISHED WORKERS * * *," "* * * I give it to you IN ADDITION TO YOUR REGULAR EARNINGS," "* * * representatives have earned as many as three, even four brand new Ford cars within a space of two or three years. Not having use for more than one car, they sold the others and pocketed the easy cash for themselves," facts being no such kits are furnished, deposit is required on each, subject to refund in event of aggregate purchase amounting to some \$12.00, distributors did not earn any such amounts under normal conditions in due course of business, but average weekly earnings of all distributors under such conditions were much less than said \$35.00 per week, sale of \$4,500 of merchandise, exclusive of free deals and combinations, was required before any automobile was furnished, and in fact no automobile had ever been supplied by said individual to distributor;
- (b) Represented that merchandise was given away as a gratuity in consideration of purchase of other products, through such statements as "We frequently offer to customers valuable kitchen utensils and many other useful articles when they purchase a big high-quality bottle of food flavoring at regular retail price. This is just one of the hundreds of special combinations and free gift offers that are bound to make you the most popular person in your community," facts being no merchandise was given away as gratuity in consideration of purchase of other products, but cost of such merchandise was included as part of purchase price charged for another article or combination of articles;
- (c) Represented, on letterheads and in pamphlets of instructions sent to his distributors and otherwise, that he was a manufacturer of the products

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sold by him, and that his goods were sold "direct from the factory to the customer," facts being he did not own, operate or control plant or factory in which were made, manufactured or compounded all the products sold by him, but purchased in bulk and repackaged many of the items so sold; and

- (d) Designated food flavorings sold by him, in advertisements, literature, and instructions published and furnished to his purchasers, as "extracts," and represented said flavorings as triple strength, through such statements as "famous triple strength guaranteed food flavorings," facts being compounds thus referred to were not extracts or juices from fruits, beans, berries, or other similar products, dissolved and carried in alcoholic solution, but were made and composed largely of imitation and synthetic flavoring materials dissolved and carried in emulsions and oils, and were not three times as strong as ordinary food flavorings, but were ordinary imitation flavoring compounds;

With capacity and tendency to mislead and deceive potential distributors and customers into a mistaken and erroneous belief that earnings to be achieved in sale of said merchandise were far in excess of those that could actually be obtained, and that respondent was manufacturer of the merchandise sold by him, furnishing his distributors with bonuses, free automobiles, sales kits and merchandise, and offering genuine extracts and triple strength food flavors, and with result, by reason of such erroneous beliefs thus engendered, that prospective distributors and members of the public were induced to buy his said merchandise and become distributors therefor, and trade was unfairly diverted to him from his said competitors similarly engaged, and who do not misrepresent their said merchandise or business status or make false and misleading statements to prospective distributors and representatives concerning earning opportunities, conditions of employment or otherwise, and said competitors' abilities successfully to compete with him were thereby lessened; 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 J. W. Gibson, an individual, trading and doing business under the firm name and style of J. W. Gibson 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 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. Said respondent, J. W. Gibson, is an individual, trading and doing business under the firm name and style of J. W. Gibson Company, with his office and principal place of business at 1828 Central Avenue, in the city of Indianapolis and State of Indiana. Respondent is now, and for more than one year last past has been, engaged in the business of selling food flavorings, spices, toilet articles, and kindred merchandise to agents and house-to-house canvassers. In the course and conduct of his business, respondent sells and distributes said products in commerce between and among the various States of the United States and in the District of Columbia, causing said products, when sold, to be shipped from his place of business in the State of Indiana to purchasers thereof located in a State or States of the United States other than the State of Indiana.

PAR. 2. In the course and conduct of his business aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other individuals, and with other corporations, firms, and partnerships engaged in the business of manufacturing, selling and distributing food flavorings, extracts, spices, toilet articles, and kindred merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent has made and is making false and misleading representations in advertisements inserted in various publications circulated throughout the United States, and in letters, circulars, pamphlets, and otherwise. Among such advertisements, published and circulated as aforesaid, are the following:

Free Sales Kit

Gibson offers this Sales Kit filled
with 5 full size Samples Finest Food Flavors
at Absolutely NO COST to workers. Mail coupon
at once

Up to \$24 a day
Double your Money

Free Samples
5 Big Bottles Sale \$1.00 Price
Your Profit 51¢

MEN AND WOMEN needing up to \$35 a WEEK
Operate one of my New Kind of Cut-Rate Store-on-
Wheels in Your Community

Ride in this
NEW FORD
Distribute Food
Necessities to
Customers

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BRAND NEW TUDOR FORD SEDAN FURNISHED WORKERS as a bonus in addition to your regular earnings. Write J. W. Gibson, Employment Mgr., Dept. 1-2, Indianapolis, Ind.

and,

I Average between
\$40.00 and \$50.00
EACH WEEK

which concludes with the identical offer of a Ford automobile contained in the preceding advertisement.

After prospective agents or purchasers have communicated with respondent because of said advertisements, they receive letters and circulars, in which, among other things, it is stated that:

I want every one of my successful representatives to have one of these beautiful latest model Fords ABSOLUTELY FREE * * *

Understand you pay nothing now or ever for this free Ford * * * I give it to you IN ADDITION TO YOUR REGULAR EARNINGS.

Why, I know of cases where representatives have earned as many as three, even four brand new Ford cars within a space of two or three years. Not having use for more than one car, they sold the others and pocketed the easy cash for themselves.

On his letterheads, in his pamphlets of instructions, and otherwise, the respondent describes and holds himself out to be a manufacturer of the merchandise he sells, stating that the "J. W. Gibson Company has been manufacturing quality food products," that his said business is "unlike other manufacturers," and that his goods are sold "direct from the factory to the customer."

In the advertisements, literature, and instructions which respondent publishes and furnishes to his purchasers, the imitation flavoring compounds referred to are described in many instances as "extracts" and "Gibson's Famous Triple Strength Guaranteed Food Flavors."

In the catalogue sent by the respondent to prospective agents and purchasers, respondent makes the following statement:

We frequently offer to customers valuable kitchen utensils and many other useful articles when they purchase a big high-quality bottle of food flavoring at regular retail price. This is just one of the hundreds of special combinations and free gift offers that are bound to make you the most popular person in your community.

PAR. 4 Respondent, by such false and misleading advertising in interstate commerce, has falsely represented to prospective agents that they can obtain free sales kits, that they can earn from \$24 to \$50 per week, and that they are given new automobiles by respondent as a bonus in addition to their regular earnings.

By the use of false and misleading representations appearing in respondent's circulars and other advertising matter pertaining to the quality of flavoring extracts and the giving of gifts and premiums, which representations are passed on to the purchasing public by agents and representatives of respondent, the public is deceived concerning the character and quality of said merchandise and the value thereof.

PAR. 5. In truth and in fact, respondent does not furnish free sales kits to prospective agents or purchasers, but on the contrary requires a deposit of one dollar for each of such sales kits, which said amount is not refunded until such purchaser has bought certain merchandise, the aggregate price of which is \$11.76; the agents or workers do not earn up to \$24 a day. The statement "men and women needing up to \$35 a week" implies that, by operating one of respondent's "Cut Rate Stores on Wheels," an agent is enabled to earn said amount of money in one week, when in truth and in fact said agents do not earn such amount; and in truth and in fact agents of respondent do not average between \$40 and \$50 per week, but on the contrary earn only amounts which do not even approximate such sum; respondent does not furnish any automobiles as a bonus to his agents in addition to their regular earnings, but on the contrary requires that such agents sell merchandise amounting to \$4,500, exclusive of free deals and combinations, before they are entitled to any automobile; in fact, no agent has ever received an automobile from respondent, free or otherwise; the representation, made in one of respondent's letters, to the effect that he knows of agents who have earned three or four brand new Ford cars, is false; respondent is not a manufacturer of the merchandise he sells, but on the contrary purchases all of his products from manufacturers and wholesalers; the extracts referred to by respondent as Guaranteed Triple Strength Food Flavors are in truth and in fact imitation flavoring compounds; respondent does not furnish to ultimate consumers gifts, premiums or money saving deals, but on the contrary the price of all such goods is included in the price of the merchandise sold to the public.

PAR. 6. Respondent, in his catalogue, pamphlets, and letters, distributed as aforesaid, has used the terms "extracts" and "Gibson's Famous Triple Strength Guaranteed Food Flavors" to describe imitation flavoring compounds which lack the necessary alcohol content required as a vehicle for carrying genuine flavoring extracts. Over a period of many years the trade and the public generally have been led to, and they now do, believe and consider a "flavoring extract" to be a flavoring compound wherein the flavoring is secured by extrac-

tion of juices from beans, berries, nuts, or fruits. These juices are then suspended in alcohol which is recognized as the most valuable and desirable vehicle that can be used for dissolving and preserving extractions of juice from beans, berries, nuts, or fruits.

PAR. 7. A substantial portion of the purchasing public has expressed and has had a marked preference for genuine "flavoring extracts," as that term is known and used by the trade and public generally, over any imitation flavoring compounds composed of synthetic substitutes and chemicals suspended in inferior oils or emulsions. The cost of producing genuine flavoring extracts is greatly in excess of the cost of producing imitation flavoring compounds.

Also, a substantial portion of the purchasing public has a marked preference for dealing with and purchasing items of merchandise from manufacturers or distributors who operate on a large scale and do a large volume of business, believing that superior quality and closer prices can be secured by dealing with such distributor.

PAR. 8. In the course and conduct of his business as hereinabove described, respondent is and has been in competition with individuals, and with firms, partnerships and corporations engaged in the manufacture, sale, and distribution in interstate commerce of food flavoring extracts, spices, toilet articles and kindred merchandise, which said competitors are likewise selling to representatives and agents, and who do not misrepresent and have not misrepresented their said merchandise, and who do not make and have not made false and misleading statements to prospective agents and representatives concerning their opportunity to earn large sums of money and otherwise.

PAR. 9. The aforesaid acts and practices of the respondent, as detailed herein, in the offering for sale and sale of his products, were calculated to, and had, and now have, the capacity and tendency to and do, mislead and deceive potential representatives, salesmen or employees into the false and erroneous belief that the earnings to be achieved in selling the wares and merchandise of the respondent are far in excess of the earnings that can actually be obtained and to mislead and deceive said representatives, salesmen or employees, as well as the purchasing public, into the mistaken and erroneous beliefs that the respondent is the manufacturer of the merchandise which he sells and that the representations with reference to bonuses, free deals and combinations are true, and into the purchase of respondent's merchandise on account of such erroneous beliefs. As a result thereof, trade has been unfairly diverted to the respondent from his said competitors whose ability to successfully compete with him has been and is lessened by reason of said methods. As a consequence thereof, substantial injury has been done by the respondent

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to competition in commerce among and between the various States of the United States.

PAR. 10. 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 September 29, 1936, issued and on October 1, 1936, served its complaint in this proceeding upon respondent J. W. Gibson, trading as J. W. Gibson 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 Astor Hogg, attorney for the Commission, before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it. No testimony or evidence was offered by respondent in opposition to the allegations of the complaint. The testimony and other evidence offered 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 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. J. W. Gibson is an individual trading under the name and style of J. W. Gibson Company with his principal place of business located in the city of Indianapolis, in the State of Indiana. He is now, and for several years last past has been, engaged in the sale and distribution of food flavorings, spices, toilet articles, and kindred merchandise to distributors and house to house can-

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vassers. In the course and conduct of his business respondent sells and distributes said products in commerce between and among the various States of the United States. He causes said products, when sold, to be shipped from his place of business in the State of Indiana to purchasers thereof located in the various States of the United States other than the State of Indiana. There is now, and has been at all times mentioned herein, a constant current of trade and commerce by the respondent in said products between and among the various States of the United States. Respondent is now, and at all times mentioned herein has been, in substantial competition with other individuals and with corporations, firms, and persons engaged in the sale and distribution of food flavorings, spices, toilet preparations, and allied products in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof respondent sold and sells his merchandise to distributors designated by him as agents, who in turn sold and sell such products usually by house to house canvassing to members of the purchasing public. To facilitate the sales of such products and as a means of obtaining such distributors respondent caused and causes advertising matter to be inserted in magazines or publications having an interstate circulation. Typical advertisements published and circulated as aforesaid are the following:

Free Sales Kit

Gibson offers this Sales Kit filled with
 5 full size Samples Finest Food Flavors at
 Absolutely NO COST to workers. Mail
 coupon at once.

Up to \$24 a day
 Double your Money

Free Samples
 5 Big Bottles Sale \$1.00 Price
 Your Profit 51¢

* * * * *

MEN AND WOMEN needing up to \$35 a WEEK
 Operate one of my New Kind of Cut-Rate Store-on-
 Wheels in Your Community
 Ride in this
 NEW FORD
 Distribute Food
 Necessities to
 Customers

BRAND NEW TUDOR FORD SEDAN FURNISHED WORKERS as a bonus
 in addition to your regular earnings. Write J. W. Gibson, Employment Mgr.,
 Dept. 1-2, Indianapolis, Ind.

* * * * *

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I Average between
\$40.00 and \$50.00
EACH WEEK

* * * * *
Gibson Leads Again. Aver 100% profit.
Free merchandise. Free Details.
* * * * *

After prospective distributors or purchasers have communicated with respondent because of said advertisements they receive letters and circulars from respondent in which, among other things, it is stated:

I want every one of my successful representatives to have one of these beautiful latest model Fords ABSOLUTELY FREE * * *.

Understand you pay nothing now or ever for this free Ford * * * I give it to you IN ADDITION TO YOUR REGULAR EARNINGS.

Why, I know of cases where representatives have earned as many as three, even four brand new Ford cars within a space of two or three years. Not having use for more than one car, they sold the others and pocketed the easy cash for themselves.

On his letterheads, in his pamphlets of instructions sent to his distributors and otherwise, respondent represents that he is a manufacturer of the products he sells and that his goods are sold "direct from the factory to the customer."

In the advertisements, literature and instructions which respondent publishes and furnishes to his purchasers the flavoring compounds referred to are described in many instances as "extracts" and "Gibson's famous triple strength guaranteed food flavorings."

In the catalogue sent by the respondent to prospective distributors and purchasers respondent makes the following statement:

We frequently offer to customers valuable kitchen utensils and many other useful articles when they purchase a big high-quality bottle of food flavoring at regular retail price. This is just one of the hundreds of special combinations and free gift offers that are bound to make you the most popular person in your community.

PAR. 3. In the manner and by the means aforesaid respondent has represented to prospective distributors and purchasers that they will receive free sales kits when they become distributors, that they can earn up to \$24.00 per day and that they will earn \$35.00 per week; that they will be given new automobiles by respondent as a bonus in addition to their regular earnings; that the food flavorings advertised and offered for sale are "extracts"; that gifts and premiums are granted purchasers without cost and that respondent offers hundreds of special combinations and free gifts of merchandise; and that respondent manufactures all the merchandise sold by him.

PAR. 4. In truth and in fact respondent does not furnish free sales kits to prospective purchasers or distributors but on the contrary requires a deposit of \$1.00 for each of such sales kits which amount is subject to be refunded in the event such purchaser buys certain merchandise, the aggregate price of which is \$11.76. The distributors of respondent's products do not earn up to \$24.00 a day under normal conditions in due course of business. The statement made by respondent "men and women needing up to \$35.00 a week" implies that the distributors of respondent's products make \$35.00 a week profit from selling respondent's goods. In truth and in fact the majority of said distributors do not earn any such amount. The average earnings of all distributors achieved under normal conditions, are much less than \$35.00 per week. Respondent's distributors do not average between \$40.00 and \$50.00 a week and neither do their earnings approximate any such sum. Respondent does not furnish any automobiles as a bonus to his distributors in addition to their regular earnings, or otherwise, but on the contrary requires that such distributors sell merchandise amounting to \$4500 exclusive of free deals and combinations before they are entitled to any automobile. In fact no distributor has ever received an automobile from the respondent. Respondent does not own, operate, or control the plant or factory in which are made, manufactured, or compounded all the products sold by him. Many of the items which he sells are purchased in bulk and repackaged by him. The flavoring compounds referred to as being of triple strength are not three times as strong as ordinary food flavorings, and on the contrary are ordinary imitation flavoring compounds. Respondent does not furnish to ultimate consumers or distributors gifts, premiums or free merchandise but on the contrary the price of all such goods is included as a part of the purchase price charged for another article or combination of articles.

PAR. 5. In his catalogues, pamphlets, and letters distributed to prospective purchasers respondent uses and used the term "extracts" to describe imitation flavoring compounds, which said representations are passed on to the consuming public by respondent's distributors. Such flavoring compounds so represented were not and are not extracts or juice from fruits, beans, berries, or other similar products dissolved and carried in alcoholic solution, but were and are, on the contrary, made and composed of flavoring materials, largely imitation and synthetic, dissolved and carried in emulsions and oils.

A substantial portion of the purchasing public has a preference for flavoring extracts as that term is generally known and understood

over imitation flavoring compounds composed of synthetic substitutes and chemicals suspended in oils and emulsions.

Also a substantial portion of the purchasing public has a preference for dealing with and purchasing merchandise from the manufacturers thereof, believing that in so doing they can and do save middlemen's profits and secure other advantages.

PAR. 6. There are among the competitors of respondent corporations, individuals, partnerships, and firms engaged in the sale of food flavorings, spices, toilet articles, and kindred merchandise in commerce between and among the various States of the United States, which said competitors likewise sell to representatives and distributors and who do not misrepresent and have not misrepresented their said merchandise or business status and who do not make and have not made false or misleading statements to prospective distributors and representatives concerning the opportunity to earn sums of money, conditions of employment or otherwise.

PAR. 7. The use by respondent of the foregoing false and misleading representations has had and now has the capacity and tendency to mislead and deceive potential distributors and customers into the mistaken and erroneous belief that the earnings to be achieved in selling the wares and merchandise of respondent are far in excess of the earnings that can actually be obtained and to mislead and deceive such persons as well as the purchasing public into the mistaken and erroneous belief that the respondent is a manufacturer of the merchandise which he sells and into the erroneous belief that respondent furnishes his distributors with bonuses, free automobiles, free sales kits, and free merchandise; and into the erroneous beliefs that the food flavorings offered for sale are genuine extracts and that food flavorings offered for sale as such are three times stronger than ordinary food flavors. And as a result of such erroneous beliefs engendered as above set forth prospective distributors and members of the public are induced to purchase respondent's merchandise and to become distributors for such merchandise. As a result thereof trade has been unfairly diverted to the respondent from his said competitors whose abilities to successfully compete with respondent have been and is lessened by the reason of use of said methods. As a consequence thereof substantial injury has been, and is 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, J. W. Gibson, trading as J. W. Gibson Company, are to the prejudice of the public

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint, brief filed herein (the respondent having offered no testimony in opposition to the complaint, having filed no brief, and not having requested oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, J. W. Gibson, trading as J. W. Gibson Company, or trading under any other name or names, his agents, servants, and employees, in soliciting the sale of and selling food flavorings, spices, toilet articles, grocery products and similar merchandise, and in advertising for distributors to sell such merchandise, do 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 "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 distributors of respondent's merchandise 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 sale of respondent's products 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 prospective distributors are given sales kits free or that any article of merchandise will be given free unless such article is given without the payment of any money.

4. Representing in any manner that merchandise is given as a gratuity in consideration of the purchase of other products when

the cost of such merchandise is included as a part of the purchase price charged for another article or combination of articles.

5. Representing in any manner that Fords or automobiles of any kind are furnished or supplied to, or earned by, workers or distributors.

6. Representing in any manner that respondent is the manufacturer of all the products sold by him or that he owns, operates, or controls a factory where all the products sold by him are manufactured or made or that customers in purchasing from respondent are dealing directly with the manufacturer of all products sold by him, unless and until respondent actually owns, operates or directly and absolutely controls a factory where all of said products are in fact made and manufactured by him.

7. Designating any food flavors as extracts until and unless the product is composed of genuine ingredients, as distinguished from synthetic chemical substitutes, and such ingredients are suspended in alcohol.

8. Representing in any manner that ordinary food flavorings are of triple strength.

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

BABIGLO 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 3033. Complaint, Apr. 3, 1937¹—Decision, Sept. 30, 1937

Where a corporation engaged in sale and distribution, as jobber, to wholesale and retail dealers in various other States, of soaps made for it by various manufacturers to its order, in direct and substantial competition with those similarly engaged in sale and offer of soaps in interstate commerce, and including among its competitors those who manufacture, sell, and distribute soaps which are actually made of olive oil and who advertise and represent their said soaps fairly and accurately—

Labeled, stamped, branded, stenciled, offered, sold, and distributed large and substantial quantities of its said soap with such words and phrases, on labels and containers thereof, as "Olive Oil," "Imported Olive Oil," "Imported Spanish Olive Oil," "Genuine Imported Spanish Olive Oil," "Made with Imported Olive Oil," and in connection therewith the words and phrases, "Old Seville," "Old Madrid," "Florentine," "Infanta," and "Rosario," notwithstanding fact aforesaid brands, thus advertised, designated, represented and sold by it, were not soaps made wholly of olive oil, long considered, by manufacturers of and dealers in said product and by public generally, as excellent soap, free from harmful substances, and possessing desirable qualities not possessed by others, and, by medical profession and drug trade, as having qualities requisite for the care of the sick or ailing, for medical use and for babies, and were not products of Spain, noted producer of olive oil, nor of Italy, but consisted of products saponified and mixed with other oils and fats containing for their fatty bases large percentages of cocoanut oil, palm kernel oil and tallow, with only small percentage of olive oil, in some instances;

With effect of confusing, prejudicing, and injuring its competitors through use of such false and misleading statements, designations, and descriptions, and diverting trade to it from them, operating as a detriment to free and legitimate competition in business of marketing soap, and placing in hands of wholesale and retail dealers an instrument permitting them more easily to substitute its goods for those of another, and of causing trading public in United States to buy its said soap as and for olive oil soaps made with one hundred percent olive oil base:

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. Marshall Morgan for the Commission.

Greenfeld, Cotton & Breitbart, of New York City, for respondent.

¹ Amended.

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 Babiglo Company, Inc., hereinafter described and named 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 said Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Babiglo Company, Inc., is a corporation organized under the laws of the State of New York, with its principal place of business located at No. 37 West 20th St., New York City. It is, and for two years last past has been engaged, as hereinafter described, in the business of selling and distributing, as jobbers, to wholesale and retail dealers located in various States of the United States, other than the State of New York, soaps manufactured for it by various manufacturers located in the States of New York, New Jersey, Ohio, and elsewhere. In consummating such sales and in distributing such merchandise, respondent causes the soaps so sold by it to be transported and delivered from the city of New York, through and into various other States of the United States to the respective purchasers thereof at their several points of location. In the course and conduct of its business, Babiglo Company, Inc., the respondent herein, has been, and now is, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in selling soap and in offering such product for sale, in interstate commerce.

PAR. 2. Spain has always been noted as a producer of olive oil. Because of the recognized qualities of olive oil as an agent for health and cleanliness, and for other reasons, soap made of olive oil has long been, and now is, considered by manufacturers of, and dealers in soap, and by the public generally, as an excellent soap, free from substances harmful to the human skin or to delicate fabrics, a product of undoubted excellence and possessing desirable qualities not contained in some other soaps. Soap made of olive oil has long been known as one of the world's best known toilet soaps. Soap made of olive oil has long been, and now is, considered and held by the medical profession and the drug trade, to have the qualities requisite and desirable for the cleansing and bathing of sick or ailing persons, and for use in medical preparations. Such soap has long been, and

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now is, prescribed and recommended by said profession and said trade as a Baby Soap.

PAR. 3. In connection with its business of selling and distributing soap in interstate commerce, respondent contracts with various manufacturers of soap who manufacture such product for it. Said manufacturers make soap to the order of respondent and the said soap, after being so manufactured, is weighed according to size and is then shipped to respondent by said manufacturers. Respondent thereupon assort the same, and stencils, brands, or labels and wraps it in accordance with respondent's own methods of marketing. Said soap is then sold to respondent's customers, wholesalers and retailers. Said stenciling, branding, labeling, wrapping, and representations appearing upon or in connection with respondent's soap products, represent and reflect the advertising ideas and policies of respondent.

PAR. 4. In further connection with the sale and distribution of its said soap to wholesalers and retailers as hereinabove described, respondent has caused and still causes large and substantial quantities of its said soap to be labeled, stamped, branded, stenciled, offered for sale, sold, and distributed under designations as hereinafter described, said representations indicating, and intended to indicate, that said soaps are, and were, made wholly of imported Spanish olive oil or were Spanish products made of olive oil, or were and are, products of Spanish or Italian origin, when such are not the facts.

The respondent has caused toilet soaps made and sold as herein described to be offered for sale, and sold, respectively, in wrappers and containers having on the wrappers, labels, and containers of the said soaps, among others, the words and phrases, "Olive Oil," "Imported Olive Oil," "Imported Spanish Olive Oil," "Genuine Imported Spanish Olive Oil," "Made With Imported Olive Oil," and in connection therewith the words and phrases, "Old Seville," "Old Madrid," "Florentine," "Infanta," "Rosario," and "Spanish Floating Soap."

PAR. 5. When in truth and in fact the aforementioned brands of soap advertised, represented and sold by respondent are not, and have not been made as alleged, and claimed, from olive oil, but are instead highly adulterated soaps of cheaper grade, type or composition, saponified and mixed with other oils and fats, containing for their fatty bases, large percentages of cocoanut oil, palm kernel oil, and tallow, with only a small percentage of olive oil in any instance, and containing no olive oil in some instances; the brands of soap containing Spanish names indicating Spanish origin, such as "Old Seville," "Old Madrid," "Infanta," and "Spanish Floating Soap" are not, and never were, of Spanish origin; the brand known as

"Florentine" is not, and never has been, a product of Italian origin, and the brand designated as "Rosario" is not, and never has been, a product either of Spanish or Italian origin.

PAR. 6. Respondent's use of the words, terms, and expressions, "Olive Oil," "Imported Olive Oil," "Imported Spanish Olive Oil," "Genuine Imported Spanish Olive Oil," "Made With Imported Olive Oil" in designating, describing, representing, and offering for sale and in selling its said soaps as hereinbefore described is, and was, false, misleading, and deceptive and has, and has had, the capacity to mislead and deceive substantial members of the wholesale and retail trade and the consuming public into purchasing respondent's said soaps in the erroneous belief that the same are, and were, "Olive Oil" soaps made with a hundred percent olive oil base, when such is not, and was not, the fact. The further use by respondent of such Spanish words and expressions as "Old Seville," "Old Madrid," "Spanish Floating Soap," and "Infanta"; of the Italian word "Rosario" in connection with the expressions, "Olive Oil," "Imported Olive Oil," "Imported Spanish Olive Oil," "Genuine Imported Spanish Olive Oil," "Made with Imported Olive Oil," in designating, describing and offering for sale and in selling its soaps as aforesaid are, and were, false, misleading, and deceptive, and have, and have had, the capacity to mislead and deceive substantial numbers of the wholesale and retail trade and the consuming public into purchasing respondent's said brands of soap in the erroneous belief that the same are, and were, respectively, of Spanish or Italian origin, when such is not the fact.

PAR. 7. There are among the competitors of respondent those engaged in the manufacture or importation of soap which is made exclusively from an olive oil base, and who accurately and fairly describe, represent, advertise and sell their products as "Olive Oil" soap, a soap made of olive oil; and there are other competitors of respondent who manufacture, describe, represent, advertise and sell soaps containing no olive oil, or a combination of olive oil and other fatty ingredients such as cocoanut oil, palm kernel oil, or other oils, who do not represent such products to be "Olive Oil" soap, but who advertise and represent and sell such soaps fairly and accurately.

PAR. 8. The use by respondent of the false, misleading, and deceptive statements, designations, and descriptions as hereinbefore set forth constitutes practices or methods of competition which tend to, and do, confuse, prejudice and injure respondent's competitors, divert trade to respondent from its competitors, operate as a detriment to free and legitimate competition in the business of marketing soap, place in the hands of wholesale and retail dealers an instrument

which permits them more easily to substitute the goods of respondent for the more expensive products of another, have the capacity and tendency to cause, and do cause, the trading public in the United States to purchase respondent's said soaps, as and for olive oil soaps, which they are not, in preference to the more costly soaps of competitors which are made with a hundred percent olive oil base.

PAR. 9. Said false, deceptive, and misleading acts, practices, and methods of respondent 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on January 15, 1937, issued and served its original complaint in this proceeding on respondent, Babiglo Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act, and on April 5, 1937, issued and served its amended complaint on the said respondent charging it with the use of unfair methods of commerce other than, and in addition to, those in relation to which the Commission issued its original complaint as aforesaid. 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. Greenfeld, Cotton & Breitbart, and W. T. Kelley, Chief Counsel of the Commission, subject to the approval of the Commission, 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 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 the said complaints, answers, 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, Babiglo Company, 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 place of business located at No. 37 West 20th St., New York City. Respondent is now and for more than two years last past has been engaged in the business of selling and distributing as jobber, to wholesale and retail dealers located in various States of the United States, other than the State of New York, soaps manufactured for it by various manufacturers located in the States of New York, New Jersey, Ohio, and elsewhere. In consummating such sales and in distributing such merchandise, respondent causes the said soaps so sold by it to be transported and delivered from its place of business in New York City, State of New York, through and into various other States of the United States to the respective purchasers thereof at their several points of location.

PAR. 2. In the course and conduct of its business, Babiglo Company, Inc., the respondent herein, has been, and now is, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in selling soap and in offering such products for sale, in interstate commerce.

PAR. 3. Spain has always been noted as a producer of olive oil. Because of the recognized qualities of olive oil as an agent for health and cleanliness, and for other reasons, soap made of olive oil has long been, and now is, considered by manufacturers of, and dealers in soap, and by the public generally, as an excellent soap, free from substances harmful to the human skin or to delicate fabrics, a product of undoubted excellence and possessing desirable qualities not contained in some other soaps. Soap made of olive oil has long been recognized as one of the world's best known toilet soaps. Soap made of olive oil has long been, and now is, considered and held by the medical profession and the drug trade, to have the qualities requisite and desirable for the cleansing and bathing of sick or ailing persons, and for use in medical preparations. Such soap has long been, and now is, prescribed and recommended by said profession and said trade as a Baby Soap.

PAR. 4. In connection with its business of selling and distributing soap in interstate commerce, respondent contracts with various manufacturers of soap who manufacture such product for it. Said

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manufacturers make soap to the order of respondent and the said soap, after being so manufactured, is weighed according to size and is then shipped to respondent by said manufacturers. Respondent thereupon assort the same, and stencils, brands, or labels and wraps it in accordance with respondent's own methods of marketing. Said soap is then sold to respondent's customers, wholesalers and retailers. Said stenciling, branding, labeling, wrapping, and representations appearing upon or in connection with respondent's soap products, represent and reflect the advertising ideas and policies of respondent.

PAR. 5. In further connection with the sale and distribution of its said soap to wholesalers and retailers as hereinabove described, respondent has caused and still causes large and substantial quantities of its said soap to be labeled, stamped, branded, stenciled, offered for sale, sold, and distributed under designations as hereinafter described.

On wrappers and containers in which respondent's said soap has been offered for sale and sold respectively appear, among others, the following words and phrases: "Olive Oil," "Imported Olive Oil," "Imported Spanish Olive Oil," "Genuine Imported Spanish Olive Oil," "Made With Imported Olive Oil," and in connection therewith the words and phrases, "Old Seville," "Old Madrid," "Florentine," "Infanta," and "Rosario."

PAR. 6. In truth and in fact the aforementioned brands of soap as advertised and designated, represented and sold by respondent, are not and have not been made wholly of olive oil but are instead soaps saponified and mixed with other oils and fats, containing for their fatty bases, large percentages of coconut oil, palm kernel oil, and tallow, with only a small percentage of olive oil in some instances. The brands of soap having Spanish names, such as "Old Seville," "Old Madrid," and "Infanta" are not and never were of Spanish origin, the brand known as "Florentine" is not and never has been a product of Italian origin, and the brand designated as "Rosario" is not and never has been a product either of Spanish or Italian origin.

PAR. 7. There are among the competitors of respondent referred to in paragraph 1 hereof those who manufacture, sell, and distribute in competition with respondent, soaps which are actually made of olive oil and who advertise and represent their said soaps fairly and accurately.

PAR. 8. Respondent's use of the statements, designations, and descriptions as hereinbefore set forth is false and misleading and constitutes practices or methods of competition which tend to, and do, confuse, prejudice, and injure respondent's competitors, divert trade to respondent from its competitors, operate as a detriment to free

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and legitimate competition in the business of marketing soap, place in the hands of wholesale and retail dealers an instrument which permits them more easily to substitute the goods of respondent for the products of another, and have the capacity and tendency to cause, and do cause, the trading public in the United States to purchase respondent's said soaps, as and for olive oil soaps, made with a hundred percent olive oil base, which they are not.

CONCLUSION

The aforesaid acts and practices of the respondent, Babiglo 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 original and amended complaints of the Commission, the answers of respondent thereto, and the agreed stipulation as to the facts entered into between the respondent herein, Babiglo Company, Inc., 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 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, Babiglo Company, Inc., its officers, representatives, agents, individual or corporate, and its employees, in connection with the offering for sale, sale and distribution of soap in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. The use of the words "olive" or "olive oil," alone or in conjunction with any other word or words, to designate or describe a soap product composed in part of olive oil and in part of other oils and fats unless there appears in immediate connection and conjunction

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with the words "olive" or "olive oil" and in clear and legible type or lettering in size equal to that of the word "olive" or the words "olive oil," other words which accurately and truthfully describe and designate the true content of the product;

2. The use of the words "Old Seville," "Old Madrid," or "Infanta," or any other words of similar import and effect, alone or in conjunction with each other or with any other word or words describing said product, or the use of any pictorial representation, as a brand or label for soap so as to import or imply that said soap was produced in and imported from Spain, unless or until such statements and representations are true in fact and said soap was actually produced in and imported from Spain; or any similar use of the word "Florentine" or the word "Rosario," or any other words of similar import and effect, unless and until such statements and representations are true in fact and said soap was produced in and imported respectively from Italy, or from Italy or Spain.

3. Representing, through the use of the word "imported," alone or in conjunction with any other word or words as descriptive of soap, or in any manner, or through any means or device, that soap manufactured in the United States was made in and subsequently imported from Spain or from any other foreign country.

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
CHRISTMAS CLUB

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SECS. 3 AND 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY SEC. 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3050. Complaint, Feb. 5, 1937—Decision, Sept. 30, 1937

Where a corporation engaged, for more than three years last past, in the sale, in commerce among the various States and in the District of Columbia, of pass books, account books, advertising literature, and other paraphernalia for use by banks and trust companies in their conduct of Christmas Clubs and other savings systems, in substantial competition with others engaged in sale in commerce of systems for use by banks and trust companies and their depositors in the conduct of such clubs and other savings systems, and, as thus engaged, in furnishing such systems for such purposes to more banks and trust companies for their use than any of its competitors, with annual revenues from such activity during aforesaid period likewise exceeding that of any other of said competitors—

- (a) Represented that it had the right to the sole and exclusive use of name or phrase "Christmas Club" for its said systems, and that said name had been trade-marked by it for use thereon, facts being that, while it was owner of registered trade-mark "Christmas Club" for use as magazine title, said name or phrase had not been registered by it as trade-mark for its said system, nor had it established in any court of competent jurisdiction its sole and exclusive right to use of name or phrase in question thereon;
- (b) Represented that it was the manufacturer and printer of its said systems, through inclusion in certain of its contract forms of statement that its said systems would be shipped f. o. b. its factories, facts being that approximately ninety-five percent of its said systems, furnished by it to banks and trust companies, were made for its order by manufacturing printing concerns in which it had no financial or other interest, while approximately five percent thereof were printed by affiliated corporations, stock of which, along with a part of its own stock, was held by another concern;
- (c) Represented that it had spent, over a period of time, more than \$3,500,000 in promoting the Christmas Club name and idea among the banks and people of the United States, facts being said figure represented an arbitrary fraction of the total selling expenses, other than cost of goods sold and executive selling expenses over a period of years, of itself and certain other companies, assets of which had been acquired by it;

With capacity and tendency to mislead certain banks and trust companies purchasing such systems from it into believing that such representations as aforesaid, as to such right to use of said name or phrase and as to manufacture of said systems, were true, and to induce them to buy such systems from it in such erroneous belief, and as manufactured and printed by it, and with effect of inducing banks and trust companies to purchase said products from it without knowing sense in which word "promotion"

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was used, and of diverting trade to it from its competitors; to the substantial injury of substantial competition in commerce:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition in commerce within the intent and meaning of said Section 5 of an Act of Congress approved Sept. 26, 1914; and

Where aforesaid corporation, engaged as above set forth—

(d) Entered into contracts for and made sales of its said systems on the condition, agreement, and understanding that purchaser thereof should not purchase or deal in the systems of a competitor or competitors, under contracts, many of which were for term of seven years and provided that the bank or trust company concerned should purchase such systems from it exclusively;

With result that companies having such contracts with it, by reason thereof, did not buy systems of competitors, and with the result that effect of such contracts had been and was to substantially lessen competition or tend to create a monopoly in it:

Held, That such acts and practices, under the circumstances set forth, constituted violation of the provisions of Section 3 of an act of Congress approved Oct. 15, 1914; and

Where aforesaid corporation, engaged as above set forth—

(e) Discriminated in price through failing to provide for payments on the same percentage basis in contracts entered into and carried out by it with banks and trust companies, providing that it would furnish such systems, of like grade and quality, to each bank or trust company and would accept in payment therefor a percentage of the deposits in the Christmas Club of the particular company, with the particular company, as the case might be, privileged under the terms of such contracts to requisition unlimited quantities of said systems from it, regardless of rate of percentage paid by it or regardless of the total deposits in its Christmas Club;

With the result that the effect of such discrimination in price between different purchasers of systems of like grade and quality had been and was to substantially lessen competition or tend to create a monopoly in interstate commerce in such systems:

Held, That such acts and practices, under the circumstances set forth, constituted a violation of the provisions of Sec. 2 (a) of an act of Congress approved Oct. 15, 1914, as amended by Sec. 1 of an Act of Congress approved June 19, 1936.

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

Mr. Edward L. Smith for the Commission.

Crawath, DeGersdorff, Swaine & Wood and *Mr. Henry G. Walter, Jr.*, of New York City, and *Mr. Richard H. Wilmer*, of Washington, D. C., for respondent.

COMPLAINT

Count I

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

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the Federal Trade Commission, having reason to believe that Christmas Club, 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 to the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Christmas Club, a 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 341 Madison Avenue, New York City in said State. It is now and for more than three years last past has been engaged in the sale of passbooks, account books, advertising literature, and other paraphernalia for use by banks and trust companies in the conduct by them of Christmas Clubs and other saving systems, which said passbooks, account books, advertising literature, and other paraphernalia will hereinafter be referred to as "systems." In the course and conduct of its said business, it now ships and for more than three years last past has shipped from its place of business in New York City aforesaid, such "systems" when sold by it, to the purchasers thereof located in the State of New York, and others located in various other States of the United States and in the District of Columbia. Such "systems" are sold by respondent for use by banks and trust companies and their depositors in the various States of the United States and in the District of Columbia. There is now and for more than three years last past has been a constant current of trade and commerce by respondent in such "systems" between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is now and for more than three years last past has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of "systems" for use by banks and trust companies and their depositors in the conduct of Christmas Clubs and other saving systems, between and among the various States of the United States and in the District of Columbia. The conduct of Christmas Clubs and other saving systems is a popular form of saving and their favor with the public is increasing and the use of such Christmas Clubs and other saving systems is a very important factor in the conduct of banks and trust companies. Respondent is now and for more than three years last past has been the largest single dealer in the United States in "systems" for use by banks and trust companies in the conduct of Christmas Clubs

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and of other saving systems and now sells and for more than three years last past has sold "systems" to more banks and trust companies than has or does any of its aforesaid competitors.

PAR. 2. In the course and conduct of its aforesaid business between and among the various States of the United States and in the District of Columbia, respondent in selling and in offering for sale its "systems" has falsely represented and still falsely represents that it is the sole owner of and has exclusive right to the use of the phrase "Christmas Club," that said phrase is trademarked by respondent, and that no one without its consent or license has the right to use the aforesaid name, "Christmas Club." In truth and in fact respondent is not and has not been the sole owner of the phrase "Christmas Club"; nor has it ever had the exclusive right to the use of the said phrase "Christmas Club"; the said phrase "Christmas Club" is not trademarked by respondent; and the aforesaid phrase may be used by others without the consent, permission, or license of the respondent.

PAR. 3. In the course and conduct of its aforesaid business between and among the various States of the United States and in the District of Columbia, respondent in selling and in offering for sale its "systems" has falsely represented and still falsely represents that it is the manufacturer and printer of the "systems" which it sells, when in truth and in fact it is not the manufacturer thereof, but such "systems" are manufactured for the respondent by manufacturing and printing concerns in which the respondent has no financial or other interest.

PAR. 4. In the course and conduct of its aforesaid business between and among the various States of the United States and in the District of Columbia, respondent in selling and in offering for sale its "systems" has represented and still represents to its customers and prospective customers that it has been and is still spending on advertising and promoting the growth of Christmas Clubs throughout the country, amounts of money considerably in excess of the amounts it has expended and is still expending for the purpose aforesaid.

PAR. 5. The aforesaid representations made by the respondent as set out in paragraphs 2, 3, and 4 hereof, have had and still have the capacity and tendency to mislead and deceive, have misled and deceived, and do mislead and deceive purchasers and prospective purchasers into the beliefs that the aforesaid representations are and have been true, and have tended to and do tend to induce, and have induced and do induce banks and trust companies to purchase "systems" from respondent in such erroneous beliefs. Thereby trade has been diverted and is being diverted by respondent from its com-

petitors and substantial injury has been done and is being done by respondent to substantial competition in interstate commerce.

PAR. 6. 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 within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

Count II

The Federal Trade Commission having reason to believe that Christmas Club, a corporation, hereinafter called respondent, has violated and is now violating the provisions of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act), hereby issues this its complaint against respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 1 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 1 of said count 1 were set out in full herein, and said paragraph 1 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. In the course and conduct of its business described in paragraph 1 of count 1, respondent in the course of commerce between and among the various States of the United States and the District of Columbia described in said paragraph of said count, has made sales and is still making sales and contracts for the sale of "systems" on the condition, agreement, and understanding that the purchasers thereof shall not deal in the "systems" of a competitor or competitors of respondent, the effect of which said sales and contracts for sale upon such condition, agreement, and understanding may be, is and has been to substantially lessen competition or tend to create a monopoly in respondent in commerce between and among the various States of the United States and in the District of Columbia in "systems."

PAR. 3. The aforesaid acts of respondent constitute a violation of the provisions of Section 3 of the hereinabove mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes, approved October 15, 1914 (the Clayton Act).

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Count III

The Federal Trade Commission having reason to believe that Christmas Club, a corporation, hereinafter called respondent, since June 19, 1936, has violated and is now violating the provisions of Section 2 (a) of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes," approved June 19, 1936, (the Robinson-Patman Act), hereby issues this its complaint against Respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraph 1 of count 1 of this complaint to the same extent and as though the allegations of said paragraph 1 of said count 1 were set out in full herein, and said paragraph 1 of said count 1 is incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. Since June 19, 1936, in the course and conduct of its business described in paragraph 1 of count 1 hereof, respondent while engaged in the commerce therein described, in the course of such commerce, directly and indirectly has discriminated and is still discriminating in price between different purchasers of "systems" of like grade and quality, the effect of which said discriminations may be to substantially lessen competition or tend to create a monopoly in the aforesaid commerce in "systems," or to injure, destroy, or prevent competition with respondent.

PAR. 3. The aforesaid acts of respondent constitute a violation of the provisions of Section 2 (a) of the above mentioned Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act), as amended by Section 1 of the Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U.S.C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman 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," and pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission on February 5, 1937, issued, and on February 8, 1937, served, its complaint in this proceeding upon respondent, Christmas Club, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and with violating Section 3 of the aforesaid act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and with violating Section 2 (a) of the said Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as amended by Section 1 of an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes." 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 amended answer, in which respondent stated that while not conceding that it has violated any law of the United States, nevertheless for the sole purpose of avoiding the trouble and expense incidental to further continuation of this proceeding, it desired to waive hearing on the charges set forth in said complaint and not to contest the proceeding, and solely for the purpose of disposing of this proceeding consented that the Commission might, without trial, without the taking of evidence and without any further procedure enter its findings as to the facts, including such inferences as the Commission might draw from the facts admitted in the said amended answer, and issue and serve upon it an order to cease and desist from the acts admitted in the said amended answer, and in which said amended answer respondent stated that all consents and admissions given or made by the respondent therein were given and made solely on the conditions and for the purposes aforesaid and insofar as they constituted admissions were not made

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as, nor were they to be taken as, admissions of fact for any other purpose or in any other proceeding whatsoever. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and said amended 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 conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The 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 office and place of business at 341 Madison Avenue, New York City, in said State.

PAR. 2. The respondent is now and for more than three years last past has been engaged, among other things, in the sale of passbooks, account books, advertising literature, and other paraphernalia for use by banks and trust companies in the conduct by them of Christmas Clubs and other savings systems (which said passbooks, account books, advertising literature, and other paraphernalia are hereinafter referred to as "systems").

PAR. 3. In the course and conduct of its business, the respondent now causes to be shipped and for more than three years last past has caused to be shipped such "systems," when sold by it from Harrisburg, Pa., to the purchasers thereof, some located in the State of Pennsylvania and others located in various other States of the United States and in the District of Columbia; and there is now and for more than three years last past has been a constant current of trade and commerce by the respondent in such "systems" between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, the respondent is now, and for more than three years last past has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale of "systems" for use by banks and trust companies and their depositors in the conduct of Christmas Clubs and other savings systems in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In 1936 there were approximately 17,800 banks and trust companies throughout the United States, of which approximately 5,200 operated Christmas Clubs.

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PAR. 6. The respondent now furnishes, and for more than three years last past has furnished, "systems" to more banks and trust companies, for use by them in the conduct of Christmas Clubs and other savings systems, than has or does any one of its competitors.

PAR. 7. The annual revenues of the respondent from furnishing "systems" to banks and trust companies now exceeds, and for more than three years last past has exceeded, that of any of its competitors.

PAR. 8. While prior to 1934 the respondent represented to banks or trust companies that it had the sole and exclusive right to the use of the name or phrase "Christmas Club" and represented that such name or phrase had been trade-marked by it for use on "systems," during the past three years it has not made such representations except as to the name of a magazine.

PAR. 9. In 1910 Merkel Landis conceived the Christmas Club plan and in 1911 transferred to the Landis Savings Club Company all of his rights, title, and interest in the plan. Early in 1912 Mr. H. F. Rawll acquired from the Landis Savings Club Company the right to use the plan. Mr. Rawll immediately gave the plan the name "Christmas Club" and operated his business under the unincorporated name "Christmas Club" from March 1912, until June 1914, when he incorporated his business under the name "Christmas Club, A Corporation," the respondent herein. The respondent subsequently acquired all the assets of the Landis Savings Club Company. While prior to 1934 the respondent represented that it had the right to the exclusive use of the name or phrase "Christmas Club," it has not established such right in any judicial proceeding. From time to time, various persons, firms and corporations, other than the respondent, have been engaged in the business of supplying banks and trust companies with "systems" inscribed with the name "Christmas Club" for use in the operation of Christmas Clubs and from 1929 to 1932, inclusive, the respondent acquired the assets of a number thereof for a substantial consideration.

PAR. 10. Since March 1927, the respondent has been and now is the owner of the registered trade-mark "Christmas Club" for use as the title of a magazine in Class 38 (Reg. No. 225139), but the name or phrase "Christmas Club" has not been so registered by it as a trade-mark for "systems." The aforesaid representations made prior to 1934, that the respondent had the sole and exclusive right to the use of the name or phrase "Christmas Club" without having registered it or having established it in a court of competent jurisdiction, and that such name or phrase had been trade-marked by it for use on "systems" without having registered it or having established it in or by a court of competent jurisdiction for use on "systems" has had

the capacity and tendency to mislead certain banks and trust companies purchasing such "systems" from the respondent into believing that such representations were true and to purchase "systems" from respondent in such erroneous beliefs.

PAR. 11. Certain forms of contracts entered into by the respondent prior to the issuance of the complaint herein contained the statement that "systems" would be shipped "f. o. b. its factories." However, approximately 95% of the "systems" furnished to banks and trust companies by the respondent are manufactured for its order by manufacturing and printing concerns in which the respondent has no financial or other interest and approximately 5% of such "systems" are printed by affiliated corporations, the stock of which is owned by a corporation which also owns a part of the stock of the respondent. All "systems" furnished by the respondent are manufactured and printed for it under its directions and instructions. Said statement contained in such forms of contracts that "systems" would be shipped by the respondent "f. o. b. its factories" has had the capacity and tendency to mislead certain banks and trust companies purchasing "systems" from the respondent into believing that the respondent itself manufactured and printed its own "systems" and to induce them to purchase "systems" from the respondent in such erroneous belief.

PAR. 12. At various times the respondent has represented, without explanation of the sense in which the term "promoting" is used, that it has spent over a period of time more than \$3,500,000 in promoting the Christmas Club name and idea among the banks and people of the United States, such figure representing an arbitrary fraction of the total selling expenses, other than cost of goods sold, and executive selling expenses, over a period of years, of the respondent and certain other companies the assets of which have been acquired by the respondent. Such representation without explanation of the sense in which the word "promotion" has been used has not informed banks and trust companies as to the sense in which respondent has used the word "promotion" and has induced them to purchase "systems" from respondent without knowing the sense in which the word "promotion" was used.

PAR. 13. By the representations hereinbefore described, trade has been diverted to respondent from its competitors and substantial injury has been done by respondent to substantial competition in interstate commerce.

PAR. 14. Prior to the issuance of the complaint herein, the respondent contracted to furnish "systems" to banks and trust companies under forms of contracts, many of which were for a term of seven

years and provided that the bank or trust company should purchase "systems" from the respondent exclusively.

PAR. 15. Certain banks and trust companies having such contracts with the respondent have not, by reason thereof, purchased "systems" from competitors of the respondent, and the effect of such contracts has been and is to substantially lessen competition or tend to create a monopoly in the respondent.

PAR. 16. Since June 19, 1936, and prior to the issuance of the complaint herein, the respondent entered into and is carrying out contracts with banks and trust companies providing that the respondent would furnish "systems" of like grade and quality to each bank or trust company and would accept in payment therefor a percentage of the deposits made in the Christmas Club of the bank or trust company. All of such contracts did not provide for payments on the same percentage basis. However, under the terms of such contracts the bank or trust company was privileged to requisition unlimited quantities of "systems" from the respondent regardless of the rate of percentage paid by the bank or trust company or regardless of the total deposits in its Christmas Club.

PAR. 17. Under such contracts the respondent has, in the course of interstate commerce, discriminated and is still discriminating in price between different purchasers of "systems" of like grade and quality, the effect of which discriminations has been and is to substantially lessen competition or tend to create a monopoly in interstate commerce in "systems."

CONCLUSIONS

1. The aforesaid acts and practices of the respondent Christmas Club, a corporation, as described in paragraphs 8, 9, 10, 11, 12, and 13 of the foregoing findings, considered in connection with the facts set forth in paragraphs 1, 2, 3, 4, 5, 6, and 7 thereof, 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."

2. The aforesaid acts and practices of the respondent Christmas Club, a corporation, as described in paragraphs 14 and 15 of the foregoing findings, considered in connection with the facts set forth in paragraphs 1, 2, 3, 4, 5, 6, and 7 of the foregoing findings, constitute a violation of the provisions of Section 3 of an Act of Congress entitled "An Act to supplement existing laws against unlaw-

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ful restraints and monopolies, and for other purposes," approved October 15, 1914.

3. The aforesaid acts and practices of the respondent Christmas Club, a corporation, as described in paragraphs 16 and 17 of the foregoing findings, considered in connection with the facts set forth in paragraphs 1, 2, 3, 4, 5, 6, and 7 thereof, constitute a violation of the provisions of Section 2 (a) of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended by Section 1 of an Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., Title 15, Sec. 13), and for other purposes," approved June 19, 1936.

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission on the complaint filed herein on February 5, 1937, and the amended answer of the respondent filed herein on September 28, 1937, and the Commission having made its findings as to the facts and conclusions of law; (1) 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"; (2) that said respondent has violated the provisions of Section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; (3) that said respondent has violated the provisions of Section 2 (a) of the said Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as amended by Section 1 of an Act of Congress entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13), and for other purposes," approved June 19, 1936.

It is ordered, That respondent Christmas Club, a corporation, and its successors, officers, agents, servants, and employees, forthwith cease and desist in connection with the business of selling or offering for sale "systems" (as that term is defined in the aforesaid findings as to the facts) in interstate commerce and in the District of Columbia, from doing and performing any of the following acts and things:

1. Representing that it has the right to the sole and exclusive use of the name or phrase "Christmas Club" for "systems"; and repre-

sending that the name or phrase "Christmas Club" has been trademarked by the respondent for use on "systems": *Provided, however,* That nothing contained in this order shall prohibit the respondent from exercising its lawful right to prevent other corporations, persons, firms or partnerships from unlawfully using the name or phrase "Christmas Club" or from unlawfully using as a trade-mark, the name or phrase "Christmas Club";

2. Representing through advertisements, circulars, correspondence, stationery, or in any manner whatsoever, that it is the manufacturer and printer of "systems," unless and until it actually owns and operates, or directly and absolutely controls, a printing establishment wherein are printed any and all "systems" by it sold or offered for sale;

3. Representing that it has spent over a period of time more than \$3,500,000, or any other sum, in promoting the Christmas Club name and idea among the banks and trust companies and the people of the United States, without accurately explaining the manner in which such sum has been computed;

4. Entering into contracts for the sale of "systems" or continuing to make sales of "systems" on the condition, agreement and understanding that the purchaser thereof shall not purchase or deal in the "systems" of a competitor or competitors of the respondent: *Provided, however,* That nothing contained in this order shall prohibit the respondent from entering into contracts whereby it agrees to furnish purchasers with such "systems" as they may requisition from the respondent if such purchasers are free to purchase "systems" from competitors of the respondent;

5. Unlawfully discriminating in price as found in paragraphs 16 and 17 of the aforesaid findings as to the facts, and conclusions.

Nothing contained in this order shall be construed to prevent the respondent from continuing to deal with banks or trust companies so long as such dealings shall not violate the provisions of this order.

It is hereby further ordered, That the said respondent shall within 90 days from the date of service upon it of this order, file with this Commission a report in writing, setting forth in detail the manner and form in which it shall have complied with this order.

Syllabus

IN THE MATTER OF
DAVIS PAINT 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 2737. Complaint, Mar. 5, 1936—Decision, Oct. 1, 1937

Where two corporations engaged in sale to purchasing public of paint, varnish, enamel, and allied products made by third concern, owner of their capital stock, and likewise engaged, along with the president thereof and said concern's principal stockholder and founder, in sale to purchasing public, directly or indirectly, through wholesale and retail dealers and through agents—

- (a) Made use of words, in advertising and soliciting the sale of the products sold by them, "Direct from factory to you," or of words of like and similar import, notwithstanding fact they did not, themselves, as above set forth, manufacture products thus offered and sold by them; and

Where said manufacturing concern, in course and conduct of its business, and to induce customers and prospective customers to purchase its products—

- (b) Represented, through guarantees, that claims by customers for refunds or adjustments would be allowed, through such statements in its advertisements and advertising matter, and on the labels attached to the containers of its products, as "GUARANTEE * * * Double-Barreled Money-Back GUARANTEE," If, for any reason, Davis' Ever-Bright Guaranteed Paint does not come up to your expectations after applying a portion of it, you may return the remainder and we will refund all you have paid for your entire order," along with offer, after all the paint had been applied according to directions and had failed to give "the service you have a right to expect of any paint, regardless of price," to replace same free of charge, paying all shipping charges and for applications "ON YOUR BUILDINGS. Or, if you prefer, we will REFUND YOUR MONEY IN FULL," facts being such claims were not in fact thus allowed, through conceded exaction of questionnaire compliance, subjection of customers to considerable correspondence and, in some cases, refusal to accede to customers' claims;

- (c) Caused to appear on its price lists, circulated widely among its agents and dealers, customers and prospective customers, depiction of "Three Large Factory Buildings," together with statement that such "up-to-date modern paint and varnish factories" were located at Kansas City, Cleveland, and Berkeley, Calif., facts being said manufacturing concern never actually owned entire paint factory in said last-named city, though stock therein was assertedly owned by its founder, president, principal stockholder, and then vice-president; and

Where an agent of a corporation, then dormant and thereafter dissolved, but capital stock of which was owned by said manufacturing concern—

- (d) Represented, through letters mailed to customers and prospective customers, that paints of said various companies and individual could be purchased for prices substantially lower than the regular or current prices, and that said paints ordinarily sold for prices substantially higher than

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the asserted special prices, through stating, among other things, in said letters that said company "has authorized me to dispose of as much paint as possible between now and Saturday," and that, because of the short time for such disposal, he was offering "any paint, varnish, enamel, etc., at EXACTLY ONE-HALF the list prices on the enclosed price list," facts being enclosed list was an old one which did not reflect current prices at which paint was being offered by aforesaid company at times such letter was forwarded;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into erroneous belief that all said representations were true, and with result that a number of the consuming public, as a direct consequence of the mistaken and erroneous belief induced by advertisements and misrepresentations of said companies and the aforesaid president, etc., of such manufacturing concern, purchased substantial volume of their product and trade was unfairly diverted to them from those likewise engaged in sale of paint, varnish, enamel, and allied products and who truthfully advertise the same; to the substantial injury of competition in commerce:

Heid, 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.

Mr. Harold E. Neibling, of Kansas City, Mo. and *Mr. Clinton Robb*, 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 each and all of the corporations and the individual named in paragraph 1 hereof, 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 and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Davis Paint Company, Inc., is a corporation organized January 2, 1924, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal offices and place of business at 14th and Iron Streets, in Kansas City in said State. Respondent, Davis Paint Company, Inc., does business and trades under its corporate name and also under the trade name, Burlington Paint Company, in Kansas City in the State of Missouri, and also under the trade name, Robertson Products Company, in Cleveland in the State of Ohio. Respondents, W. H. Beard Paint

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Company, Farm and Home Paint Company, Manchester Paint Corporation, New Method Paint Company, Painter's Paint Company, and World Star Paint Company, are all corporations organized, existing, and doing business under and by virtue of the laws of the State of Missouri and have their respective principal offices and places of business located in Kansas City in the said State. Respondent, Berry J. Davis, is now and since the date of the incorporation of each of said corporations has been the principal stockholder in each of the corporate respondents and now has his principal office and place of business at 14th and Iron Streets in Kansas City, Mo. Said individual respondent manages, controls and directs the policies and operations of all the corporate respondents named herein. Said Berry J. Davis is the president of the corporate respondents, Davis Paint Company, Inc., and Manchester Paint Corporation, and is vice president of the corporate respondents, W. H. Beard Paint Company, Farm and Home Paint Company, New Method Paint Company, Painter's Paint Company, and World Star Paint Company.

PAR. 2. Respondent corporations named herein doing business under their respective corporate names and the respondent, Davis Paint Company, Inc., doing business also under the trade names, Burlington Paint Company and Robertson Products Company, now are and have been for many years engaged in the sale of paint, varnish, enamel, and allied products to members of the public either directly to the purchasing public or indirectly through wholesale and retail dealers and through agents. Said corporate respondents in the course and conduct of their respective businesses ship, or cause to be shipped or transported, their products when sold by them, from the States of Missouri and Ohio or the State of origin of the shipment to the purchasers thereof located at points in various States of the United States other than in the States of Missouri and Ohio or in the State of origin of the shipment. There is now and has been during all the times hereinbefore mentioned a constant current of trade or commerce in the products sold by the several corporate respondents between and among various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their respective businesses all of the respondent corporations now are, and have been during all the times hereinabove mentioned, engaged in substantial competition with various other corporations, firms, and individuals selling or offering for sale paint, varnish, enamel, and allied products to members of the general public in the several manners set out in paragraph 2 hereof 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 and conduct of its business respondent, Davis Paint Company, Inc., acting under the direction of respondent, Berry J. Davis, is now and has been during all of the times above mentioned, both under its corporate name and under the trade names, Burlington Paint Company and Robertson Products Company, manufacturing, offering for sale and selling paint, varnish, enamel, and allied products, to members of the public directly and to wholesalers and retailers who in turn sell to members of the public and to the public through its own agents. Said respondent, Davis Paint Company, Inc., operates retail stores in Kansas City, Mo., Kansas City, Kans. and Wichita, Kans. The business of said respondent is solicited by various advertising methods such as circulars, catalogues, price lists, and publications mailed to customers, prospective customers, agents, and dealers throughout the United States.

Respondent, Davis Paint Company, Inc., has been and now is manufacturing all the paint, varnish, enamel and allied products sold and offered for sale by it and by all the respondent corporations named herein.

PAR. 5. Respondent, Davis Paint Company, Inc., not only manufactures all of the products sold and offered for sale by the respondent corporations named herein, but owns and controls said respondent corporations and directs their policies. Respondent, Davis Paint Company, Inc., in the course and conduct of its business and acting under the direction of the respondent, Berry J. Davis, conceals the fact that the Davis Paint Company, Inc., owns or has a controlling interest in the other respondent corporations named herein, and causes said corporations to be held out and advertised through the use of labels on containers bearing the corporate name of the particular corporation making the sale together with such phrases as "direct from factory to you," and in other ways, as being the manufacturer of the products respectively sold by each of said respondents and as being wholly apart from, independent of, and having no connection with the Davis Paint Company, Inc. By so concealing the fact that said respondent corporations are its subsidiaries, it permits said corporations to be held out as competing with it.

PAR. 6. Respondent, Berry J. Davis, as principal stockholder and manager of respondent, Davis Paint Company, Inc., organized and created all the other respondent corporations named, for the purpose of soliciting business for the sale of the products of the Davis Paint Company, Inc., in such a way as to conceal the fact that said respondent corporations and the businesses conducted by the respondent, Davis Paint Company, Inc., under the several trade names indicated

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herein are in any way connected with or controlled by respondent, Davis Paint Company, Inc. For example, some of the respondent corporations above referred to solicit business only from paint contractors and retailers; others solicit business direct from the consumer by mailing lists; others solicit business by dealing only through agents; and still others solicit business through department stores by means of a leased department arrangement. By this method of doing business respondent, Davis Paint Company, Inc., is able to and does in fact vary the prices of its products, depending upon which class of trade it seeks, and to increase its business by concealing the fact that the products, supposedly manufactured by one of the corporations above referred to sold or offered for sale by an agent, by a retail dealer or by a department store in one and the same locality, are in fact all the same products and manufactured by respondent, Davis Paint Company, Inc.

PAR. 7. Respondent, Davis Paint Company, Inc., acting under the direction of respondent, Berry J. Davis, in the course and conduct of its business and for the purpose of inducing customers and prospective customers to purchase its products, in its advertisements and advertising matter circulated generally throughout the United States among agents and customers and prospective customers, and on the labels attached to the containers of the paint sold under its corporate name, has caused and still causes a form of guarantee which contains the following, among other statements, to be used:

GUARANTEE

Davis Ever-Bright Brand
Double-Barreled Money-Back
GUARANTEE

Here is our Guarantee printed in black and white. Always demand a printed Money-Back Guarantee, signed by the Manufacturer, before you buy Paints * * *

If, for any reason, Davis' Ever-Bright Guaranteed Paint does not come up to your expectations after applying a portion of it, you may return the remainder and we will refund all you have paid for your entire order.

After you have applied all the paint to your buildings according to our directions and if it does not give you the service you have a right to expect of any paint, regardless of price, we will replace it free of charge, pay all shipping charges and PAY FOR PUTTING IT ON YOUR BUILDINGS. Or, if you prefer, we will REFUND YOUR MONEY IN FULL.

Could any Guarantee be more fair? * * *

Why not buy your paint where you are fully protected by a printed Guarantee that means something?

Said guarantee is false and misleading in that respondent, Davis Paint Company, Inc., upon the report to it of dissatisfaction of the

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products purchased by the customer, has not complied, and does not comply with or fulfill the terms of the guarantee, but in truth and in fact, respondent, Davis Paint Company, Inc., has made it a practice to evade the guarantee hereinbefore mentioned by forcing such customers who are dissatisfied to adjust their claims in a manner different from that set forth in its guarantee.

PAR. 8. In the course and conduct of its business respondent, Davis Paint Company, Inc., acting under the direction of Berry J. Davis, has caused to appear on its price list which it circulates widely among its agents, dealers, customers and prospective customers, the false and misleading pictorial representation of "three large factory buildings," together with the following words:

These three up-to-date modern paint and varnish factories are located at Kansas City, Mo., Cleveland, Ohio, and Berkeley, California * * * Three great factories ready to serve you.

The said pictorial representation, together with the statements appearing in connection therewith, serve as a representation to the purchasing public that the respondent, Davis Paint Company, Inc., actually owns, controls, and operates paint and varnish factories located at Kansas City, Mo., Cleveland, Ohio, and Berkeley, Calif. In truth and in fact said respondent, Davis Paint Company, Inc., does not have and never did have any factory at Berkeley, Calif.

PAR. 9. All the respondent corporations except respondent, Davis Paint Company, Inc.; acting under the direction and control of respondent, Berry J. Davis, in the course and conduct of their respective businesses, describe and represent themselves, by false and misleading representations appearing in their catalogues, price lists, and advertisements circulated widely among their customers and prospective customers, and among members of the public, and on labels attached to the containers of their products; to be the manufacturers of the products sold and offered for sale by them, such representations being made by the statement "Direct from Factory to You" and in other ways. In truth and in fact no one of the respondent corporations hereinabove named is the manufacturer of the products sold or offered for sale by it, nor does any of them own, control, or operate any factory for the manufacture of said products.

PAR. 10. In the course and conduct of its business and for the purpose of inducing customers and prospective customers to purchase its products, respondent, World Star Paint Company, acting under the direction of respondents, Berry J. Davis and Davis Paint Company, Inc., causes to be inserted in its advertisements and advertising matter circulated among agents, dealers, customers and prospective cus-

tomers, and on labels attached to the containers of its products, a "Guarantee" which contains the following, among other statements:

We guarantee to refund your money in full or replace any paint with which you are not completely satisfied.

Said guarantee is false and misleading in that respondent, World Star Paint Company, upon the report to it of dissatisfaction of the products purchased by the customer, has not complied, and does not comply with or fulfill the terms of the guarantee, but in truth and in fact respondent, World Star Paint Company, has made it a practice to evade the guarantee hereinbefore mentioned by forcing customers who are dissatisfied to adjust their claims in a manner different from that set forth in its guarantee.

PAR. 11. In the course and conduct of its business and for the purpose of inducing customers and prospective customers to purchase its products, World Star Paint Company, acting under the direction of respondents, Berry J. Davis and Davis Paint Company, Inc., caused to be mailed to customers and prospective customers a letter written on stationery bearing the name of an attorney-at-law and signed by said attorney, in which letter the following statements and representations were made:

I am handling the affairs of the World Star Paint Company of this city.

This company has authorized me to dispose of as much paint as possible between now and Saturday, May 26. Consequently, because I must dispose of quite a lot of paint in this short time, I offer you any paint, varnish, enamel, etc., at EXACTLY ONE-HALF the list prices on the enclosed price list.

The said letter hereinabove referred to had the capacity to and did mislead purchasers and prospective purchasers to believe that said products offered for sale were distress merchandise, that said company was insolvent, and that it would be closing out. In truth and in fact said merchandise being sold and offered for sale was not distress merchandise, said company was not insolvent and said company was not closing out. The merchandise offered for sale was being supplied at all times to the respondent, World Star Paint Company, by respondent, Davis Paint Company, Inc. Further, said letter contained false and misleading statements in that it offered said merchandise for "Exactly one-half Price," when in truth and in fact the merchandise sold and offered for sale was not sold or offered for sale at exactly one-half the list price, but at the price at which said products were, and had been, usually sold to members of the public by the said respondent, World Star Paint Company, and by other subsidiary corporations of respondent, Davis Paint Company, Inc., hereinbefore named.

PAR. 12. The above and foregoing fraudulent acts, practices and representations of the respondents in the course of their advertising, offering for sale and the selling of their products 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 in various States of the United States into the erroneous belief that the products sold by the respective corporate respondents other than the respondent, Davis Paint Company, Inc., are in fact manufactured by such respondents; that said corporate respondents are independent of and in no way connected with the respondent, Davis Paint Company, Inc., that said corporate respondent, Davis Paint Company, Inc., and other of the corporate respondents would in fact guarantee their products as set forth in paragraphs 7 and 10 hereof; that the corporate respondent, World Star Paint Company, was about to close out its business and dispose of distress merchandise, as a result of which high grade merchandise could be purchased at exactly one-half the regular price, as set forth in paragraph 11 hereof; that respondent, Davis Paint Company, Inc., owned three large factories as set forth in paragraph 8 hereof; and thereby induce the ultimate consumer to purchase a substantial quantity of the products of the respondent, Davis Paint Company, Inc., in reliance upon such erroneous beliefs.

There are manufacturers of paint, varnish, enamel, and allied products who sell and offer for sale their products in commerce as aforesaid, who do not in any way misrepresent the size or character of their respective businesses or otherwise misrepresent their business or products. There are dealers of paint, varnish, enamel, and allied products who are not manufacturers of said products and who sell and offer for sale their products in commerce as aforesaid, and who do not in any way misrepresent the size or character of their respective businesses or otherwise misrepresent their business or products. Thereby trade is diverted to the respondent, Davis Paint Company, Inc., and to the other respondents named herein, from other competitors who do not make such misrepresentations and thereby substantial injury is done by the respondents to substantial competition in commerce as aforesaid.

PAR. 13. 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 the respondents' competitors and constitute unfair methods of competition in interstate commerce within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 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 5, 1936, issued and served its complaint in this proceeding upon the respondents herein, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On May 29, 1936, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents' counsel, Harold E. Neibling, 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 Commission may proceed upon said statement of facts to make its report as to the findings of facts (including inferences which it may draw from the said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Davis Paint Company, is a corporation organized January 2, 1924, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal offices and place of business in Kansas City, Mo. Respondent, Davis Paint Company, also formerly did a limited business in the State of Ohio under the name of Robertson Products Company (a corporation whose assets it purchased). Respondent, Davis Paint Company, owned the capital stock of the following corporate respondents, to wit:

<i>Name of Corporation</i>	<i>Date Dissolved</i>
Burlington Paint Company-----	April 24, 1935
Painter's Paint Company-----	May 1, 1925
World Star Paint Company-----	September 12, 1935
W. H. Beard Paint Company-----	January 2, 1936
Manchester Paint Corporation-----	December 15, 1936

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which, on the dates set forth above, were duly, actually, and finally dissolved according to law, and since said dates have transacted and attempted to transact no business whatsoever, but prior to said dissolution dates, each of said corporations were duly organized, existing and carrying on business under and by virtue of the laws of the State of Missouri, with their respective principal offices and places of business located in Kansas City in said State. Respondents, New Method Paint Company, and Farm and Home Paint Company, are corporations organized, existing, and now doing business under and by virtue of the laws of the State of Missouri, and have their respective principal offices and places of business located in Kansas City, Mo. Respondent, Berry J. Davis, an individual, is the founder, President, and principal stockholder of the Davis Paint Company, which company is the owner of the stock of respondents, New Method Paint Company and Farm and Home Paint Company.

PAR. 2. All of the above respondents named in paragraph 1 were, and some now are, as set forth in paragraph 1, engaged in the sale of paint, varnish, enamel and allied products to members of the public, either directly to the purchasing public or indirectly through wholesale and retail dealers and through agents. Said corporate respondents, in the course and conduct of their respective businesses, cause or caused to be shipped or transported their products, when sold by them, from the State of Missouri, or the State of origin of shipment to purchasers thereof located in various points of the United States other than in the State of Missouri or in the State of origin of the shipment, and said respondents are in substantial competition with other firms and individuals engaged in similar business 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 respective businesses all of the respondent corporations now are, and have been during all the times hereinabove mentioned, engaged in substantial competition with various other corporations, firms, and individuals selling or offering for sale paint, varnish, enamel, and allied products to members of the general public in the several manners set out in paragraph 2 hereof in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. Respondent, Davis Paint Company, has been and now does manufacture the paint, varnish, enamel, and allied products offered for sale by the respondents named herein, which were and are now engaged in offering said products for sale to the public under their respective corporate and trade names. The business of all the respondents was, and is, solicited by various advertising

methods, such as circulars, catalogs, price lists, and publications mailed to prospective customers, agents, and dealers throughout the United States.

Formerly it was the practice of the said non-manufacturing corporate respondents, in advertising and soliciting the sale of the products sold by them, to use the words "Direct from factory to you," or words of like and similar import, which practice, however, was voluntarily abandoned by the respondents herein, and since the abandonment of said practice, the same has never been renewed; said products sold or offered for sale by said non-manufacturing corporate respondents for more than a year last past have been labeled with the words "Manufactured for," or "Mfgd. for," or words of similar import, indicating to the general public that the said non-manufacturing corporate respondents do not claim to manufacture the said products.

PAR. 5. Respondent, Davis Paint Company, in the course and conduct of its business and for the purpose of inducing customers and prospective customers to purchase its products, in its advertisements and advertising matter circulated generally throughout the United States among agents and customers and prospective customers, and on the labels attached to the containers of the paint sold under its corporate name, formerly used a form of guarantee which contained the following, among other statements,

GUARANTEE

Davis Ever-Bright Brand
Double-Barreled Money-Back

GUARANTEE

Here is our Guarantee printed in black and white. Always demand a printed Money-Back Guarantee, signed by the Manufacturer, before you buy Paints * * *

If, for any reason, Davis' Ever-Bright Guaranteed Paint does not come up to your expectations after applying a portion of it, you may return the remainder and we will refund all you have paid for your entire order.

After you have applied all the paint to your buildings according to our directions and if it does not give you the service you have a right to expect of any paint, regardless of price, we will replace it free of charge, pay all shipping charges and PAY FOR PUTTING IT ON YOUR BUILDING. Or, if you prefer, we will REFUND YOUR MONEY IN FULL.

Could any Guarantee be more fair? * * *

Why not buy your paint where you are fully protected by a printed Guarantee that means something?

Complaint alleges that respondent, Davis Paint Company, has not complied and did not comply in full with the terms of said guarantee, but had made a practice to require customers who were dissatisfied

to adjust their claims in a manner different from that set forth in its guarantee. Respondents admit that a few customers have complained to respondents concerning adjustments proposed by them under said guarantee and respondents further admit that in answer to said complaints reporting dissatisfaction with the paint purchased by them, respondents sent to said customers questionnaires, which respondents required to be filled out by the complainants, and sometimes subjected said customers to considerable correspondence, and in some cases respondents admit that they refused to accede to the customer's claims. Respondents further state that over a year ago they voluntarily revised the terms of said guarantee in such a manner as to narrow the scope of the same.

PAR. 6. Formerly, in the course and conduct of its business, respondent, Davis Paint Company, caused to appear on its price list, which it circulated widely among its agents, dealers, customers, and prospective customers, a pictorial representation of "Three Large Factory Buildings" together with the following words:

These three up-to-date modern paint and varnish factories are located at Kansas City, Missouri; Cleveland, Ohio, and Berkeley, California * * *
Three great factories ready to serve you.

Respondent, Davis Paint Company, admits that it never actually owned an entire paint factory in Berkeley, Calif., but states that at the time said representations were made, respondent, Berry J. Davis, was vice-president of and owned capital stock in a large paint factory in Berkeley, Calif., which factory was represented in said pictorial advertising; but respondents state that long since they have voluntarily completely abandoned representing that they own or control any other factories except those in Kansas City, Mo., and Cleveland, Ohio.

PAR. 7. Prior to the dissolution in September 1935, of the respondent, World Star Paint Company, and while said company was in a dormant condition, an agent of said company caused to be mailed to customers and prospective customers a letter, in which letter the following statements and representations were made:

I am handling the affairs of the World Star Paint Company of this city.

This company has authorized me to dispose of as much paint as possible between now and Saturday, May 26. Consequently, because I must dispose of quite a lot of paint in this short time, I offer you any paint, varnish, enamel, etc., at EXACTLY ONE-HALF the list prices on the enclosed price list.

Respondents state that the price list enclosed in the letter as above set forth was an old price list which did not reflect the current prices at which paint was being offered by respondent, World Star Paint Company, at the time said letter was forwarded.

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PAR. 8. Each and all of the false and misleading statements and misrepresentations made by respondents as hereinabove set forth 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 representations are true. Further, as a direct consequence of the mistaken and erroneous belief induced by the advertisements and misrepresentations of the respondents as hereinabove enumerated, a number of the consuming public purchased a substantial volume of respondents' product, with the result that trade has been unfairly diverted to respondents from corporations, firms and individuals likewise engaged in the business of selling paint, varnish, enamel and allied products and who truthfully advertise their products. As a result thereof, substantial injury has been done by respondents 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 have been and are to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, and the agreed stipulation of facts entered into between the respondents herein, by their 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 respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That respondents, Davis Paint Company, Inc., a corporation, trading under its own name and also as Robertson Products Company; Farm and Home Paint Company, a corporation; and New Method Paint Company, a corporation; and Berry J. Davis,

an individual, their officers, representatives, agents, and employees in connection with the offering for sale, sale and distribution of paint, varnish, enamel, and allied products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that any of said corporate respondents, with the exception of the Davis Paint Company, owns, controls and operates any factory wherein the products, which they sell and distribute, are manufactured;

2. Representing that respondent, Davis Paint Company, has factories located elsewhere than in Kansas City, Mo., and Cleveland, Ohio;

3. Representing in guarantees, or in any other manner, that claims by customers for refunds or adjustments will be allowed when such claims are not in fact so allowed;

4. Representing that their paints can be purchased for prices substantially lower than the regular or current prices, and that said paints ordinarily sell for prices substantially higher than the prices represented to be special, when such are not the facts.

It appearing that the respondents herein:

Burlington Paint Company, Painter's Paint Company, World Star Paint Company, W. H. Beard Paint Company, and Manchester Paint Corporation, have been duly, actually and finally dissolved according to law, the complaint as to them shall be, and the same hereby is, dismissed.

It is further ordered, That the respondents herein shall within 30 days from the date of the serving upon them of this order, file with the Commission, their report in writing stating the manner and form in which they have complied with this order.

Complaint

IN THE MATTER OF

FEDERAL ENAMELING AND STAMPING COMPANY

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

Docket 2842. Complaint, June 11, 1936—Decision, Oct. 1, 1937

Where a corporation engaged in manufacture, sale, and distribution of enamel kitchen and other enamelware, under trade name "FEDERALWARE," in competition with many engaged in sale and distribution, among the various States and in the District of Columbia, of such ware and who do not misrepresent the quality thereof or resort to unfair acts and practices in sale and distribution of their said products; in advertising its said products through radio announcements and programs, hand bills, booklets, display cards, window trims, sales promotion announcements, letters, etc., and through advertisements in periodicals, newspapers and catalogs—

- (a) Represented that its said product would not chip and was thirty-six times more durable than ordinary enamelware and would save its cost to the ultimate purchaser, in one year or less, through fuel savings, facts being said products were not, and never had been, chip-proof or chip-proofed as represented, nor thirty-six times more durable, nor to a substantial degree more durable, than ordinary enamelware, would not and did not save their cost to the purchaser as above set forth, nor save purchaser any material amount in fuel; and
- (b) Represented that its said product was stainless, facts being its said enamelware would not withstand, without showing signs of etching or stain, tentative test of boiling in citric and malic acid solution under certain conditions arrived at by Committee on Standardization of Tests of Technical Research Service of the Porcelain Enamel Institute;

With tendency and capacity to mislead and deceive purchasing public and retail dealers, and with effect of so misleading such public and dealers into erroneous belief that aforesaid various representations were true, and into buying its said products on account of such mistaken beliefs, and with effect of placing in hands of wholesalers and retailers means of deceiving ultimate purchasers through its said advertising and representations, and of unfairly diverting trade to it from competitors likewise engaged in sale, in commerce among the States and in the District of Columbia, of truthfully advertised products of the same kind and nature:

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. T. H. Kennedy and *Mr. Floyd O. Collins* for the Commission.
Stebbins, Blenko & Parmelee, of Pittsburgh, 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

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Federal Trade Commission, having reason to believe that Federal Enameling and Stamping Company, a corporation, hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Federal Enameling and Stamping Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its factory and principal place of business at McKees Rocks, Pa. Respondent also maintains a mailing address at Pittsburgh, Pa. Respondent is, and for more than five years last past has been, engaged in the manufacture of porcelain enamel kitchen utensils which it sells under the trade name of "Federalware," and otherwise and in the selling thereof 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 such products, when sold by it, to be transported from its place of business in Pennsylvania or other places within the United States to purchasers thereof, some located in the State of Pennsylvania and others located in various other 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 five years last past, has been in constant competition with other corporations and with persons, firms, and partnerships engaged in the sale of similar products in commerce among and between the various States of the United States and 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 catalogues, advertising matter carried in magazines having national distribution and in metropolitan daily newspapers, radio announcements, radio programs, labels, booklets, stickers, dodgers, stuffers, folders, display cards, counter cards, window trims, "guarantee" cards, sales promotion announcements, letters, and by other means represented, and still represents that said products are:

- (a) Chip proof,
- (b) Chip proofed,
- (c) Stainless,
- (d) Thirty six times more durable than ordinary enamelware, or to a substantial degree more durable than ordinary enamelware, and that
- (e) The covers or lids supplied with said products are chromium;
- (f) Said products will save their cost to the ultimate purchaser in one year or less through fuel saving.

In truth and in fact each and every said representation has been and is untrue, and said products are not nor have they ever been chip proof, chip proofed, stainless, thirty six times more durable, nor to a substantial degree more durable than ordinary enamelware, nor are the covers or lids supplied with said products chromium nor have they ever been chromium, nor will said products save their cost in fuel saving in one year or less time. There is a preference by a substantial number of retail dealers in products similar to those of respondent hereinabove described and by a substantial part of the purchasing public for products that are chip proof, chip proofed, stainless, thirty six times more durable, or substantially more durable than ordinary enamelware and that have chromium covers or lids and that will save their cost to the ultimate purchaser in one year or less through fuel saving.

The aforesaid representations by the 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 the said products of the respondent have all of the properties, capacities or effects claimed for them by the respondent as aforesaid and the use of said misrepresentations causes them to purchase respondent's products in such erroneous belief. The aforesaid representations by the respondent have placed and still place in the hands of retailers of the products of respondent hereinabove described the means of misleading and deceiving the purchasing public.

PAR. 3. There are among the competitors of respondent manufacturers and distributors of products similar to those of respondent hereinabove described who truthfully represent their said products. There are also among said 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. Thereby substantial injury has been done and still is being done by respondent to competition 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 11, 1936, issued and served its complaint in this proceeding upon respondent, Federal Enameling and Stamping 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 Thomas H. Kennedy, 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 William H. Parmelee, 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 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, Federal Enameling and Stamping Company, is a Pennsylvania corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania. Its principal place of business is located at McKees Rocks, Pa. Respondent maintains a mailing address at Pittsburgh, Pa. Respondent is now, and has been since 1913, engaged in the manufacture, sale and distribution of enamel kitchenware and other enamelware and has been manufacturing, selling, and distributing said enamelware under the trade name of "FEDERALWARE." Respondent causes said product, when sold, to be transported in commerce, from its different places of business, to purchasers thereof located at various points in States of the United States other than the State of origin of said shipment, and in the District of Columbia. Respondent maintains a constant current of trade and commerce in said products among and between the various States of the United States and in the District of Columbia.

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PAR. 2. During the course and conduct of respondent's business as hereinabove set out, respondent has been, and is now, in active, substantial competition with other corporations, and with individuals, firms, and partnerships, likewise engaged in the sale and distribution of enamel kitchenware and other enamelware, in commerce among and between the various States of the United States and the District of Columbia. There are among respondent's competitors many who are engaged in the sale and distribution, in commerce among and between the various States of the United States and the District of Columbia, of enamelware and enamel kitchenware who do not misrepresent the quality of the enamelware and enamel kitchenware sold by them, and who do not resort to unfair acts and practices in the sale and distribution of their said products.

PAR. 3. In the course and conduct of respondent's business in selling and offering for sale its enamel kitchenware and other enamelware, respondent advertises said products through radio announcements, radio programs, handbills, booklets, stickers, dodgers, stuffers, folders, display cards, counter cards, window trims, guarantee cards, sales promotion announcements, letters, and through advertisements in magazines, newspapers and through the use of catalogs. Through the use of said advertising mediums, and in other ways and by other means, respondent has represented and still represents, that said products are:

Chip-proof;

Chip-proofed;

Stainless;

36 times more durable than ordinary enamelware or to a substantial degree more durable than ordinary enamelware; and that said products will save their cost to the ultimate purchaser in one year or less through fuel savings.

PAR. 4. Said representations had and now have the tendency and capacity to mislead and deceive the purchasing public and retail dealers, and have misled, and do now mislead, the purchasing public and retail dealers into the erroneous belief that said representations are true, and into the belief that said products sold and distributed by respondent will not chip and will not stain; that said products are 36 times more durable than ordinary enamelware or are to a substantial degree more durable than ordinary enamelware, and that said products will save their cost to the purchaser in one year or less through fuel savings.

PAR. 5. Each and every said representation as above set out has been and is untrue, for in truth, and in fact, said products are not now, neither have they ever been chip-proof. Said products are

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not now, neither have they ever been chip-proofed. Said products are not now, neither have they ever been 36 times more durable than ordinary enamelware nor to a substantial degree more durable than ordinary enamelware. Said products do not now, neither did they ever save their cost to the purchaser in one year or less through fuel savings. Neither will they now nor did they ever save the purchaser any material amount in fuel.

PAR. 6. There is a preference on the part of a substantial number of retail dealers in enamelware and enamel kitchenware, and a substantial portion of the purchasing public, for enamelware and enamel kitchenware that is chip-proof, chip-proofed, stainless, 36 times more durable, or substantially more durable, than ordinary enamelware, and for enamelware that will save fuel. At the time of the hearings in this matter the Committee on Standardization of Tests of Technical Research Service of the Porcelain Enamel Institute had arrived at a tentative test for stainless enamel kitchenware, and that test requires that enamel kitchenware represented as stainless shall pass a test of boiling a 1½% citric acid solution plus a 1½% malic acid solution for one-half hour in the utensil tested and that the utensil should then not show any visible signs of etching or stain. Respondent's enamelware products as constituted at the date of the hearings in this case will not withstand the aforementioned test without showing signs of etching or stain.

PAR. 7. The representations of respondent as hereinbefore set forth, in describing and advertising its enamelware and enamel kitchenware, are false and misleading, and have the capacity and tendency to deceive, and have deceived, and do deceive retailers and the purchasing public into buying respondent's products, on account of the mistaken beliefs herein set out. Through its advertising and aforesaid representations respondent has placed, and is placing, in the hands of wholesalers and retailers the means of deceiving the ultimate purchasers. The aforesaid acts and practices have the capacity and tendency to, and did, and do unfairly divert trade to respondent from respondent's competitors who are likewise engaged in selling in commerce among and between the various States of the United States and the District of Columbia, products of the same kind and nature as those of respondent's, which products are truthfully advertised.

CONCLUSION

The aforesaid acts and practices of the respondent, Federal Enameling and Stamping Company, are to the prejudice of the public and of respondent's competitors and constitute unfair methods of com-

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petition 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, briefs filed herein by Floyd O. Collins, counsel for the Commission, and by William H. Parmelee, 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, Federal Enameling and Stamping Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of enamelware or enamel kitchenware in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said enamelware will not chip;
2. Representing that said enamelware is 36 times more durable or to any substantial degree more durable than ordinary enamelware;
3. Representing that said enamelware products will save their cost to the ultimate purchaser in one year or less through fuel savings or will save the user any material amount on fuel cost;
4. Using the word "stainless," or any word of similar import and meaning, as a brand, stamp, or label upon or for enamelware or enamel kitchenware, or in advertising the same unless such enamelware or enamel kitchenware is made of material which can successfully withstand the test of boiling in it as a container a solution of 1½% citric acid plus 1½% malic acid for a period of one-half hour without showing visible signs of etching or stain.

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
NEW YORK STATE SHEET METAL ROOFING AND AIR-
CONDITIONING CONTRACTORS' 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 2931. Complaint, Sept. 28, 1936—Decision, Oct. 4, 1937

Where a corporate trade association or organization, membership of which consisted of plumbing contractors and dealers in sheet metal roofing supplies and hot air furnaces, with respective places of business at various points in New York State, and in competition with one another and other plumbing contractors and dealers in such products located in other States and members therein of similar trade associations; and corporate manufacturer of hot air furnaces engaged in sale and distribution of its products in interstate commerce to customers located in States other than that of said manufacturer, and in substantial competition with others likewise engaged in business of making, selling, and distributing such furnaces in interstate commerce, and, but for the matters and things below set forth, naturally and normally in competition with other manufacturers who normally also sell not only to contractors and dealers comprising membership of various trade organizations above described, but to certain large mail order houses—

- Entered into and engaged in carrying out an agreement and understanding among themselves to list those manufacturers who were thus selling their hot air furnaces to mail order houses aforesaid, and to urge members of their above association, and also the other various trade associations and their respective members, to purchase only from manufacturers recommended by them, and in the accomplishment of their aforesaid purposes—
- (a) Held meetings to devise ways of exerting influence or pressure or other means of inducing members of the respective trade associations not to purchase the products of manufacturers named by them as being concerns dealing with mail order houses;
 - (b) Printed and published "White Lists" containing names of manufacturers approved by them who were not selling to such houses;
 - (c) Used, in concert and agreement among themselves and with others, coercive and concerted action, boycott, threats thereof, and other united action against manufacturers who were selling to such houses; and
 - (d) Caused to be published, and distributed, many thousands of pamphlets and bulletins to the various trade associations in the several States and to their respective members, urging latter to discontinue buying products of manufacturers named therein, and said associations to induce their membership to discontinue trading with such manufacturers;

With effect of monopolizing in themselves business of dealing in and distributing such products, unreasonably lessening, eliminating, restraining, stifling, hampering, and suppressing competition in industry concerned, and depriving 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 otherwise operating as a restraint upon and a

detriment to the freedom of fair and legitimate competition therein, and obstructing natural flow of trade in channels of interstate commerce, and with capacity and tendency so to monopolize, etc.:

Held, That such acts and practices of said corporate association and manufacturer and their respective officers were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. William L. Pencke for the Commission.

Griffith, Wager & Brackett, of Utica, N. Y., for New York State Sheet Metal Roofing and Air-Conditioning Contractors' Ass'n, and its officers.

Mr. Gilbert H. Montague, of New York City, for Fox Furnace Co., and its officers.

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 paragraphs 1 and 2 hereof, 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 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. Respondent, New York State Sheet Metal, Roofing and Air-Conditioning Contractors' Association, Inc., is a corporation organized in the month of September 1935, existing and doing business under the laws of the State of New York, with its principal office and place of business located at 916-918 Columbia Street in the city of Utica in said State. Its officers are the respondents, H. W. Noregon, president, Clarence J. Meyer, first vice-president, James F. Keys, second vice-president, Adolph Hesse, secretary, and Edward Klick, treasurer. Said corporation is the successor to an unincorporated association known as New York State Sheet Metal and Roofing Contractors' Association, which had its place of business and office at the same place as the present corporation. Its officers were as follows: William J. Schmitt, president, H. W. Noregon, first vice-president, Adolph Hesse, secretary and Edward Klick, treasurer. Both said corporation and its predecessor will hereinafter be referred to as the New York Association.

PAR. 2. Respondent, Fox Furnace Company, is a corporation, organized and existing under the laws of the State of Ohio, with its office and principal place of business in the city of Elyria in said

State. Its officers are respondents, Clarence A. Olsen, president, George W. Cobb, Jr., secretary, and M. M. Suppes, treasurer. It will hereinafter be referred to as the Fox Company.

PAR. 3. Respondent, New York Association, is a trade organization whose membership consists of plumbing contractors, and dealers in sheet metal, roofing supplies, and hot air furnaces, with their respective places of business located at various points in the State of New York. Said members are in competition with each other, and with other plumbing contractors and dealers in sheet metal, roofing supplies, and hot air furnaces, located in States other than the State of New York, and who are likewise members of similar trade associations in their respective States.

PAR. 4. Respondent, Fox Furnace Company, is now, and for more than three years last past has been, engaged in the manufacture, sale, and distribution of hot air furnaces. Respondent sells and distributes its products in commerce between and among the various States of the United States and in the District of Columbia, causing said products when sold to be shipped from its place of business in the State of Ohio to purchasers thereof located in a State or States of the United States other than the State of Ohio. In the course and conduct of its business aforesaid, respondent, Fox Furnace Company, is now, and for more than three years last past has been, in substantial competition with other corporations, firms, partnerships, and individuals engaged in the business of manufacturing, selling, and distributing hot air furnaces in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The members of said New York Association and other trade associations described in paragraph 3 hereof purchase hot air furnaces from said Fox Company in Ohio and from other manufacturers located in various other States of the United States. Said manufacturers ship their said products when purchased by the aforesaid members of the aforesaid associations from their respective places of business to the aforesaid members of the said associations located in the various States of the United States. There are certain manufacturers of hot air furnaces who not only sell to the contractors and dealers comprising the membership of the various trade organizations hereinabove described, but who have been and are selling hot air furnaces to certain large mail order houses. In the course and conduct of their aforesaid respective businesses, the said last mentioned manufacturers, but for the matters and things hereinafter set out, would be and would have been naturally and

normally in competition with the other manufacturers of hot air furnaces, among which manufacturers is the Fox Company.

PAR. 6. On or about September 1934, the said New York Association and the said Fox Company entered into, have since carried out and are still carrying out an agreement, combination, understanding, and conspiracy among themselves, to blacklist those manufacturers who were and are selling hot air furnaces to the mail order houses aforesaid; to prejudice the members of the New York Association and the various other trade associations and their respective members against said manufacturers; to urge the members of said trade associations to purchase only from manufacturers recommended by said respondents.

To carry out the aforesaid purposes, the said respondents have done among others, the following acts and things:

(a) Held meetings to devise means of exerting influence, pressure, or other means of inducing or requiring members of the respective trade associations not to purchase the products of manufacturers named by them as being manufacturers dealing with mail order houses;

(b) Printed and published lists (so-called "White-Lists") containing the names of manufacturers approved by them who are not selling to mail order houses;

(c) Used in concert and agreement among themselves and with others coercive and concerted action, boycott, threats of boycott and other united action against manufacturers selling to mail order houses;

(d) Caused publication and distribution of many thousands of pamphlets and bulletins to the various trade associations in the several states of the United States and to the respective members thereof, urging and requiring said members to discontinue purchasing the products of manufacturers named in said pamphlets and bulletins, and urging and requiring the said trade associations to induce their membership to discontinue trading with said manufacturers.

PAR. 7. The capacity, tendency, and effect of said agreements, combinations, understandings and conspiracies, and the said acts and practices of the said respondents set forth in paragraph 6 hereof, are and have been to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said hot air furnace industry throughout the several States of the United States; to operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade; to prejudice and injure the public and manufacturers, dealers and others who did

not conform to respondents' program, and to spread into States other than New York and Ohio the same methods of boycott and "white-listing" employed by respondents.

PAR. 8. 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 28th day of September 1936, issued and served its complaint in this proceeding upon the parties named in the above caption, charging them with the use of unfair methods of competition in violation of the provisions of said act. Subsequently, all of said respondents filed their answers to said complaint, consenting therein that for the purposes of this proceeding all the material allegations of said complaint might be deemed to be admitted.

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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, New York State Sheet Metal Roofing and Air-Conditioning Contractors' Association, was incorporated under the laws of the State of New York in the month of September 1935. It is the successor to an unincorporated association known as New York State Sheet Metal and Roofing Contractors' Association. The principal office and place of business of said respondent is in the city of Utica, State of New York. Its officers are the respondents, H. W. Noregon, president, Clarence J. Meyer, first vice-president, James F. Keys, second vice-president, Adolph Hesse, secretary, and Edward Klick, treasurer.

PAR. 2. Respondent, Fox Furnace Company, is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business in the city of Elyria, in said

State. Its officers are respondents, Clarence A. Olsen, president, George W. Cobb, Jr., secretary, and M. M. Suppes, treasurer. It will hereinafter be referred to as the Fox Company.

PAR. 3. Respondent, New York Association, is a trade organization whose membership consists of plumbing contractors, and dealers in sheet metal roofing supplies and hot air furnaces, with their respective places of business located at various points in the State of New York. Said members are in competition with each other, and with other plumbing contractors and dealers in sheet metal roofing supplies and hot air furnaces located in States other than the State of New York, and who are likewise members of similar trade associations in their respective States.

PAR. 4. Respondent, Fox Furnace Company, is now and for many years has been engaged in the manufacture, sale, and distribution of hot air furnaces. It sells and distributes its products in interstate commerce, shipping said products to customers who are located in States other than the State of Ohio. The Fox Furnace Company is now, and for many years has been, in substantial competition with other corporations, firms, partnerships, and individuals who are also engaged in the business of manufacturing, selling and distributing hot air furnaces in interstate commerce.

PAR. 5. The members of said New York Association and other trade associations described in paragraph 3 hereof purchase hot air furnaces from said Fox Company in Ohio and from other manufacturers located in various other States of the United States. Said manufacturers ship their said products when purchased by the aforesaid members of the aforesaid associations from their respective places of business to the aforesaid members of the said associations located in the various States of the United States. There are certain manufacturers of hot air furnaces who not only sell to the contractors and dealers comprising the membership of the various trade organizations hereinabove described, but who have been and are selling hot air furnaces to certain large mail order houses. In the course and conduct of their aforesaid respective businesses, the said last mentioned manufacturers, but for the matters and things hereinafter set out, would be and would have been naturally and normally in competition with the other manufacturers of hot air furnaces, among which manufacturers is the Fox Company.

PAR. 6. On or about September 1934, the said New York Association and the said Fox Company entered into and carried out, and up to a date prior to the filing of the complaint were still carrying out, an agreement and understanding among themselves, to list those manufacturers who were and are selling hot-air furnaces to mail order

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houses aforesaid; and to urge the members of the New York Association and the various trade associations and their respective members to purchase only from manufacturers recommended by said respondents.

To carry out the aforesaid purposes, the said respondents have done, among others, the following acts and things:

(a) Held meetings to devise means of exerting influence, pressure, or other means of inducing members of the respective trade associations not to purchase the products of manufacturers named by them as being manufacturers dealing with mail-order houses;

(b) Printed and published lists (so-called "White Lists") containing the names of manufacturers approved by them who are not selling to mail-order houses;

(c) Used in concert and agreement among themselves and with other coercive and concerted action, boycott, threats of boycott and other united action against manufacturers selling to mail-order houses;

(d) Caused publication and distribution of many thousands of pamphlets and bulletins to the various trade associations in the several States of the United States and to the respective members thereof, urging said members to discontinue purchasing the products of manufacturers named in said pamphlets and bulletins, and urging the said trade associations to induce their membership to discontinue trading with said manufacturers.

PAR. 7. The capacity, tendency, and effect of said agreement and understanding and the said acts and practices of these respondents as set forth in paragraph 6 hereof, are, and have been to monopolize in said respondents the business of dealing in and distributing hot-air furnaces; 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 New York State Sheet Metal Roofing and Air-Conditioning Contractors' Association, a corporation, and H. W. Noregon, president, Clarence J. Meyer, first vice-president, James F. Keys, second vice-president, Adolph

Hesse, secretary and Edward Klick, treasurer, and Fox Furnace Company, a corporation, and Clarence A. Olsen, president, George W. Cobb, Jr., secretary, and M. M. Suppes, treasurer, 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 September 28, 1936, and the answers of the respondents herein, New York State Sheet Metal Roofing and Air-Conditioning Contractors' Association, and H. W. Noregon, president, Clarence J. Meyer, first vice-president, James F. Keys, second vice-president, Adolph Hesse, secretary, and Edward Klick, treasurer, of said association, and Fox Furnace Company, and Clarence A. Olsen, president, George W. Cobb, Jr., secretary, and M. M. Suppes, treasurer, of said company, filed on November 13, 1936, in which they state that they desire to and have hereby waived hearing on the charges set forth in the complaint insofar as the same referred to alleged 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," 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 complaint may 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, said respective 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 said complaint which constitute violations of Section 5 of the Federal Trade Commission Act.

It is ordered, That the respondents, New York State Sheet Metal Roofing and Air-Conditioning Contractors' Association, and H. W.

Noregon, president, Clarence J. Meyer, first vice-president, James F. Keys, second vice-president, Adolph Hesse, secretary, and Edward Klick, treasurer, of said association, and Fox Furnace Company, and Clarence A. Olsen, president, George W. Cobb, Jr., secretary, and M. M. Suppes, treasurer, of said company, and their successors, officers, agents, and employees cease and desist, in connection with the business of selling and offering for sale of hot-air furnaces, from doing and performing by agreement, or understanding between or among any two or more of said respondents, the following acts and things:

(a) Holding meetings to devise means of exerting influence, pressure, or other means of inducing members of the respective trade associations not to purchase the products of manufacturers named by them as being manufacturers dealing with mail order houses;

(b) Printing and publishing lists (so-called "White Lists") containing the names of manufacturers approved by them who are not selling to mail order houses;

(c) Using in concert and agreement among themselves and with others coercive and concerted action, boycott, threats of boycott and other united action against manufacturerers selling to mail order houses;

(d) Causing publication and distribution of pamphlets and bulletins to the various trade associations in the several States of the United States and to the respective members thereof, urging said members to discontinue purchasing the products of manufacturers named in said pamphlets and bulletins, and urging the said trade associations to induce their membership to discontinue trading with said manufacturers.

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.

Syllabus

IN THE MATTER OF

NACIONAL DESTILERIAS CORPORATION

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

Docket 2477. Complaint, June 28, 1935—Decision, Oct. 9, 1937

- Where a corporation engaged as a wholesaler, in the purchase and importation from the Philippine Islands of rum, brandy, gins, and cordials, such as Creme de Menthe, Anisette, Creme de Cacao, and Vermouth, and in the storing of its goods, on importation, in various warehouses in certain cities in the United States, and in resale and reshipment thereof from such points to wholesale and retail purchasers thereof in other States, in substantial competition with (1) those engaged in manufacture by distillation of rums, brandies, gins, cordials, and other spirituous beverages, and in sale thereof in trade and commerce among the various States and in the District of Columbia, (2) those engaged in purchasing, rectifying, blending, and bottling such various beverages and similarly selling same, and (3) those engaged in purchasing, and reselling such various beverages as aforesaid, and including among said competitors those who (1) manufacture and distill from mash, wort, or wash, through process of original and continuous distillation from raw materials, such as grain, mash, or wort, and truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names on the labels of the bottles in which they sell and ship such products as rums, brandies, cordials, gins, and other alcoholic beverages, (2) those who, engaged in purchasing, rectifying, blending, bottling, and selling such various beverages, do not use aforesaid word as above set forth, and (3) those who, engaged as wholesalers of rums, brandies, etc., and other such beverages, also do not use aforesaid words as above set forth—
- Represented, through use of word "Destilerias" 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, along with names "Destilerias Ayala" and "Destilerias La Tondena," Manila distilleries for which it was exclusive distributing agent in the United States, and in various other ways to its customers and furnished them with means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller of cordials, gins, and other spirituous beverages, notwithstanding fact it did not own, operate, or control any place or places where any alcoholic beverages were by it made by process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until manufacture is complete, 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 said public into belief that it was a distiller and of inducing such dealers and public, acting in such belief, to buy rums, brandies, cordials, gins, and other spirituous beverages labeled and sold by it, and of thereby diverting trade to it from those of its competitors who do not, by their corporate or trade names or in any

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other manner, misrepresent that they are distillers of whiskies, gins, and other spirituous beverages; 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. 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 Nacional Destilerias 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:

PARAGRAP II 1. Respondent is a corporation organized, existing and doing business under the laws of the State of Indiana, with its office and principal place of business in the city of Indianapolis, in said State. It is now, and for more than one year last past has been, engaged as a wholesaler, purchasing and importing from the Philippine Islands and elsewhere and reselling whiskies, gins, and other spirituous beverages 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, blend-

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ing, 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 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 and reselling whiskies, gins, and other spirituous beverages in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. For a long period of time the word "distilleries" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the places where such liquors are manufactured by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers. The words "Nacional Destilerias" are the Spanish for "National Distillers" and are so similar in spelling and sound to their English equivalent as to be readily understood by a substantial portion of the purchasing public.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Destilerias" 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 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 ad-

vertising 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. There are also among such competitors corporations, firms, partnerships, and individuals engaged in business as wholesalers of 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 labeled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are 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 28, 1935, issued, and on July

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1, 1935, served its complaint in this proceeding upon the respondent, Nacional Destilerias 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 PGad B. Morehouse, attorney for the Commission, before John J. Keenan, an examiner of the Commission, theretofore duly designated by it. No testimony or other evidence was introduced by the respondent in opposition to the allegations of the complaint. The said testimony and other evidence in support of the allegations of the complaint were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, other evidence, and brief in support of the complaint, no brief in opposition thereto and no oral arguments 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 repondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business at 130 East Washington Building, Room 609, in the city of Indianapolis, in said State. It was incorporated on November 28, 1933, and since a time shortly after its organization has been engaged as a wholesaler, purchasing and importing from the Philippine Islands and re-selling rum, brandy, and gins, and cordials such as Creme de Menthe, Anisette, Creme de Cacao, and Vermouth. Upon importation, respondent stores its goods in various warehouses in Chicago, New York, New Orleans, and Los Angeles, and such goods are re-shipped from those points upon the order of the respondent to the purchasers thereof consisting of wholesalers, and retailers located in States of the United States other than the point of origin of such shipments, including the States of Massachusetts, New York, Rhode Island, Kentucky, Illinois, and Missouri. In the course and conduct of its business, respondent is engaged in selling its said products 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 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 rums, brandies, gins, cordials, 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 rums, brandies, 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; 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 and reselling rums, brandies, gins, cordials, and other spirituous beverages in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The words "Nacional Destilerias" in the corporate name of this respondent are the Spanish equivalent for "National Distillers" and are so similar in spelling and sound to the English equivalent thereof as to be readily misunderstood by a substantial portion of the purchasing public to mean "National Distillers." For a long period of time, the word "Distilleries" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the places where whiskies, gins, and other alcoholic beverages are manufactured by the process of original and continuous distillation from raw materials such as grain, mash, or wort.

Within the cities of Indianapolis, Ind.; St. Louis, Mo.; Kansas City, Mo.; and Chicago, Ill., more than thirty-five witnesses testified, as disinterested members of the public, what "Nacional Destilerias Corporation" meant to them in association with the liquor industry. With the exception of some four or five who did not understand the words, they all testified substantially to the effect that the corporate name "Nacional Destilerias Corporation" meant to them "National Distillery Company"; that such trade name printed on the labels of bottles as used by the respondent would influence them to purchase the merchandise of respondent under the belief that they were purchasing the merchandise of a distillery. The gist of the testimony of practically all these public witnesses was to the effect that

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in purchasing a product with a distiller's name upon the same, preference would be given to such product in the belief that it would be more uniform, up to certain specifications, etc., because it was made under Government supervision; that they preferred buying in as direct manner as possible; that distillers have more responsibility than a rectifier or wholesaler in the field of spirituous liquors; that the use of the word "Destilerias" as used in the corporate name by respondent would indicate to them that respondent was a distiller; that they would give preference to respondent's package over a bottle which did not contain any words indicating a distillery.

The Commission finds that a substantial portion of the purchasing public prefers to buy from the retailer spirituous liquors prepared and bottled by, and purchased by the retailer from, real distillers; and that the inclusion of respondent's present corporate name upon the labels of the bottles in which it sells and ships its aforesaid liquors therefore has a tendency unfairly to induce purchasers and prospective purchasers to purchase respondent's said liquors in preference to liquors sold by competing wholesalers who do not falsely designate themselves as distillers or distilling companies, and to induce retailers to purchase the respondent's cordials, gins, and liquors in preference to like products sold by wholesalers who do not use trade or corporate names having a capacity and tendency to confuse the purchasing public as to their status in the trade.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Destilerias" 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 it is a distiller of cordials, gins, and other spirituous beverages, when, as a matter of fact, respondent is not a distiller, and does not own, operate, or control any place or places where any alcoholic beverages are manufactured by the process of distillation from mash, wort, or wash.

The specimens of labels introduced in this case, show that in some instances the names of the Manila distilleries; viz, Destilerias Ayala and Destilerias La Tondena, for which respondent is the exclusive distributing agent in the United States, appear thereon in addition to the words "Imported by Nacional Destilerias Corporation, Indianapolis, Indiana." The Commission finds that such labeling, under the circumstances hereinabove set forth; namely, the existing preference of a substantial portion of the public to deal in as direct a manner as possible with the actual distillers and bottlers of the

package of liquors which it buys, is misleading and deceptive in fact, and has led retail liquor dealer purchasers to purchase respondent's products under the false impression induced by such labeling and by the use of respondent's name upon its stationery and invoices, that respondent was a distiller and owned and operated distilleries of those names in the Philippine Islands.

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 on the labels of the bottles in which they sell and ship such products as rums, brandies, cordials, gins, and other alcoholic beverages. 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 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 business as wholesalers of rums, brandies, cordials, 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, 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 has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller, and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the rums, brandies, cordials, gins, and other spirituous beverages labeled and sold by the respondent, thereby diverting trade to respondent from those of its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are distillers 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 respondent, Nacional Destilerias Corporation, are to the prejudice of the public and of respondent's

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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 filed herein in support thereof, 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, Nacional Destilerias 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, do cease and desist from:

Representing, through the use of the word "Destilerias", or any form of the words distiller, distilleries, distilling, or distilled, or equivalents thereof, in its corporate name on its stationery, invoices, or labels attached to the bottles in which its said products are sold and shipped (a) that respondent is a distiller of the said rums, brandies, cordials, or other spirituous beverages; or, (b) that the said whiskies, gins, or other spirituous beverages were by it manufactured through a process of distillation; or (c) that respondent 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, 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 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
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

Docket 2431. Complaint, June 7, 1935—Decision, Oct. 20, 1937

Where a corporation engaged in the distilled spirits rectifying industry, in purchasing, rectifying, blending, and bottling various kinds of gin, rock and rye, and a wide variety of cordials or liqueurs, and in producing gin with a still used therefor, by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in use for experimental purposes, in connection with production of cordials, of two small stills of five-gallon capacity or less, and in sale of its aforesaid various products chiefly to wholesalers and State Liquor Commissions, in other States and in District of Columbia, in substantial competition with those engaged in manufacture by true distillation of various kinds of 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 cordials, gins, and other alcoholic beverages in rectifying plants and under rectifier's permits, and in sale thereof as aforesaid, and including among said competitors those who, as manufacturers and distillers from mash, wort, or wash of whiskies, gins, and other alcoholic beverages sold by them, truthfully used words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names and on their stationery, catalogs, and advertising and on the labels of the bottles in which they sell and ship such products and do not misrepresent that they have had one hundred years' experience in making quality liquors, and those who, engaged in purchasing, rectifying, blending, and bottling cordials, gins, and other alcoholic beverages in rectifying plants as above set forth, do not use such words as aforesaid, nor misrepresent, as above stated, their years of experience in the making of quality liquors—

Represented, through use of word "Distilleries" in its corporate name, printed on its stationery, catalogs and advertising, and on the labels attached to the bottles in which it sold and shipped its said products, and through printed representations, that it had had "100 years experience making quality liqueurs," to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that it was a distiller of cordials, gins, and other alcoholic beverages and had been making quality liqueurs for one hundred years, notwithstanding fact it did not own, operate or control any distillery or place where any alcoholic beverages are made by process of distillation from mash, wort, or wash by original and continuous distillation therefrom, through continuous closed pipes and vessels until manufacture is complete, as long understood from word "distilleries" when used in connection with industry in question and products thereof by trade and ultimate purchasing public, had not had one hundred years' experience, and was not, either under the Internal Revenue laws or as commonly understood, a distiller, for the spirituous bottled

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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 cordials, gins, and other alcoholic 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 its said cordials, gins and other alcoholic beverages, 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 way, misrepresent the extent of their past experience or that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, or other such 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 L. Hornor*, trial examiner.

Mr. PGad B. Morehouse for the Commission.

Mr. R. E. Joyce, of Washington, D. C., and *Dann & Atlas*, 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 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 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 September 15, 1933, 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 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 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 distributors, some located within the State of Michigan and some located

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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 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 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 distillery or a distiller, as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public and the liquor industry. For a long period of time the word "distilleries" when used in connection with the liquor industry and with the products thereof has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where alcoholic liquors are produced 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 thereof.

PAR. 3. In the course and conduct of its business as aforesaid by printed representations that it has had "100 years experience making quality liqueurs" and by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogs, advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that

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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 re-distillation 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 "distilleries" is commonly accepted and understood by those engaged in the liquor trade and the public. Respondent does not own, operate, or control any place or places where alcoholic beverages are manufactured by a process of original and continuous distillation from mash, wort, or wash. Respondent has not had 100 years experience making quality liqueurs.

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, and who do not misrepresent that they have had 100 years experience in making quality liqueurs. 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 alcoholic 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, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products, and who do not misrepresent that they have had 100 years experience making quality liqueurs.

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 belief that the whiskies, gins, and other alcoholic beverages sold by the respondent or 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 the extent of their past experience or that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, or other alcoholic 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 7, 1935, issued, and on June 10, 1935, served its complaint in this proceeding upon the respondent, 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 PGad B. Morehouse, 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 R. E. Joyce and Saul A. Dann, attorneys for 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, other evidence, and brief in support of the complaint, no briefs in opposition thereto having been filed and no oral arguments 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. Respondent is a corporation organized September 15, 1933, under the laws of the State of Michigan, with its principal

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office and place of business at 3539 Concord Avenue, in the city of Detroit in said State. It was incorporated with an authorized capital stock of \$175,000, and ever since a date shortly after its incorporation has been and now is engaged in the distilled spirits rectifying industry under the necessary permits from the United States, in the business of purchasing, rectifying, blending, and bottling various kinds of gin, rock and rye, and a wide variety of cordials of liqueurs such as Kuemmel, Triple Sec, Creme de Menthe, Creme de Cacao, Cocktails, Tom Collins, Greek Liqueurs, Polish Liqueurs, Tom and Jerry, 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. While it has some retail accounts, it sells chiefly to wholesalers and State Liquor Commissions in States having liquor monopolies. As of October 1, 1936, it had sold approximately \$1,575,000 worth of spirituous beverages.

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 some thirty-one 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 various kinds of 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 cordials, gins, and other alcoholic 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. Prior to August 15, 1936, when the regulations of the Federal Alcoholic Administration of the Treasury Department became effective under the Act of August 29, 1935, 49 Stat. 977, certain cordials (synonymous with liqueurs) could be and were labeled and referred to in the trade as "distilled" products. Thereafter, that Department would not permit such products to be labeled "distilled."

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The Commission takes notice of Regulation No. 5, Article 2, of the aforesaid regulations entitled "Standards of Identity for Distilled Spirits," Class Six, "Cordials and Liqueurs," which reads as follows:

(a) Cordials or Liqueurs are products obtained by mixing or redistilling neutral spirits, brandy, gin, or other distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolations, or maceration of such materials, and to which sugar or dextrose or both have been added in an amount not less than 2½% by weight of the finished product. Synthetic or imitation flavoring materials shall not be included.

(b) "Sloe gin" is a cordial or liqueur with the main characteristic flavoring derived from sloe berries.

(c) Cordials and liqueurs shall not be designated as "distilled" or "compound."

The evidence of record shows that in the trade cordials are produced either by the method of percolation, distillation, maceration, or compounding. Percolation, as to cordials, is the distilling of various fruits and herbs to obtain the flavor from them, the berries or herbs being placed in a still and alcohol put into the still. This alcohol is then vaporized through the berries to extract all of the flavor from them, and then condensed on the other side of the still. All of the distillate that comes off is a cordial. All cordials are made by compounding, but the flavor therein is derived by percolation, distillation, or macerations. Maceration is a cold water method of extracting the flavor.

Approximately 75% of respondents' products are such "non-distilled" products, approximately 3% is gin, and the balance consists of brandies, rums, Slivowitz, and various other distilled products which respondent bottles but does not distill itself, and these are marked in compliance with the aforesaid regulations with the words "Bottled by."

Respondent has no distiller's permit from the Federal Government, and acquires such alcohol products as it requires in its business directly or indirectly from distillers. Its answer admits that it does not own, operate, or control any place or places where whiskies, gins, or other alcoholic beverages are manufactured from mash, wort, or wash.

PAR. 3. Upon the premises of respondent's place of business aforesaid there is a 250-gallon capacity gin still, wherein respondent manufactures gin from alcohol purchased but not produced by it, through the redistillation of said alcohol over juniper berries and other aromatics. This gin constitutes approximately 3% of its total output and approximately 2% of its total sales volume. In addition to the aforesaid gin still it has two small stills of a 2- and 5-gallon capacity respectively, which are used as a part of its laboratory equipment in

experimenting with the production of cordials. The aforesaid manufacture of gin by redistillation of purchased alcohol is well recognized in the trade as a process of rectification, and it is not necessary under the pertinent laws and regulations for one engaging in such a process to possess a permit to distill. Neither such rectification of alcoholic spirits nor the use of the two smaller stills above mentioned for experimental purposes, make or constitute this respondent a distiller nor its place of business a distillery, within the intent and meaning of Section 3247 of the revised statutes regulating Internal Revenue. (U. S. C. Tit. 26, Sec. 1158.) The Commission finds that this respondent is a rectifier, its place of business a rectifying plant, and that it is engaged in the business of rectifying, within the intent and meaning of Section 3244 of the revised statutes of the United States. (U. S. C. Tit. 26, Sec. 1397f.) Neither does such rectification and experimentation make or constitute this respondent a distiller as commonly understood by the public and by those engaged in any branch of 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 alcoholic liquors are produced 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 thereof.

PAR. 4. In the course and conduct of its business as aforesaid, by printed representations that it has had "100 years experience making quality liqueurs" and by the use of the word "Distilleries" in its corporate name, printed on its stationery, catalogues, 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 a means of representing to their vendees, both retailers and the ultimate consuming public, that it is a distiller of cordials, gins, and other alcoholic beverages and has been making quality liqueurs for 100 years, when as a matter of fact respondent is not a distiller and does not own, operate or control any distillery or place where any alcoholic beverages are manufactured by the process of distillation, from mash, wort, or wash. Respondent has not had 100 years experience making quality liqueurs.

The specimens of labels introduced in evidence in this case show that in several instances respondent has caused to be conspicuously printed thereon such phrases as "Made by Arrow Distilleries, Inc."

"Distilled and Bottled by Arrow Distilleries, Inc.," "Prepared by Arrow Distilleries, Inc." and "Made and Bottled by Arrow Distilleries, Inc."

PAR. 5. In support of the allegations contained in paragraph 2 of the complaint, relating to public preference to buy alcoholic beverages bottled and prepared by the actual distillers thereof, witnesses were called who were members of the purchasing public and who were examined with respect to any such preference on their part for the purchase of liqueurs or cordials as well as other alcoholic beverages when bottled by a distiller. 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 products, in the belief that a distiller's product would be more uniform and up to certain specifications and that a manufacturer's name should mean something. They testified that they preferred buying in as direct a manner as 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 "Distilleries" in the corporate name of the respondent would indicate to them that the respondent was the actual distiller of the product and that 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 "Distilleries" or any word indicating a "Distilling" process in its corporate name or otherwise. This preference on the part of the public was confirmed by the testimony of several retailers, one of whom had found that due to the preference arising from the use of such term as "Distilleries" on the package, he could advance the price 15 percent over that of a similar package which did not contain such a representation.

PAR. 6. 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, catalogues, advertising, and on the labels of the bottles in which they sell and ship such products, and who do not misrepresent that they have had 100 years experience making quality liqueurs. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, and bottling cordials, gins and other alcoholic beverages in rectifying plants under recti-

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fier's 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, catalogs, advertising, nor on the labels attached to the bottles in which they sell and ship their said products, and who do not misrepresent that they have had 100 years experience making quality liqueurs.

PAR. 7. The representations by respondents, 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 belief that the cordials, gins, and other alcoholic beverages sold by the 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 cordials, 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 the extent of their past experience or that they are manufacturers by distillation from mash, wort, or wash of whiskies, gins, or other alcoholic beverages, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 8. 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 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, brief filed herein by PGad B. Morehouse, counsel for the Commission (no brief having been filed in opposition thereto by R. E. Joyce and Saul Dann, attorneys for respondent, and no oral arguments having been requested), 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 sale and distribution of cordials, gins, and all other alcoholic 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 cordials, gins or other spirituous beverages; or (b) that the said cordials, 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; and from

2. Representing that it has had 100 years experience making quality liqueurs, or in any other way by words or phrases of like import, representing that it has been making liqueurs for a longer period of time than is actually the fact.

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

Syllabus

IN THE MATTER OF
AMERICAN MUSHROOM INDUSTRIES, LTD.

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

Docket 3057. Complaint, Feb. 12, 1937—Decision, Oct. 26, 1937

Where a corporation engaged in promoting sale of mushroom spawn, purchased by it from producer thereof, and by it sold primarily through mail order, in response to prolific advertising, for price, ordinarily, about ten-fold that paid by professional planters for same quantity of same identical spawn produced by same producer, and, as thus engaged, in competition with those who sell mushroom spawn in interstate and foreign commerce without falsely representing that there is a shortage of fresh mushrooms on the market, no experience is necessary in growing of said product, there is a big profit in such growing at home, or making use of any false and misleading representations below set forth; in soliciting sale of and selling its said spawn, in correspondence, advertisements and trade literature—

- (a) Represented that same would produce extraordinary financial returns to purchasers and users thereof, and that mushroom growing was so simple inexperienced amateurs possessing no previous knowledge or technical skill might earn substantial weekly income raising such product in any idle space about the house, there was shortage on the market, spawn sold by it was a new and superior type which would produce white mushrooms at rate of from two and one-half to three pounds per square foot per planting, and mushrooms grown therefrom were superior to, or commanded higher prices than, white mushrooms grown from other spawn, and it gave book free to its customers, through such statements, among others, as "Shortage of fresh mushrooms on the market. New growers needed immediately. Earn up to \$25.00 or more * * *," "* * * even a boy or girl can really grow mushrooms the AMI way," "* * * BIG PROFIT business at your own Home Make BIG MONEY full or part time * * *," "Prices are advancing rapidly * * *," facts being there was no such shortage, prices had been on a downward trend with many professional growers forced into bankruptcy, product could not be successfully raised in any idle space about the home, but growing thereof involved unpleasant elements, required experience, and was not simple or easy occupation, spawn sold by it was of same type as that sold by producer in large quantities to many others, no book was given free to customers, but cost thereof was included in purchase price of spawn sold, and representations aforesaid were otherwise false; and
- (b) Represented that it was the largest concern in the world of its kind, and that it had a world-wide service and gave "Expert Advice—Laboratory Analysis—Research," and maintained "a staff of experts to advise you on every phase of the industry" and it had an office in London, England, facts being it maintained no offices in said city, nor any such world-wide service, had no personnel in the United States competent to give expert advice on raising of such products, nor any laboratories, or research facilities of

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its own, and was not the largest concern in the world engaged in sale of mushroom spawn;

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 said spawn in reliance thereon, and with result that, through such false and misleading representations made as above indicated, it increased its own sales of such mushroom spawn, thus dishonestly promoted, advertised or represented, and with effect of lessening thereby market for similar spawn by other growers, merchants or dealers who truthfully represent nature, advantage or expectant financial return from planting their spawn or desirability of becoming mushroom growers, and their true size and character as commercial concerns in industry in question, and expert advice and service which they are capable of giving purchasers of their products, and result that trade was thus unfairly diverted to it from aforesaid competitors who do not make use of same or similar representations in conduct 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. John W. Addison* and *Mr. Irving D. Royal*, 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 American Mushroom Industries, Ltd., hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issued its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, American Mushroom Industries, Ltd., is a Canadian Corporation, having its principal office and place of business at 28-30 Bloor Street, West, Toronto, Canada. It also maintains a branch office in the United States located at 73 West Eagle Street, Buffalo, N. Y. The respondent company is now, and has been, for more than one year last past, engaged in the business of promoting the sale of mushroom spawn. Approximately 95% of its total sales are made in the United States and the balance in Canada. In the course and conduct of its business in the United States it ships said mushroom spawn when sold from its place of business in New York; to the purchasers thereof, some located in

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the State of New York, 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 and between the United States and the Dominion of Canada. In the course and conduct of its business the respondent is now, and has been, in substantial competition with other corporations, firms, partnerships, and persons 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 its business, as described in paragraph 1 hereof, and for more than one year last past, the respondent herein, in soliciting the sale of and selling its mushroom spawn in commerce, as herein set out, states in its correspondence, advertisements, and trade literature, among other things, that:

Shortage of fresh mushrooms on the market. New growers needed immediately. Earn up to \$25.00 or more growing fancy White Queen Mushrooms in your cellar, shed, stable or some other vacant space.—Experience is unnecessary.

So simple to do that even a boy or girl can really grow mushrooms the AMI way.

Fast increasing demand insures ready market.

Start this **BIG PROFIT** business at your own Home Make **BIG MONEY** full or part time—year around.

There's a real shortage of fresh mushrooms on the market. This is the ideal time to start.

Prices are advancing rapidly all over the country.

Said statements together with other similar statements not herein set out, serve as representations on the part of the respondent to a substantial portion of the purchasing public that there is a shortage of and a tremendously increasing demand for fresh mushrooms and that the respondent's mushroom spawn will produce extraordinary financial returns to purchasers and users thereof; that said spawn may be planted in any idle space about the home; that mushroom growing 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 shortage of mushrooms or any unusual demand therefor, and prices are not advancing. On the contrary prices for a number of years have been on a downward trend. 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 satisfactorily accomplished in the home as the preparation of the beds involves the use of a compost made from manure, which produces a highly disagreeable odor. Mushrooms cannot be successfully grown without experience, as production requires a high degree of horticultural skill. It is not a simple or easy occupation, due to the hard work and skill required, the disagreeable odor incident to preparing the compost, erecting the beds, and the constant care and attention required in regulating the temperature, humidity, and ventilation. Mushrooms cannot be grown the year around.

PAR. 3. In the course and conduct of its business, as described in paragraph 1 hereof, and for more than one year last past, the respondent herein, in soliciting the sale of and in selling its mushroom spawn in commerce as herein set out, states in its correspondence, advertisements, or trade literature, among other things, that:

It has a "World Wide Service."

That it gives "Expert Advice—Laboratory Analysis—Research."

We maintain a staff of experts to advise you on every phase of the industry.

Largest concern of its kind in the World.

No competition with fancy variety, White Queens.

Improved type, AMI spawn is entirely different from any other spawn offered for sale.

That White Queen mushrooms which can be produced only from AMI spawn command the highest prices wherever marketed.

Some AMI growers produce 3 lbs. to the square foot.—We would say that 2½ lbs. per square foot represents the ideal yield.

American Mushroom Industries, Ltd., Toronto, Can., Buffalo, N. Y., London, Eng.

\$1.50 book FREE.

Said statements serve as representations on the part of respondent to a substantial portion of the purchasing public that respondent maintains a world-wide service, maintains a staff of experts; is in a position to give expert advice, laboratory and research service; that it maintains an office in London, England, and is the largest concern in the world of its kind and that the spawn which it sells is superior to all other types of mushroom spawn and produces mushrooms entirely superior to all other types of white mushrooms at the rate of from two and one-half to three pounds per square foot per planting; that they command higher prices than other mushrooms and that it gives books free to its customers.

In truth and in fact, respondent does not maintain offices in London, England, and does not maintain a world-wide service. It maintains no personnel in the United States competent to give expert advice on

the raising of mushrooms and has no laboratory or research facilities of its own. It is not the largest concern in the world in the mushroom business. Mushroom spawn of the same type, sold by respondent, under the name of "White Queen" is sold in large quantities by the producer thereof to many corporations, firms, and individuals other than to the respondent, and the mushrooms raised therefrom do not command a higher price than mushrooms raised from other types of spawn producing white mushrooms and the said spawn will not produce from two and one-half to three pounds of mushrooms per square foot per planting. Respondent does not give books free to its customers, but the cost thereof is included in the purchase price of the spawn sold.

PAR. 4. There are among the competitors of respondent, as set forth in paragraph 1 hereof, other corporations, individuals, or partnerships who do sell mushroom spawn in interstate and foreign commerce and who do not falsely represent that there is a shortage of fresh mushrooms on the market, or that no experience is necessary in the growing of mushrooms, or that there is big profit in growing mushrooms at home, or use any of the false and misleading representations set forth in paragraphs 2 and 3 hereof.

PAR. 5. The acts and practices of respondent in falsely representing and advertising that there is a tremendous demand for mushrooms, that there is a shortage of mushrooms on the market, that it maintains offices in London, England; and has a world-wide service; that its mushroom spawn is superior to all other mushroom spawn and in making the other representations set forth in paragraphs 2 and 3 hereof, 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 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 its 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 their mushroom spawn or the desirability of becoming mushroom growers, and their true size and character as commercial concerns in the mushroom industry and the expert advice and service which they are capable of giving purchasers of their products.

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 nature of the mushroom business or the desirability of becoming mushroom growers, or the demand for mushrooms, and the financial returns obtainable thereby, or the desirability of using the mushroom spawn sold by them or their true size in the industry and the financial returns to be obtained from 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 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 February 12, 1937, issued and served its complaint in this proceeding upon respondent, American Mushroom Industries, Ltd., 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 M. Hammond, attorney for the Commission, before John W. Addison and Irving D. Royal, trial examiners 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 hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and Commission's 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. Respondent, American Mushroom Industries, Ltd., is a Canadian corporation, having its principal office and place of business at 28-30 Bloor Street, West, Toronto, Canada. It also maintains a branch office in the United States located at 73 West Eagle Street, Buffalo, N. Y. The respondent company was, prior to the filing of the complaint herein, and for a long time prior thereto, engaged in the business of promoting the sale of mushroom spawn. This spawn was purchased by it from a Pennsylvania producer, who packed the same in one-pound containers furnished by the respondent. It is what is known in the trade as "dry" spawn, as distinguished from the "wet" spawn, the article generally used by professional growers. Respondent's sales were primarily of the "mail order" type, and deliveries were made in that manner on receipt of orders in response to its prolific advertising. All advertising and the labels on respondent's containers featured the words "White Queen." Respondent claimed great superiority for this spawn over other types of white mushroom spawn, as hereinafter shown, although the expert testimony taken shows that all white mushrooms are grown from the same identical type of spawn. Approximately 90% of respondent's total sales are made in the United States, and the balance in Canada. In the course of its business in the United States, it ships said mushroom spawn, when sold, from its place of business in Buffalo, N. Y. 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 was, prior to the filing of the complaint in this case, a constant current of trade and commerce by the respondent in the aforesaid mushroom spawn, between and among the various States of the United States and between the United States and the Dominion of Canada. In the conduct of its business, the respondent was, prior to the filing of the complaint herein, in February 1937, in substantial competition with other corporations, firms, partnerships, and persons 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 conduct of its business, as described hereinabove, the respondent herein, in soliciting the sale of and selling its mushroom spawn in commerce, states in its correspondence, advertisements and trade literature, among other things, that:

Shortage of fresh mushrooms on the market. New growers needed immediately. Earn up to \$25.00 or more growing fancy White Queen Mushrooms

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in your cellar, shed, stable or some other vacant space.—Experience is unnecessary.

So simple to do that even a boy or girl can really grow mushrooms the AMI way.

Fast increasing demand insures ready market.

Start this **BIG PROFIT** business at your own Home Make **BIG MONEY** full or part time—year around.

There's a real shortage of fresh mushrooms on the market. This is the ideal time to start.

Prices are advancing rapidly all over the country.

These statements together with other similar statements not herein set out, serve as representations on the part of the respondent to a substantial portion of the purchasing public that there is a shortage and a tremendously increasing demand for fresh mushrooms, and that the respondent's mushroom spawn will produce extraordinary financial returns to purchasers and users thereof; that said spawn may be planted in any idle space about the home; that mushroom growing 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 shortage of mushrooms or any unusual demand therefor, and prices are not advancing. On the contrary, prices for a number of years have been on a downward trend, and many professional mushroom growers have been forced into bankruptcy because of that fact. The production of mushrooms by amateur growers at home, in small beds, is not highly remunerative financially, particularly in view of the fact that the respondent usually charges approximately \$5.00 per one-pound unit for his spawn, as compared with the price of 50c paid by professional planters for the same quantity of the same identical spawn produced by the same producer. 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 between fifty-five and sixty-five degrees Fahrenheit, and ventilated in a precise manner. The raising of mushrooms cannot be satisfactorily accomplished in the home, as the preparation of the beds involves the use of a compost made from manure which, for several weeks after the preparation commences, produces a highly disagreeable odor. In metropolitan areas, this fact alone would, in many cases, prevent preparation of the beds. Mushrooms cannot be successfully grown without experience, as production requires a high degree of horticultural skill. It is not a simple or easy occupation, due to the hard work and skill required, the disagreeable odor incident to preparing the compost, erecting the beds, and the constant care and attention required in regulating the temperature, humidity, and ventilation. Mushrooms cannot be grown the year around without

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artificial refrigeration or cooling devices necessary to keep the temperature below 65 degrees Fahrenheit. In most sections, the growing operations require heating in winter, and if grown in summer, cooling apparatus is necessary.

PAR. 3. In the course and conduct of its business, as described hereinabove, the respondent, in soliciting the sale of and in selling its mushroom spawn in commerce as herein set out, states in its correspondence, advertisements, or trade literature, among other things, that:

It has a "World Wide Service."

That it gives "Expert Advice—Laboratory Analysis—Research."

We maintain a staff of experts to advise you on every phase of the industry.

Largest concern of its kind in the World.

No competition with fancy variety, White Queens.

Improved type, AMI spawn is entirely different from any other spawn offered for sale.

That White Queen mushrooms which can be produced only from AMI spawn command the highest prices wherever marketed.

Some AMI growers produce 3 lbs. to the square foot.—We would say that 2½ lbs. per square foot represents the ideal yield.

American Mushroom Industries, Ltd. Toronto, Can., Buffalo, N. Y., London, Eng.

\$1.50 book FREE.

Said statements serve as representations on the part of respondent to a substantial portion of the purchasing public that respondent maintains a world-wide service and maintains a staff of experts; that it is in a position to give expert advice and laboratory and research service; that it maintains an office in London, England, and is the largest concern in the world of its kind; that the spawn which it sells is superior to all other types of mushroom spawn and produces mushrooms entirely superior to all other types of white mushrooms at the rate of from two and one-half to three pounds per square foot per planting; that mushrooms grown from its spawn command higher prices than other mushrooms and that it gives books free to its customers.

The testimony and pleadings in this case show that the respondent does not maintain offices in London, England, and does not maintain a world-wide service. It maintains no personnel in the United States competent to give expert advice on the raising of mushrooms and has no laboratory or research facilities of its own. It is not the largest concern in the world engaged in selling mushroom spawn. Mushroom spawn of the same type as that sold by respondent under the name of "White Queen" is sold in large quantities by the producer thereof to many corporations, firms and individuals other than to the respondent. The mushrooms raised from respondent's spawn do not

command a higher price than mushrooms raised from other types of spawn producing white mushrooms and the said spawn will not produce from two and one-half to three pounds of mushrooms per square foot per planting. In fact, expert professional growers only average from one to one and one-fourth pounds per square foot, and the crop which an amateur would obtain, if one were obtained at all, would probably be less. Respondent does not give books free to its customers, but the cost thereof is included in the purchase price of the spawn sold.

PAR. 4. There are among the competitors of respondent, as set forth in paragraph 1 hereof, other firms and individuals who sell mushroom spawn in interstate and foreign commerce and who do not falsely represent that there is a shortage of fresh mushrooms on the market, or that no experience is necessary in the growing of mushrooms, or that there is big profit in growing mushrooms at home, and who do not use any of the false and misleading representations set forth in paragraphs 2 and 3 hereof.

PAR. 5. The acts and practices of respondent in falsely representing and advertising that there is a tremendous demand for mushrooms; that there is a shortage of mushrooms on the market; that it maintains offices in London, England, and has a world-wide service; that its mushroom spawn is superior to all other mushroom spawn and in making the other representations set forth in paragraphs 2 and 3 hereof, 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 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 its 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 their mushroom spawn or the desirability of becoming mushroom growers, and their true size and character as commercial concerns in the mushroom industry and the expert advice and service which they are capable of giving purchasers of their products.

As a result thereof, trade has been unfairly diverted to the respondent from competitors referred to herein who do not make use of the same or similar misrepresentations in the conduct of their respective businesses. As a further result, substantial injury has been

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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, American Mushroom Industries, Ltd., 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 testimony and other evidence taken before John W. Addison and Irving D. Royal, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint, brief filed herein 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, American Mushroom Industries, Ltd., its officers, 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, or holding out, as usual or customary earnings or profits to be derived by mushroom growers, any sum or amount in excess of the average, usual, and customary sums or amounts actually earned by users of respondent's spawn or other spawn, under normal conditions in due course of business;
2. Representing that mushroom growing is so simple inexperienced amateurs possessing no previous knowledge or technical skill may earn substantial weekly incomes raising mushrooms in any idle space about the home, such as an attic, garage or basement;
3. Representing that there is a shortage of mushrooms on the market, or distorting or exaggerating in any manner the true facts concerning mushroom growing;

4. Representing that the mushroom spawn sold by it is a new and superior type or variety which will produce white mushrooms in a greater quantity per square foot than is actually the case, or that mushrooms grown from its spawn are superior to or command higher prices than white mushrooms grown from other spawn;

5. Representing itself to be a larger concern than it actually is or that it is one of the pioneers in the mushroom or mushroom spawn industry;

6. Representing that it is one of the largest concerns of its kind in the world;

7. Representing that it maintains a world-wide service or maintains a staff of scientific and laboratory personnel;

8. Representing that it has an office in London, England, or any other place when such is not the case.

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
NATIONAL LABORATORYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2900. Complaint, Aug. 14, 1936—Decision, Oct. 30, 1937

Where a corporation engaged in sale and distribution of its alleged "Nuga-Tone" tablet remedy for treatment of those suffering from diseases and ailments of the stomach, intestines, and other organs, and in transporting and causing its said product to be transported in commerce among the several States, direct from its place of business to consumers in other States, to and through wholesale druggists for resale, and otherwise, in competition with those engaged in offer and sale in like commerce of compounds or preparations for use in treatment of same or similar ailments and diseases; in advertising its said "Nuga-Tone" by radio and in periodicals and newspapers and by mail—

- (a) Represented that it was a combination of bitter stomachic tonics, or a valuable and effective alterative tonic, which might be taken over long periods by anyone without harmful results, and constituted an effective remedy or cure for indigestion and stomach or intestinal ailments, and would aid digestion, relieve pains or discomfort following eating, increase the appetite, and permit one to eat anything;
- (b) Represented that said "Nuga-Tone" removed the causes of aches and pains in the muscles, nerves, and bones, and gave new power and energy to the muscular and nervous system, and constituted an effective remedy or treatment for poor heart action and for loss of power and energy, which would protect the body against the most serious diseases and stimulate and invigorate the entire system, and act directly on the vital organs, and make sick people strong and healthy and cause paleness to disappear, and produce normal sleep; and
- (c) Represented, through use of word "Laboratory" in its corporate name, that it owned, operated, or controlled a laboratory, and made use of such statements on labels, cartons, etc., as "Distributed by" or "From" National Laboratory, etc.;

Facts being preparation in question contained arsenic, corrosive sublimate and strychnin, and constituted dangerous composition, by reason of presence of said fatal poisons, which should only be taken under prescription of physician and which no good doctor would thus combine for any purpose, no warning against use for children was included in connection with sale thereof nor that product should be taken under doctor's prescription, number of tablets which, as asserted thereon, could be taken at one time safely, would result, based on aggregate content of aforesaid poisons thus involved, under accepted medical authority, in dosage for child far beyond accepted standard, and in fatal dosage under maximum suggested for adult, preparation had no such value and brought about no such effects as above set forth, but constituted "shot-gun" prescription, of type carefully avoided by modern medical profession, and product which could not be taken indefinitely without harmful results, and dangerous mixture with its three aforesaid

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fatal poisons, presence of none of which was disclosed to purchaser, and it did not maintain, conduct, or operate a laboratory in connection with said preparation or have laboratory at its three-room place of business, or at any place:

With tendency and capacity to cause members of purchasing public to believe that said "Nuga-Tone" was harmless and might be taken with impunity and constituted valuable combination of bitter stomachic tonics and preparation which was remedy or cure for, or would afford relief for, stomach and intestinal troubles and other human diseases and ailments, and relieve persons suffering therefrom as above indicated, and completely restore them to health, and with result that many members of public, acting under such erroneous beliefs induced by such various misrepresentations, purchased its said "Nuga-Tone," and with effect of unfairly diverting trade to it from competitors engaged in sale in interstate commerce of drugs, preparations and remedies which are truthfully advertised and represented and recommended for use in connection with treatment of the various diseases and ailments involved herein; 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 and *Mr. T. H. Kennedy* for the Commission.
Newby & Burditt, 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 National Laboratory, 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 National Laboratory is a corporation organized under the laws of the State of Illinois, with its office and principal place of business located at 767 Milwaukee Avenue, Chicago, State of Illinois.

Respondent is now and for more than one year last past has been engaged in the manufacture and in the sale to wholesale druggists located in the various States of the United States other than in the State of Illinois, and in the District of Columbia, of a remedy known as "Nuga-Tone," designed by respondent for treatment of human beings suffering from diseases of the stomach, intestinal, and other organs. There is now and has been for more than one year

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last past a constant current of trade and commerce by said respondent in the aforesaid product, Nuga-Tone, between and among the various States of the United States and in the District of Columbia. In connection with the sale and distribution of its said product, "Nuga-Tone," respondent causes the same to be transported in interstate commerce from its place of business at Chicago, Ill., into and through States of the United States other than the State of Illinois to the vendees thereof at their respective points of location. In the course and conduct of its said business, respondent is and has been in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia, of remedies designed for the treatment of the stomach, digestive, and other organs of the human body.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof, respondent has been and is now soliciting the sale of and selling its aforesaid remedy "Nuga-Tone" through the medium of radio, magazines, and newspaper advertising, and by mail. Sales are made direct to wholesale druggists. These in turn sell to the retail trade and in this way respondent's product, moving through the channels of commerce, reaches the consuming public. Said consuming public is informed of respondent's product "Nuga-Tone" principally through the medium of weekly broadcasts over a large Chicago station.

PAR. 3. In offering for sale and selling in interstate commerce its product "Nuga-Tone," respondent, among others, has made the following statements and representations:

Use of term LABORATORY as part of the trade name.

A valuable Alterative Tonic.

Stimulating Tonic. A combination of Bitter Stomachic tonics, Alterative tonics, Intestinal tonics, and Stimulating Tonics, arranged in accord with Modern Medical Science.

As an Alterative Tonic—aids in re-establishing a more healthy functioning in the processes of Nutrition.

Bitter Stomachic Tonic—to increase the activity of the mucous membrane of the gastro-intestinal tract by increasing its tone—stimulating the appetite.

Stimulating and increasing the tone of the general system.

People who are weak or sickly should take NUGA-TONE * * * that makes you strong and healthy.

NUGA-TONE has given millions of men and women in all parts of the world better health and greater strength.

If you have little appetite and what you eat causes distress in your stomach, or if you have pains in your stomach after eating take NUGA-TONE just a few days and notice how much better you will feel. Your appetite will be better, food will taste better. It will digest much easier and the pain and

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distress in your stomach and intestines will disappear. There is no need to suffer from this ordinary stomach complaint if you take NUGA-TONE.

Go to your druggist and get this wonderful remedy.

When you are bothered with aches or pains, be sure to take NUGA-TONE. It removes the cause of aches and pains in the muscles, nerves and bones, and gives new power and energy to the muscular and nervous systems, and is a wonderful help to protect the body against more serious disease.

If you are discouraged with life, are weak, get tired easily; stomach does not function properly, nerves are unstrung and your previous eagerness has disappeared—then use NUGA-TONE and you will again enjoy the pleasures of good health.

NUGA-TONE acts on the whole system—not only on the stomach, nerves, blood, appetite, etc.

Almost every man or woman, particularly those past middle age, need a tonic to keep their system in full activity. NUGA-TONE stimulates and invigorates your entire system. It acts as an aid to rundown vital organs, helping them to function as they were intended, and gives you power and energy of younger days. The worries of old age disappear and life again becomes a pleasure.

Are you troubled with being unable to sleep nights, which causes you to become nervous and irritable? Then take NUGA-TONE which is a wonderful and efficient remedy for the nervous system.

It contains no opiate or habit-forming drugs, is not habit forming.

* * * After using NUGA-TONE I feel entirely well * * * I was suffering badly with indigestion, bad headache, poor appetite and could not sleep at night. I used various remedies and pills but they did not help me. After taking NUGA-TONE the condition of my health improved, stomach became regulated, headaches stopped and now I have a good appetite and can sleep nights. NOW I MUST HAVE NUGA-TONE REGULARLY AS WITHOUT IT I CANNOT LIVE.

You can keep taking it without harmful results.

Normal sleep will again be possible and you will cease to be nervous or irritable.

If you are pale or without vigor you should start taking NUGA-TONE, the great health and body builder * * * your blood is probably like water. Build it up without delay or you may contract some more serious condition.

NUGA-TONE contains a form of iron which is quickly absorbed by the system and is necessary in good red blood. Paleness will disappear, in its place will be a rosy complexion, indicating a healthy blood condition. Strength and vigor will return to the pale and weak.

If you feel that your strength does not respond to your will, that you are weak and infirm, that life has no value to you—it is best evidence that your organs do not function properly. No doubt you need a good tonic to stimulate your organs to natural activity.

A guaranteed remedy which will bring back your old time strength and health is NUGA-TONE.

This remarkable remedy acts directly upon your organs—eliminating the causes of your disability.

If your appetite is poor and what you eat causes distress in your stomach, or if you have pains in your stomach or intestines after eating, headaches, dizzy spells or a weak stomach—take NUGA-TONE just a few days and notice how

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much better you will feel. Your appetite will be much better—food will taste better. It will digest much easier and the pain and distress in your stomach and intestines will disappear. There is no need to suffer from this ordinary stomach complaint if you take NUGA-TONE.

When you are troubled with indigestion, stomach or intestinal sluggishness, poor heart action, nerves exhausted and all unstrung or lack of confidence in yourself, remember NUGA-TONE is a speedy way of remedying these ills.

It has been found that men and women suffering from general debility * * * are quickly aided by taking this unequaled remedy.

NUGA-TONE * * * gets the stomach to function as it should.

It is remarkable remedy for ridding the system of poisons which cause dizzy spells, stomach pains due to poor digestion, headaches and similar ailments.

NUGA-TONE acts directly upon your vital organs and stops the causes of your troubles.

It is a genuine red blood builder.

Almost immediately nervousness will stop. .

NUGA-TONE will give wonderful results in only a few days * * * nervous troubles will disappear * * * No more bloating after eating; foul breath or sour stomach caused by improper digestion or poor elimination.

You can eat anything that you want when you take NUGA-TONE.

One of my customers returned from the late war in very poor health. I persuaded him to try NUGA-TONE and he did. Now he has regained his health and is a strong, powerful man.

I was in a weak, rundown condition. Everything I ate hurt me. My father, having taken NUGA-TONE some years ago and being relieved of indigestion, advised me to try it. In so doing, I am completely relieved * * * W. T. Vance, Union, Miss.

Gas and bloating in the stomach quickly disappear.

NUGA-TONE contains the elements that are used by all good doctors for correcting these troubles.

It is a doctor's own prescription.

Makes you strong and healthy.

PAR. 4. In truth and in fact the foregoing representations of respondent are false, deceptive, and misleading in the following, among other, particulars:

The therapeutic claims expressed in such advertising are false almost in their entirety.

This product is not an efficient remedy or treatment for lost manhood, indigestion and stomach troubles; nor will it make one strong and healthy;

This product is not of value as an alterative tonic; nor will it remove the cause of aches and pains in the muscles, nerves and bones;

This product does not give new power and energy to the muscular and nervous system; nor will it protect the body against more serious disease;

This product will not cause the worries of old age to disappear and life to become a pleasure again;

This product is a potentially harmful character and particularly dangerous in the hands of lay users, which fact is not disclosed to the general purchasing public.

PAR. 5. Among the competitors of respondent referred to in paragraph 1 herein, there are those who sell and distribute in competition with respondent remedies designed for the treatment of stomach, intestinal, and other human ailments, and who advertise and represent their said products fairly and accurately.

The above mentioned false and misleading representations in connection with the sale of respondent's said product have induced and do induce the consuming public to purchase said product under the erroneous belief that it is a remedy or cure for stomach and intestinal troubles and other diseases and ailments of the human body, and that the use of respondent's said product would relieve or completely restore health to persons suffering from the aforesaid ailments or diseases. The marketing of respondent's said product is directly contrary to the interest of the public welfare, the consuming public has been and is being deceived and misled, 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 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 August 14, 1936, issued and thereafter served its original complaint in this proceeding on National Laboratory, 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 complaint were introduced by Marshall Morgan and Thomas H. Kennedy, attorneys 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 Newby & Burditt, attorneys 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 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 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 767 Milwaukee Avenue, in the city of Chicago. Respondent is now and for several years last past has been engaged in the business of selling and distributing an alleged remedy known as "Nuga-Tone," in tablet form, designed by respondent for treatment of human beings suffering from diseases and ailments of the stomach, intestines, and other organs.

PAR. 2. In the course and conduct of its said business as described in paragraph 1 hereof, respondent, National Laboratory, in response to orders received, has offered its said product for sale and has sold and transported and caused the same to be transported in commerce among the several States of the United States direct from its aforesaid place of business in Chicago to consumers located at points in States of the United States other than the State of Illinois.

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, compounds or preparations for use in the treatment of the same or similar ailments and diseases.

PAR. 3. Respondent, in connection with the sale and distribution of the aforementioned product "Nuga-Tone," has advertised the same by radio, and in magazines and newspapers and by mail. Respondent sells direct to wholesale druggists who in turn sell to the retail trade, thus reaching the ultimate consumer and general public. Sales are not limited to druggists or pharmacists, however, nor to licensed physicians, surgeons, dentists, or veterinarians. Respondent uses pasteboard cartons which can be employed in addressing and

mailing individual bottles of Nuga-Tone tablets. Respondent company has used the United States mail in distributing its product in interstate commerce, sending larger quantities by express or freight, or by parcel post.

Through the use of radio, magazines, newspapers, and mail, as aforesaid, respondent has advertised and represented its product Nuga-Tone as a valuable alterative tonic; a stimulating tonic; a combination of bitter stomachic tonics; as a bitter stomachic tonic increasing the activity of the mucous membrane of the gastro-intestinal tract; as an intestinal tonic; as aiding in establishing a more healthy functioning in the process of nutrition; as stimulating the appetite and the tone of the general system; as making the weak and sickly strong and healthy; as having given better health and greater strength to millions of men and women in all parts of the world; as relieving stomach distress, removing the causes of aches and pains in the muscles, nerves, and bones and giving new power and energy to the nervous system; bringing back the pleasures of good health to those who have been distressed with life, who are weak, get tired easily, whose stomach does not function properly, whose nerves are all unstrung and their "previous eagerness has disappeared"; as invigorating or acting upon the entire system, aiding run-down vital organs, helping them to function as they were intended, giving back "the power and energy of younger days"; causing the worries of old age to disappear and life to become a pleasure again; as a remedy for sleeplessness and irritability, toning the nervous system; as something one can keep on taking without harmful results; as a remedy for those who are pale or without vigor and whose "blood is probably like water"; as stimulating to natural activity the organs of those whose strength does not respond to their will, who are weak and infirm, life having no value to them; as a remedy guaranteed to "bring back your old-time strength and health"; as a remedy for those troubled with indigestion, stomach or intestinal sluggishness, poor heart action, exhausted nerves and "lack of confidence in yourself"; as a remarkable remedy, ridding the system of poisons causing dizzy spells, stomach pains due to indigestion, and headaches; as being a genuine red blood builder; as eliminating bloating after eating, foul breath or sour stomach; and as enabling the patient to eat anything he wants.

PAR. 4. Each tablet of Nuga-Tone contains three deadly poisons, namely, arsenic trioxide, mercuric chloride, otherwise known as corrosive sublimate, and strychnin sulphate.

Respondent's Nuga-Tone, the record discloses, is composed of the following ingredients:

Corrosive sublimate.....	Gr. $\frac{1}{60}$
Strychnin sulphate.....	" $\frac{1}{60}$
Arsenic Trioxide.....	" $\frac{1}{40}$
Reduced Iron.....	" $\frac{1}{2}$
Extract Gentian.....	" $\frac{1}{2}$
Extract Cascara Sagrada.....	" $\frac{3}{4}$
Extract Taraxacum.....	" $\frac{1}{4}$
Zinc Phosphide.....	" $\frac{1}{60}$

This formula has been used by respondent since about 1916.

Arsenic Trioxide is a white odorless, tasteless powder used in the manufacture of pigments, glass, shot and bullets, insecticides, rat poison, cattle dip, weed killer; as a hide preservative; and in medicine being a violent irritant. The average dose of arsenic for medicinal use is given in Volume II of the Pharmacopoeia of the United States at $\frac{1}{30}$ grain.

Mercuric Chloride, otherwise known as corrosive sublimate, is a white crystalline powder, very poisonous, variously used in the manufacture of calomel and other mercury compounds, and in medicine as a remedy for syphilis, rheumatism, and as an antiseptic. It is also used in the manufacture of various articles of commerce.

The average dose as given by the United States Pharmacopoeia is $\frac{1}{15}$ grain.

Strychnin sulphate is a hard white crystalline alkaloid, very bitter in taste and very poisonous. It is used in medicine as a stimulant to the nervous system. The average dose of strychnin according to the United States Pharmacopoeia is $\frac{1}{30}$ grain.

The United States Pharmacopoeia in treating of arsenic, mercuric chloride, and strychnin carries the following identical warning as to each:

Caution * * * Extremely Poisonous

On one side of the bottle in which the product Nuga-Tone is sold and delivered in interstate commerce to the consuming public Nuga-Tone is described as a "Stomachic Alterative and General Tonic" * * * containing eight active drugs, six of which are indorsed by the United States Pharmacopoeia and each tablet contains a full adult dose. On another of the four sides of the bottle under the heading, "Directions for Taking," it is stated:

To obtain highest beneficial results, Nuga-Tone should be taken regularly for at least 30 days or longer. Take one Tablet three times daily before or after eating.

Neither the label nor the carton discloses the ingredients of Nuga-Tone. There is no indication on the label or elsewhere, that Nuga-Tone contains three deadly poisons! The preparation some years ago was sold with this wording on the bottle:

Do not give to Children under 16 Years of Age.

The directions at this time do not contain this warning nor do they suggest that Nuga-Tone should be taken under the advice of a physician. Respondent in connection with the sale of Nuga-Tone has never made any representations or given any warning to the effect that the product should be taken under the direction of a physician. On the contrary, respondent has represented that one can keep on taking Nuga-Tone without harmful results. Each tablet contains $\frac{1}{60}$ of a grain of strychnin, $\frac{1}{60}$ of a grain of mercuric chloride, and $\frac{1}{40}$ of a grain of arsenic and the person engaging in such self-medication has no way of knowing that he is taking these three poisons into his system.

PAR. 5. Bitters are only effective as such in liquid form and respondent's product is a tablet. Leading medical and pharmacological authorities treat "bitters" under the title or heading "Stomachics".

Bitter, aromatic, and sharp drugs have been used since antiquity as "tonics" and in functional dyspepsias. They were supposed to increase the appetite and improve digestion, and thus favor nutrition. These are divided into two principal classes, "simple" and "aromatic." "Bitters" are always administered shortly before meals, it being conceivable that they act as a sort of "chemical dinner bell."

Bitters are substances that are employed to give a bitter taste, the object of their administration being to improve the appetite. When the appetite is below normal, a strong stimulation of the taste buds will often restore it; and substances with a bitter taste that is not otherwise disagreeable, tend to act as stimulants to the taste buds. The bitter effect on the appetite is solely the local one on the taste buds. The effects of bitters depend on the taste. The value of a bitter, therefore, is not obtained if the bitter is hidden, as in capsules or coated pills, although this is often done.

It is useless to administer bitters in the form of pills and tablets. If a bitter is put into a pill or capsule, a patient does not taste it and it does not produce the effect that a bitter is supposed to produce. Bitters have no medicinal effect "except to the taste." Through the taste bitters stimulate; through the mouth may stimulate gastric secretion if one likes the bitters. The "taste buds" are found in the mouth and throat of human beings, the tongue, palate, tonsils, and fauces comprising important units. To affect the brush-like ends

of the nerves of taste, which ramify in the taste buds, substances must be soluble. Bitters given after the meal are useless as such.

Pharmacologists do not carry corrosive sublimate or arsenic in lists of simple, astringent or aromatic bitters, and strychnin is not so listed except when "well diluted."

PAR. 6. The various representations of the respondent in respect to the diseases, ailments and conditions for which respondent claims Nuga-Tone to be a remedy or as affording relief or accomplishing certain stated results as hereinbefore related, were carefully considered in connection with the ingredients contained in Nuga-Tone and in the light of a knowledge of medicine and the accepted methods of the treatment of such diseases, ailments and conditions. As a result of the testimony of competent medical authorities, findings are as follows:

Nuga-Tone is a dangerous composition because of the corrosive sublimate, the strychnin and the arsenic. Arsenic, corrosive sublimate, and strychnin are fatal poisons which should only be taken under the prescription of a physician and no good doctor would make this combination for any purpose.

Nuga-Tone contains one element, strychnin, that might have a stimulating action, but a dangerous stimulating action, for a specific depression. Strychnin increases the excitability and activity of the spinal cord and brain. Strychnin is ordinarily given to patients under the care and observation of physicians. Strychnin increases the excitability of the spinal cord to the point of convulsions and death if taken in excess. Strychnin is a foreign substance and any amount of strychnin is an excessive dose unless there is a prior diagnosis by a physician that this poison will help. It should only be taken at the doctor's prescription when the situation specifically calls for it. Strychnin sulphate does not stimulate the gastric reflexes nor the appetite. It can be classed as a stimulant in that it raises the excitability of the spinal cord which is not desirable in the normal individual. Strychnin sulphate does not aid digestion; it does not have any effect on the appetite. All that strychnin does is to increase the reflex excitability and a person who has excessive reflex excitability will be harmed by it. Its use as a tonic must be interpreted in such a way as to understand that it will only act as a tonic if it happens to fit the case. No Doctor would give or would be foolish enough to prescribe strychnin as a stimulant to increase the flow of the gastric and biliary juices.

Arsenic, supposed under certain conditions in small amounts to stimulate the rate of production of red cells, is a dangerous drug

and can produce chronic poisoning. The arsenic in the composition would possess for the ordinary person the danger of chronic poisoning, which if it went too far would tend to impairment. Arsenic is a remedy that is used in syphilis and related conditions. Arsenic trioxide is not used extensively now for anything. It was formerly used by some in the hope that it would stimulate the red bone marrow, increase the production of red cells, improve the hair growth and the form of the skin. These were hopes and guesses of former days. There is no known effect that arsenic would have on either growth or nutrition except in an injurious way. Arsenic is not used by any competent doctor in the treatment of blood cells or like conditions.

Corrosive sublimate is not a stimulant and Nuga-Tone as a whole is a dangerous composition because of the corrosive sublimate, the strychnin and arsenic, three fatal poisons. Nuga-Tone is liable to produce serious diseases because it contains these poisons, especially arsenic and corrosive sublimate, if used without discrimination and for a certain length of time. It is not customary for doctors in writing prescriptions to use three poisonous substances in one. To use a mixture like this is termed the worst kind of malpractice. Taken as a whole Nuga-Tone must be regarded as a dangerous combination, and it would not rightly be described as a stimulating tonic.

The cascara in Nuga-Tone might have a slight action on the bowels. Zinc is essentially an antiseptic. Zinc phosphide tends to increase the degree of dilation of blood vessels. It does not stimulate metabolism nor increase red blood cells, nor may it be used as a sedative for nerves. The iron might help an anemic condition. The only ingredient in the preparation that might affect the appetite is the gentian and it is doubtful whether it increases or has any real effect on the appetite. Extract of gentian does increase the flow of saliva but does not increase the flow of gastric juice.

The term "alterative" is not used in modern medicine at all, that is, as practiced by modern doctors in the last decade or twenty-five years. It is an old term. An alterative was supposed to modify the activity of the alimentary canal, particularly the liver. A good many of the substances which were supposed to change the action of the liver, the action of the alimentary canal, were called alteratives in the old days.

Nuga-Tone is not a valuable alterative tonic; is not a combination of bitter stomachic tonics, alterative tonics, intestinal tonics and stimulative tonics, arranged in accord with medical science; it does

not aid in reestablishing a more healthy functioning in the process of nutrition; it is not effective in increasing the activity of the mucous membrane of the gastro-intestinal tract by increasing its tone or stimulating the appetite; it does not stimulate and increase the tone of the general system; weak and sickly people should not take it to make them strong and healthy; it is not a wonderful remedy and does not remove the cause of aches and pains in the muscles, nerves and bones; it does not give new power and energy to the muscular and nervous systems; it is not a wonderful help to protect the body against more serious diseases. Nuga-Tone possesses no properties which would alleviate nervous conditions. Persons past middle age do not need a tonic of this description. Nuga-Tone does not act as an aid to run-down vital organs, helping them to function as they were intended, nor give persons past middle age the power and energy of younger days. It does not aid in producing sleep; it is not a great body builder nor health builder; it will not make food digest more readily; will not cause pain and distress in the stomach to disappear; will not aid poor heart action, will not tend to relieve general debility; is not a remarkable remedy for ridding the system of poisons; is not a genuine red blood builder; will not cause gas and bloating in the stomach to disappear; does not contain the elements that are used by all good doctors for correcting the various troubles outlined hereinbefore and will not make one strong and healthy.

"Self-medication" cannot be approved at any time because it is harmful to the patient. * * * A patient harms himself by taking a medicine that may not relieve the cause of his condition, but actually aggravates it.

PAR. 7. Respondent's product, by reason of the varied nature of its ingredients and the numerous therapeutic claims made for it, qualifies under the heading of a "shot-gun" prescription. A "shot-gun prescription" is defined as one containing many ingredients or features of which one is expected to prove efficacious. It contains ingredients having various kinds of effects. If one might fit the case another might not. Prescribing so many ingredients in one prescription is stated by medical authority to be one of the worst medical practices. Our forefathers in medicine are stated to have done that as long as they did not understand the way in which medicine acted but nowadays the medical profession very carefully avoids employing so many ingredients in one prescription.

PAR. 8. Respondent's representations as to the harmless character of "Nuga-Tone" are deceptive, false, and misleading. In its adver-

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tising matter respondent has represented that "you can keep on taking it without harmful result" and respondent in support of this representation, variously contends through the medium of a medical expert that Nuga-Tone may be taken safely two, three, or four times a day for two or three years with no harm at all resulting to a person; that it would do no harm to children in medicinal doses; would not thus hurt a child above three years of age; that a child four or five years of age could take a full pill without harm; two or three doses would not hurt such child. Medical authority prescribes the dose of corrosive sublimate for a child up to three years old as $1/100$ of a grain and $1/75$ of a grain for a child 5 years of age. A tablet of Nuga-Tone contains $1/60$ of a grain. The dosage of strychnin for a child three to five years of age is $1/100$ of a grain. A tablet of Nuga-Tone contains $1/60$ of a grain of strychnin. The dose of arsenic for a child three years of age is $1/150$ of a grain and $1/100$ of a grain for a child five years of age. Each table of Nuga-Tone contains $1/40$ grain of arsenic, nearly four times the dose prescribed for children three years of age and more than double the dose suitable for children five years of age.

The label on a bottle of Nuga-Tone contains no caution against the administering of the drug to children.

Respondent in further support of its representation that one may keep taking its Nuga-Tone without harmful results also asserts through the medium of a medical expert that ten pills may be given to an adult at one dose "with perfect safety." In taking ten tablets at one time the adult would have in his system at the same time $1/6$ grain of corrosive sublimate, $1/6$ grain of strychnin and $1/4$ grain of arsenic, in all $7/12$ grains of three deadly poisons. Accepted medical authority is to the effect that $1/12$ grain of strychnin is a fatal dose.

PAR. 9. The respondent does not operate, conduct or maintain a laboratory. The bottle or container in which Nuga-Tone is distributed in interstate commerce contains as a part of the label thereon the following language:

Distributed by
National Laboratory
Chicago, Ill. U. S. A.

The carton in which the bottle is kept contains the same wording and the so-called shipping carton contains language reading:

From National Laboratory
767 Milwaukee Ave.,
Chicago, Ill. U. S. A.

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The directions enclosed with each bottle of Nuga-Tone, printed in several languages, carry the following in English:

Distributed by
National Laboratory,
Chicago, Ill. U. S. A.

National Laboratory has been in business twenty-one years, selling the product Nuga-Tone during all that period from Chicago. The respondent's place of business is in the Security Bank Building, Milwaukee and Ogden Avenue, Chicago, occupying three rooms in such building. Respondent has no laboratory at such address; does not have a laboratory at any place. A laboratory was maintained by the late Dr. C. E. Cessna for a period of seven years prior to his death. Cessna was a doctor and compounded some prescriptions there. Some of the equipment still remains but it has not since been used.

At the time the complaint herein was issued, Nuga-Tone was being manufactured for respondent by Parke, Davis & Company, of Detroit, Mich., shipped to respondent in bulk, packaged by respondent at its place of business in Chicago, and transported from there to respondent's various customers throughout the country. The product is at present being manufactured for respondent by the Shores Company of Cedar Rapids, Iowa, and by them sent to respondent in Chicago, where it is packaged and distributed.

The formula for Nuga-Tone was originated many years ago by the late Dr. Charles E. Cessna, father of the real and present owners of the formula. Dr. Cessna died in 1929, and since that time the business has been carried on by his sons. Since Dr. Cessna's death, there has been no doctor connected with respondent company, and respondent has not had anything that might be called a laboratory for many years.

PAR. 10. The various statements and representations made by respondent, through the medium of radio, magazines, newspapers, and by mail, as set forth and enumerated in paragraph 3 herein, in selling and offering for sale its product "Nuga-Tone" in the respective states of the United States, were and are, as shown in paragraphs 5 and 6 herein, false, deceptive and misleading. Nuga-Tone is not a valuable alterative tonic, nor a combination of bitter stomachic tonics, alterative tonics and stimulating tonics arranged in accord with medical science. Nuga-Tone does not provide a remedy for or prove effective in treating or relieving the diseases, ailments and conditions set forth in paragraph 3 hereof. Nuga-Tone is not a product one can keep on taking without harmful results. On the contrary, Nuga-Tone is a dangerous mixture containing three fatal poi-

sons, the presence of none of which is disclosed by respondent to the purchaser of said product. Respondent does not maintain, conduct or operate a laboratory in connection with the preparation of Nuga-Tone for sale.

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, ailments, or conditions as those mentioned by respondent in its advertising but who truthfully represent their products and the therapeutic value which may be attributed to them, and honestly vend the same.

PAR. 12. The use of the aforesaid false and misleading representations and practices on the part of respondent in the sale and offering for sale of its product known and designated as "Nuga-Tone" has had, and now has, the tendency and capacity to cause members of the purchasing public to form the erroneous beliefs that respondent's said product Nuga-Tone is harmless, and may be taken with impunity, is a valuable combination of Bitter Stomachic Tonics, and is a remedy or cure for or will afford relief for stomach and intestinal troubles and other diseases and ailments of the human body, and that the use of respondent's said product will relieve persons suffering from the aforesaid diseases, ailments and conditions and completely restore them to health. 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 "Nuga-Tone." As a result the aforesaid representations and practices on the part of respondent have and have had the capacity and tendency to unfairly divert trade to respondent from competitors engaged in selling in interstate commerce, drugs, preparations and 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 herein. 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, National 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 Fed-

eral 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 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 said respondent, National Laboratory, a corporation, its officers, 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 pharmaceutical preparation in tablet or other form, designated as "Nuga-Tone," or any other preparation of substantially the same ingredients sold under that name or under any other name, legend or title, do forthwith cease and desist from:

1. Representing it is a combination of Bitter Stomachic Tonics or a valuable and effective alterative tonic and may be taken over long periods by any one without harmful results;
2. Representing it is an effective remedy or cure for indigestion and stomach or intestinal ailments and will aid digestion, relieve pains or discomfort following eating, increase the appetite and permit one to eat anything;
3. Representing it removes the causes of aches and pains in the muscles, nerves and bones, and gives new power and energy to the muscular and nervous system;
4. Representing it is an effective remedy or treatment for poor heart action and for loss of power and energy;
5. Representing it will protect the body against the more serious diseases, stimulate and invigorate the entire system and act directly on the vital organs;
6. Representing it will make sick people strong and healthy, cause paleness to disappear and produce normal sleep;
7. Representing, through the use of the word "Laboratory" in its corporate name, or in any other manner, or through the use of any

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other word of similar import and meaning, or through any other means or device, that it owns, operates or controls a laboratory until and unless it actually owns and operates or directly and absolutely controls a laboratory wherein said preparation is actually manufactured by it.

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
SHEFFORD CHEESE COMPANY, INC.

COMPLAINT, MEMORANDUM OPINION, AND ORDER CLOSING CASE IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 2936. Complaint, Sept. 30, 1936—Order, Oct. 30, 1937

DISCRIMINATING IN PRICE—CLAYTON ACT. SEC. 2, SUBSEC. (A)—QUANTITY AND VOLUME DISCOUNTS AND DIFFERENTIALS—WHERE PRESUMPTION OF REASONABLENESS; COMPETITIVE INJURY NEITHER INTENDED NOR EVIDENT; TO MEET DISCOUNTS, ETC., OF COMPETITORS; AND OTHER DISCOUNT EVENTUALLY OPEN TO ALL.

Where, on complaint charging respondent, engaged in manufacturing, processing, offering, selling, and distributing cheese, cheese products, and cheese foodstuffs, with unlawful discrimination in violation of section in question, in allowing from one cent to three cents discount, as case might be, on certain quantity purchases of loaf cheese, and fifteen percent discount on weekly purchases of package cheese and cheese products (excepting such loaf cheese and cream loaf cheese subject to discounts as above indicated), exceeding \$100 in volume, it appeared that said company's pricing policies were very similar to, and its discounts on most items were identical with, those shown to have been used by Kraft-Phenix Cheese Corporation, Docket 2935, July 17, 1937, 25 F. T. C. 537, in which order of dismissal issued, all sales of package cheese during period covered by Commission's supplemental investigation were made at list prices less fifteen percent discount, and allegation that the differing discounts appearing in respondent's price schedule were made to meet those of competitors or services and facilities furnished by competitors, was not controverted by information in hands of Commission, closing of proceeding without prejudice indicated and so ordered.

Mr. Allen C. Phelps and Mr. James I. Rooney for the Commission.
Thompson, Rabb & Stevenson, of Indianapolis, Ind., and *Williams, Myers & Quiggle*, of Washington, D. C., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" as amended by an Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. Title 15, Section 13) and for other purposes," the Federal Trade Commission, having reason to believe that Shefford Cheese Company, a

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corporation, is violating and has been violating the provisions of Section 2 (a) of said Act, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Shefford Cheese Company, Inc., is a corporation with its principal office, and place of business in the city of Syracuse, N. Y. Said respondent maintains zone or branch offices at Green Bay, Wis., Chicago, Ill., Brooklyn, N. Y., and at various other points in different States of the United States.

PAR. 2. Said respondent corporation is and has been prior to June 19, 1936, engaged in the business of manufacturing, processing, offering for sale, selling, and distributing cheese, cheese products, and cheese foodstuffs. Respondent sells and distributes said products in commerce between and among the various States of the United States, causing said products to be shipped and transported from the respective places of origin or concentration thereof, located in various States of the United States, to purchasers of such products, located usually in different States of the United States from those in which such products originate or are concentrated for distribution, and there is and has been, at all times herein mentioned, a continuous current of trade and commerce in said products between respondent's factories, processing plants, branch offices, and distributing points and purchasers located in States of the United States different from those in which such factories, processing plants, branch offices, and distributing points are located; that said commodities are so sold and distributed for use, consumption, and resale within the different States of the United States.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now and during the time herein mentioned, has been in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, processing, offering for sale, selling, and distributing cheese, cheese products, and cheese foodstuffs in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as above described, respondent since on or about September 19, 1936, has discriminated in price and is now discriminating in price between different purchasers buying said products of like grade and quality, so sold in interstate commerce for resale to consumers, by giving and allowing to some of its said purchasers of cheese and cheese products lower prices than those given or allowed other of its said purchasers competitively engaged one with the other in the resale of said products to the consumer within the United States. Said discriminations consist in the following:

1. In connection with the offering for sale and sale of Shefford five-pound loaf cheese, in the granting of an allowance of a one cent discount from the unit pound price set for lots of 5 pounds to 29 pounds of such product for purchases in lots of 30 pounds to 149 pounds; in the allowance of a one cent per pound discount from the price set for lots of 30 pounds to 149 pounds for purchases of lots from 150 pounds to 749 pounds; in the allowance of a one-half cent per pound discount from the price set for lots of 150 pounds to 749 pounds for purchases of 750 pounds or over.

2. In connection with the offering for sale and sale of Shefford cream loaf cheese in three pound boxes, in the granting of an allowance of a one cent discount from the unit pound price set for lots of 3 pounds to 15 pounds of such product for purchases in lots of 18 pounds to 297 pounds; in the allowance of a two cent per pound discount from the price set for lots of 18 pounds to 297 pounds for purchases in lots of 300 pounds or over.

3. In connection with the offering for sale and selling of Shefford package cheese and cheese products, except loaf cheese and cream loaf cheese, in the allowance of a fifteen percent discount on all purchases of such products by a customer in a volume in excess of \$100.00 per week.

PAR. 5. That the purchasers of such commodities from respondent, so bought and sold in interstate commerce, are in competition in the resale of such products to the consumer with other such purchasers in the different States of the United States in which said purchasers are respectively located and engaged in business; that the effect of such discriminatory prices is to enable some of said purchasers to purchase such commodities at a lower price than competing purchasers can buy the same products, solely because of the variation of volume of resale trade done in such products by the different purchasers thereof.

PAR. 6. The general effect of said systematic discrimination in price, made by said respondents as above set forth has been or may be to substantially lessen competition or to injure, destroy or prevent competition in the sale and distribution of cheese and cheese products between the said respondent and other manufacturers and distributors of similar products engaged in interstate commerce, and also between the said favored purchasers of said products receiving such discriminatory prices and other unfavored competing purchasers of said products not receiving said discriminatory prices; and the effect of said discriminations has been or may be to tend to create a monopoly in respondent in said line of commerce and also in the said favored

purchasers receiving said discriminatory prices from said respondent, in the resale of said products in different localities or trade territories in the United States in which such purchasers respectively operate.

PAR. 7. The foregoing alleged acts of the said respondent are in violation of Section 2 (a) of said Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C. Title 15, Section 13), and for other purposes."

MEMORANDUM OPINION

The complaint in this case charges respondent Shefford Cheese Company, Inc., with price discrimination in connection with the sale of loaf cheese and packaged cheese in violation of Section 2 (a) of the Clayton Act as amended (the Robinson-Patman Act). Respondent, after having answered, subsequently filed a motion to dismiss the complaint on certain grounds set out therein. This matter comes before the Commission upon respondent's said motion to dismiss.

After the issuance of the complaint, the Commission caused a supplemental investigation of the facts in this case to be made, and in addition has available to it certain information voluntarily submitted by the respondent.

It appears that this respondent's pricing policies are very similar to, and on most items its discounts are identical with, those shown by the evidence in Docket 2935 to have been used by the respondent in the case, Kraft-Phenix Cheese Corporation. It further appears that during the period covered by the Commission's supplemental investigation all sales of packaged cheese by respondent Shefford Cheese Company were made at list prices less a discount of 15%; hence there was in fact no discrimination between two classes of customers in connection with the sale of this class of products. In addition, it is to be noted that this respondent alleges in its answer that the differing discounts appearing in its price schedule were made to meet those of competitors or the services and facilities furnished by competitors, and the information in the hands of the Commission does not controvert this allegation.

The Commission therefore considers, on the basis of the facts before it, that this proceeding should be closed without prejudice, and it has been so ordered.

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ORDER CLOSING CASE

This matter coming on to be heard by the Commission upon the motion of respondent to dismiss the complaint, and the Commission having duly considered said motion and the record herein, and being now fully advised in the premises;

It is ordered, That respondent's motion to dismiss the complaint be denied, but that the case growing out of the complaint herein, 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..

IN THE MATTER OF
E. O. JACKSON 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 2940. Complaint, Oct. 6, 1936—Decision, Oct. 30, 1937

Where a corporation engaged in distilled spirits rectifying industry, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages, and in producing 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 sale of its aforesaid various products, and of whisky theretofore, and for a time, distilled by it as lessee of a Kentucky distillery prior to discontinuance of such distilling operations, to wholesale purchasers, principally, in most of the 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 the sale thereof 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, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling such various products, do not use aforesaid words as above set forth, and also those who, engaged in either distilled spirits or distilled spirits rectifying industry, or both, do not make grossly exaggerated and misleading statements regarding the quality of a whisky artificially aged in from 30 to 60 days so as to give it appearance of whisky which had been aged in the wood for approximately two years—

- (a) 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, 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 all its said whiskies and other alcoholic beverages bottled by it were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it was not, as to all its products excepting liquor actually produced by it under lease as aforesaid, a distiller, for the spirituous bottled liquors of which there is a preference on the part of a substantial portion of the purchasing public, but a rectifier, within true intent and meaning of the law and as commonly understood by trade and consuming public, and with tendency to induce public to purchase products of concern using such words in its corporate name, in preference to those of other bottlers, as and for products bottled by actual distiller and as giving purchaser, in buying as directly as

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possible from distiller, better grade of merchandise, saving in money or more uniform product; and

- (b) Represented, through statement "Kentucky's Best" straight Bourbon whiskey, bottled by the distillers, direct from Kentucky, in advertising its "charred chip" whiskey, in which "charred chip" process is employed to give whiskey approximately same satisfactory color in from 30 to 60 days as obtained by approximately 2 years of aging in the wood, as claimed by it that its said whiskey was of same or equivalent quality as whiskey properly and normally aged in the wood, facts being that such representations, as applied to Bourbon whiskey distilled in Kentucky and aged by aforesaid process, were grossly exaggerated and misleading;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that all said representations were true, and that the whiskeys, gins and other spirituous beverages bottled and sold by it were by it made and distilled from mash, wort, or wash, as aforesaid, and of inducing dealers and purchasing public, acting in such beliefs, to buy its said whiskeys and other spirituous beverages bottled and sold 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 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. John J. Keenan*, trial examiner.

Mr. P. Gad B. Morehouse for the Commission.

Mr. Donald H. Mann, of D'Ancona, Pflaum & Kohlsaat, 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 E. O. Jackson 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 Illinois, having its principal office and place of business at 8440 South Chicago Avenue in the city of Chicago in said State. It is now and since January 1, 1936, has been engaged in the distilled spirits rectifying industry, purchasing, rectifying, blending, and bottling whiskeys, gins, and other spirituous beverages and engaging in the sale thereof in con-

stant 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 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 now, and since its organization 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 and liquors does not make or constitute respondent a distiller as defined by Section 3247 of the Revised Statutes regulating Internal Revenue, nor a distilling company as commonly understood by the public or the liquor industry. For a long period of time the word "distilling" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacture of distilled spirits 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 substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by those actually engaged in the operation, ownership, or control of such a distillery.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the

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

In the course and conduct of its business as aforesaid, respondent bottles at Chicago, Illinois, and ships and sells in interstate commerce and in the District of Columbia, among other brands, a brand of whiskey labeled as follows:

From Old Kentucky
BOTTLED BY THE DISTILLERS
Your Assurance of Uniformly High Quality
Proof 90

C O T T O N
C L U B
KENTUCKY
STRAIGHT BOURBON
WHISKEY
SUPERBLY SMOOTH AND MELLOW
Distilled At
Distillery No. 17
5th Dist. of Kentucky

As a means of inducing and promoting the sale of said "Cotton Club" brand of whiskey in interstate commerce, respondent has widely distributed advertising matter in which it has made, among others, the following representations of fact, to wit:

KENTUCKY'S BEST NOW COSTS YOU LESS
BOTTLED BY THE DISTILLERS
DIRECT FROM KENTUCKY

Try COTTON CLUB and your taste will convince you that it's the greatest Kentucky Whiskey value on the market. You'll marvel that so fine a whiskey can be sold at so low a price * * * Handled from the grain to the finished bottle by one organization.

Distilled and Bottled by
E. O. JACKSON DISTILLING CO.,
Louisville, Kentucky.
A uniformly high quality product—

Said representations of fact are grossly exaggerated, false and misleading in that (a) the said whiskey is not of high quality; (b) respondent has no place of business in Louisville, Ky.; (c) has not since January 1, 1936, actually owned, operated or controlled any distillery whatever in the sense in which said term is commonly accepted and used in the distilled spirits industry.

"Distillery No. 17," 5th District of Kentucky became and was favorably known to many engaged in the liquor trade by reason of the production there between 1903 and 1935 of whiskey of a high quality by A. Ph. Stitzel, Inc., and in 1929 this particular distillery received one of the first licenses issued by the government for the manufacture of medicinal whiskey during the prohibition period. Between July 1, 1935, and January 1, 1936, this respondent, under lease from the vendee of A. Ph. Stitzel, Inc., produced 5,000 barrels of whiskey at said distillery at high proof by what is known as the "charred chip process," which said whiskey was of a quality inferior to a good grade of Kentucky Bourbon whiskey, and the respondent's aforesaid "Cotton Club" brand is, therefore, not of the grade and quality indicated by the representation "Distilled at Distillery No. 17, 5th District of Kentucky, and is not "Kentucky's Best."

The other brands of whiskies, cordials and liquors sold by respondent were not by it distilled "from the grain to the finished bottle."

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.

There are also among the competitors of respondent corporations, firms, partnerships and individuals engaged in either the distilled spirits industry or the distilled spirits rectifying industry, or both, who neither misrepresent their location nor the place where their

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spirits are bottled nor the reputation, grade or quality of their product.

PAR. 5. Representations by respondent, as hereinabove 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 all of the aforesaid representations are true and that respondent is a distiller and that all the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of such products; and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 6. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on October 6, 1936 issued, and on October 9, 1936 served its complaint in this proceeding against E. O. Jackson Distilling Company, a corporation, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John J. Keenan, an Examiner of the Commission theretofore duly designated by it. Messrs. D'Ancona, Pflaum & Kohlsaas, by Mr. Donald H. Mann, attorneys for respondent, introduced no evidence in opposition thereto, 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 (no oral arguments 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, E. O. Jackson Distilling Company, 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 8440 South Chicago Avenue, in the city of Chicago, in said State. It is also authorized to do business in the State of Kentucky, and its principal office in that State is 1407 West Jefferson Street, Louisville, Ky., where, since January 1936, it has maintained a bottling plant and office. It is now and since January 1, 1936 has been engaged in the distilled spirits rectifying industry, purchasing, rectifying, blending, and bottling whiskeys, gins, and other spirituous beverages, and engaging 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 the various States of the United States to the purchasers thereof, consisting principally of wholesalers located in most of the other States of the United States and the District of Columbia. Its dollar sales volume sometimes amounts to as much as \$100,000 a month.

In the course and conduct of its business as aforesaid, respondent is now, and 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 now, and since its organization 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 be-

tween 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 above described premises in the city of Chicago, a 500-gallon gin still, properly registered, which it uses in the production of gin by a process of rectification, whereby tax-paid alcohol purchased by it is redistilled over juniper berries and other aromatics. This gin constitutes approximately 15 to 20% of respondent's total production. This manufacture of gin by redistillation is well recognized in the trade as a process of rectification. It is not necessary, under the pertinent laws and regulations, for one engaging therein to possess a permit to distill. Such rectification of alcoholic spirits does not make or constitute this respondent a distilling company within the intent and meaning of Section 3247 of the revised statutes regulating Internal Revenue (U. S. Code Tit. 26, Sec. 1158). The Commission finds that this respondent is a rectifier, its place of business a rectifying plant, and that it is engaged in the business of rectifying, within the intent and meaning of Section 3244 of the revised statutes of the United States (U. S. Code Tit. 26, Sec. 1397-f). Neither does such rectification make or constitute this respondent a distiller as commonly understood by the public and by those engaged in any branch of 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 production of alcoholic liquors by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, and a substantial portion of the purchasing public prefers to buy spirituous liquors bottled and prepared by the actual distillers thereof.

PAR. 3. Rectifying in the distilled spirits industry means the mixing of whiskey of different ages or types or the mixing of other ingredients with whiskeys, but reducing proof of the whiskey by adding water is not rectifying. Rectifiers also blend whiskeys with neutral spirits (grain alcohol).

Many distillers operate a separate establishment six hundred feet or more away from the distillery, known as a rectifying plant, wherein they operate in the same manner as an ordinary 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 and after reduction of proof.

Any rectifying by a distiller 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 rectifying plant, appear the word "bottled" or "blended," as the case may be, "By the ----- Company."

If the distilled spirits therein contained are bottled by a distiller in his distillery or are spirits of his 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, they put "Blended and bottled by ----- Company."

Finally, usually blown in the bottom of each bottle, is a symbol consisting of a letter followed by a number, a "D" for a distillery and a "R" for a rectifier, the number following the letter corresponding with the distiller's or rectifier's permit.

Respondent's rectifier's permit is designated as R-259.

A distiller who also operates a rectifying plant, having both kinds of permits, may use either symbol, depending on whether the liquor contained in the bottle was produced and bottled under his distiller's or under his rectifier's permit.

Knowledge of these details is not widespread among the retail trade although it is more so now than it was during the first year after the repeal of the Prohibition Amendment, and knowledge of such details is quite limited to the general public.

All whiskeys, whether emanating from distillers or from rectifiers, are generally in the trade conceded to be distilled products.

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

The process used by this respondent in the production of its gin, insofar as the redistillation process is concerned, is the same identical process that is used in many distilleries in the United States for the production of gin, except that in the case of the respondent, it purchases its alcohol, and in the case of the distilleries, they distill the alcohol which they redistill over the juniper berries, and, in some cases, such alcohol is conveyed through closed pipes and vessels in one continuous process from the mash through the cistern tank to the gin still.

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Findings

PAR. 4. Prior to January 1, 1936, respondent, as lessee of the Frankfort Distilleries, Incorporated, at Louisville, Kentucky, operated a distillery, under a distillers' basic permit issued by the Federal Alcohol Administration Division of the Treasury Department. Respondent also filed warehousing bond, dated July 13, 1935, effective July 25, 1935, in the penal sum of \$100,000, with the Seaboard Surety Company as surety. Pursuant to the authority contained in such permit, this respondent, prior to January 17, 1936, produced by distillation from mash, wort or wash, approximately 5,000 barrels of whiskey, of which, at the time of the hearing, it had about 2,500 barrels remaining, which, in the ordinary progress of its business activities, would last for approximately two years. Respondent then suspended operations on January 17, 1936, and has not operated said distillery since. Its bonds stand cancelled, according to their own terms, as of May 1, 1936. Respondent's aforesaid basic distillers' permit is still outstanding, but is subject to revocation in the event that it does not again engage in the operations thereby authorized, for a period of more than two years, which two years will expire on January 17, 1938.

The whiskey which respondent distilled prior to January 17, 1936, and the gin produced by it as aforesaid, constitute roughly approximately 65% of its business, the other 35% being taken up by cordials which it compounds, and blended whiskies which it prepares from distilled spirits and whiskies purchased from others. This respondent has not operated under lease or otherwise produced from raw materials by distillation alcoholic spirits of any kind since January 17, 1936, but has since been engaged solely as a rectifier in the bottling and sale of the spirits which it did produce (under various brand names such as "Cotton Club," "Barrel Tap Bourbon," "Kentucky Trotter," "Kentucky State," and "Kentucky Classic"), spirits obtained by purchase from other sources, and its gin, as aforesaid. Its cordials, gin, and blends are bottled in the city of Chicago, and all of the whiskeys which it produced under lease as aforesaid, together with some purchased whiskeys, are bottled in its plant in Kentucky. While a lessee-operator of a distillery, who has ceased distilling, but who warehouses and sells liquors previously so distilled, remains a distiller within the provisions of law imposing forfeiture for wrongful acts of a distiller, insofar as the liquor so distilled is concerned, the Commission finds that this respondent, as to all of its products, except the liquor actually produced by it under such lease, is not a distiller, but a rectifier, within the true intent and meaning of the law, and as commonly understood by the trade and the consuming public.

PAR. 5. With respect to all of the whiskeys and other alcoholic beverages not produced by this respondent during its lessee operation of the distillery, as aforesaid, in the regular course and conduct of its business, by the use of the word "Distilling" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers, and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that the said whiskies and other alcoholic beverages bottled by it were by it manufactured through the process of distillation from mash, wort, or wash.

PAR. 6. Based upon the testimony of a large number of witnesses from both the trade and the purchasing public, the Commission finds that the word "distilling," or similar words such as "distillers" and "distilleries," when used in the corporate name of the bottler of spirits or other alcoholic beverages, on the bottles in which such spirits are contained, indicates the distillation by such bottler of such spirits from fermented grain, mash, or wort, and that the use of such words tends to induce the public to purchase the products of the concern using such words in its corporate name, in preference to the products of other bottlers, in the belief that they are buying the product bottled by the actual distiller of its contents; and that in buying as directly as possible from the distiller, they would get a better grade of merchandise, save money, or secure a more uniform product. For these reasons they would be inclined to give preference to a product bearing the name of a distiller or distilling company.

PAR. 7. In its production by distillation of the 5,000 barrels of whiskey in the Kentucky distillery, which it leased as aforesaid, this respondent used a method known as the "charred chip" process. This is a process of running the whiskey over charred wood chips between the still and the cistern room, to give the whiskey color at an earlier age than normally. In such manner, approximately the same satisfactory color is obtained in from 30 to 60 days, as would be obtained by approximately 2 years of aging in the wood, according to the claim made by an officer of the respondent corporation. This alleged aging process was represented by respondent's salesmen as an exclusive process of aging which it and no one else had, and that it was used by it in a famous old Kentucky distillery, owned by respondent. In one instance a sale of ten cases of such whiskey was made to a retailer who, from such representations, was under the impression at the time he made the purchase, that he was purchasing the liquor from a distillery. Respondent advertised such "charred chip" whiskey, part of which on the occasion of the sale aforesaid was returned by the

purchaser as unsatisfactory, as "Kentucky's Best" straight Bourbon whiskey, bottled by the distillers, direct from Kentucky. The Commission finds that such representations, when applied to a Bourbon whiskey distilled in Kentucky and aged by the charred chip process, aforesaid, are grossly exaggerated and misleading.

PAR. 8. 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.

There are also among the competitors of respondent corporations, firms, partnerships and individuals engaged in either the distilled spirits industry or the distilled spirits rectifying industry, or both, who do not make grossly exaggerated and misleading statements concerning the quality of a whiskey artificially aged in from 30 to 60 days, so as to give it the appearance of a whiskey which has been aged in the wood for approximately 2 years.

PAR. 9. Representations by respondent, as hereinabove set forth, have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the beliefs that all of the aforesaid representations are true and that all the whiskies, gins, and other spirituous beverages bottled and sold by respondent are manufactured and distilled by it from mash, wort or wash, as aforesaid, 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 manufacturers by distillation from mash, wort, or wash, of such products; and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 10. Existing regulations promulgated under the Federal Alcohol Administration Act approved August 29, 1935 (49 Stat. L. 977),

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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, as well as such of respondent's whiskies as it actually produced as lessee-operator of a distillery, by distillation from mash, wort, or wash, prior to January 17, 1936.

CONCLUSION

The aforesaid acts and practices of the respondent E. O. Jackson 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 J. Keenan, 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 in opposition thereto) briefs filed herein by PGad B. Morehouse, counsel for the Commission, and by Donald H. Mann, attorney for respondent (no oral argument having been requested or 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 now ordered, That the respondent E. O. Jackson Distilling Company, its officers, agents, representatives, 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:

1. Representing through the use of the word "distilling" in its corporate name, on its stationery, advertising, or on the labels attached

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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 the distiller of the said whiskies, gins or other spirituous beverages when such is not the fact; or (b) 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 by means of the statement "Kentucky's Best" in connection with whiskey manufactured or distilled by it, and run over charred chips for the purpose of simulating the true color of older whiskies, or by the use of words and phrases of similar import, that the said whiskey is of the same or equivalent quality as whiskey that has been properly and normally aged in the wood.

It is further provided, That nothing herein contained shall prevent respondent 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 any of its products, which it did in fact produce by distillation, that it is the distiller 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
PITTSBURGH PLATE GLASS 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, AND OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3154. Complaint, June 16, 1937—Decision, Oct. 30, 1937

Where (1) eight manufacturers of window glass, owning and controlling practically all the factories producing such product in the United States and producing most of such product sold and distributed therein, and able to influence prices and terms at which, and conditions under which, such product was sold throughout the United States, and in competition among themselves, except to the extent that their said competition had been lessened, restricted or restrained, or their potential competition forestalled, by practices and methods below described and set forth, and in competition with other competitor manufacturers, except as such competition or potential competition had been hindered, etc., as above described; (2) the association of which such eight manufacturers, along with a ninth company, owner of the stock of one of said manufacturing concerns and affiliated with five of their number and engaged as exclusive selling agent for said manufacturing concerns and four of the other manufacturers above set forth were members; and (3) association of distributors of such products including window glass particularly, of which one of said manufacturers, with eight manufacturing plants at various points in the United States and with approximately seventy warehouses in many different States, was member, and of which the other seven manufacturers were associate members, and the members of which distributors' association were in competition with one another and with other competitor distributors in resale and distribution of products in question to dealers and consumers in the various localities and trade areas of the United States, except insofar as such competition or potential competition had been hindered, etc., as hereinbefore set forth, by the acts and practices hereinafter described, directly and substantially, affecting such competition and that among manufacturers of such products, and the members of which distributors' association, with five divisions covering the United States, constituted group of distributors so large and influential in the trade as to be able, by themselves and in cooperation with aforesaid manufacturers first referred to, to influence flow of trade in channels of commerce in window glass throughout the country and terms and conditions under which distributors thereof buy such products; and (4) the officers, directors, and members of said two associations, and the executive committeemen of said latter association; associated and allied together to carry into effect certain policies, practices and methods relating to sale and distribution of window glass as below described—

Agreed and conspired, and combined and confederated together and with others, and 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 certain policies, sales methods and trade practices upon which they had agreed and to which they adhered, and which they attempted to and did impose, by coercion and compulsion, upon glass distributors and dealers who were not permitted, or did not desire, to be members of said distributors' association, and upon others, to the actual or potential injury of some of such distributors and dealers and of ultimate purchasers and consumers of glass generally; and in pursuance of said agreement, course of action and undertaking above referred to, and as respects said policies, sales methods, and trade practices, and through official and unofficial meetings of their associations, discussions, bulletins, circulars, etc., distributed among the members and others, and the seeking and obtaining of promises and assurances from one another and exchange of information with one another with respect to their businesses and activities, and through action of aforesaid distributors in inducing the granting of such discriminatory prices, as below set forth, by said manufacturers, and in receiving and accepting the same—

- (a) Classified all buyers of window glass from manufacturers as "quantity buyers" or "carload lot buyers," and formulated, printed and circulated among themselves list of such "quantity buyers," whose classification as such was dependent upon purchase of a minimum of from 3,000 to 5,000 50-foot boxes of window glass for stock per year, and made it the policy and practice of such manufacturers to issue only one window glass price list showing prices to "quantity buyers" only, and issued to and intended for their use exclusively, and confined, as a policy and practice, to a restricted trade area sales of window glass by "quantity buyers," who rarely, if ever, accepted orders for such product for transmission to the manufacturer from dealers located outside their respective designated trade areas, and granted or denied admittance to list of "quantity buyers," as policy and practice, only after complete investigation by secretary of said manufacturers' association to determine eligibility of such buyers, with final decision made by the association, and refused sales of window glass in carload lots by said manufacturers directly to any buyer except "quantity buyers";
- (b) Published, exclusively, price lists for window glass to "carload lot buyers," through said distributors' association, and distributed same only by members thereof, and required and compelled all such "carload lot buyers" and others not classified as "quantity buyers" and placed on said list, to purchase window glass from such so-called "quantity buyers" or from aforesaid manufacturer members through such buyers, and all such other buyers to pay up to $7\frac{1}{2}\%$ more for window glass of same grade and quality than price quoted to and paid by "quantity buyers," with manufacturer, as agreed, to receive $2\frac{1}{2}\%$, and "quantity buyer" 5%, over such quoted list price on sales to such "carload lot buyers," and made numerous sales from said manufacturers to "carload lot buyers" at such higher prices and on aforesaid basis, referring orders to said manufacturers from such "carload lot buyers" to so-called "quantity buyers" and filling same by direct shipment to former with aforesaid $2\frac{1}{2}\%$ markup over manufacturer's list price and understanding that "quantity buyer" would add and receive additional markup of 5%, as above set forth; and
- (c) Precluded, under policies and practices adopted, any two or more dealers from making pooled purchases of window glass in carload lots, or "car-

load lot buyer" of such product from reconsigning or diverting such carload to some other dealer, and supervised and directed practices and policies of dealers reselling window glass to other dealers and consumers and, generally, controlled distribution and outlets for such products, and adopted, generally, policy and practice, tendency of which was to lessen and restrain competition in sale and distribution of window glass in the United States, and prevented dealers who did not conform to their practices, policies, and prices from buying window glass at manufacturer's list price or in carload lots, and acted in concert to control channels of distribution and require dealer conformance to such practices and methods;

With capacity and tendency to, and effect of, tending to (1) concentrate in such "quantity buyers" opportunity to purchase window glass from manufacturer at manufacturer's discount from list price, (2) standardize prices at, and conditions under, which window glass was sold by manufacturers in carload lots to other than those classified as such "quantity buyers," (3) bring about an unlawful discrimination in prices at which such product is sold by the manufacturer to different purchasers, (4) unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in window glass trade and industry and tend to deprive purchasing and consuming public of advantages in price, service, or 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 operate as a restraint upon and detriment to the freedom of fair and legitimate competition therein, (5) tend to increase cost to purchasers of such product, (6) discriminate against small business enterprises engaged or desiring to engage in sale or distribution of said product, (7) tend to obstruct establishment of new distributors thereof, (8) lessen and restrain price competition among manufacturers in sale thereof in carload lots to other than "quantity buyers," (9) burden, hamper and interfere with normal and natural flow of trade in commerce therein into, through and from the various States, and injure competitors of individual distributor-respondents by unfairly diverting business and trade from them, and otherwise depriving them unfairly of competitive advantage which they would receive under conditions of free and open competition, and (10) prejudice and injure dealers, distributors and others who do not conform to program or methods above set forth, or desire to do so, but are so compelled by concerted action of said manufacturers and distributors and their associations, etc.; and

Where aforesaid various concerns, manufacturers, and distributors, as above set forth, and their associations, officers, etc.—

(d) Conspired and confederated together to bring about, and did bring about and make effective, a policy and system whereby manufacturers aforesaid discriminated in price between different purchasers of window glass of like grade and quality, as above set forth, with effect of lessening competition between and among manufacturers in said line of commerce and of injury, destroying, and preventing competition between and among such "quantity buyers" and such "carload lot buyers," and between and among the customers of such buyers buying such product for resale to consumers; and

Where manufacturers aforesaid—

(e) Discriminated in price between different purchasers buying window glass of like grade and quality in interstate commerce for resale to dealers and

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consumers, by charging some of their said purchasers of such product higher prices than those charged others of their said purchasers competitively engaged with one another in resale of said product within the United States, and consisting in imposition of 2½% markup by the manufacturers upon all "carload lot buyers" over and above manufacturer's list price at which window glass had been and was being sold to so-called "quantity buyers"; and

Where aforesaid distributor members—

(f) Knowingly induced said manufacturer members thus to discriminate in price as above set forth, and knowingly received such discriminations in price on purchases of window glass made by them;

With result that the general effect of said systematic discriminations in price, so made by said manufacturers and induced and received by said distributors, had been or might be substantially to lessen competition and tend to create a monopoly in sale and distribution of window glass, and to injure, destroy, and prevent competition between and among said distributors and their competitors, and between and among customers of each:

Held, That such acts and practices had a dangerous tendency unduly to hinder competition in window glass trade throughout the United States, and to create a monopoly thereof in the hands of aforesaid manufacturers and distributors and their associations, etc., and constituted unfair methods of competition, in violation of Sec. 5 of an Act of Congress approved September 26, 1914, and that discriminatory acts and practices last above set forth constituted violation of Sec. 2 (a) and Sec. 2 (f) of an Act of Congress approved June 19, 1936.

Mr. Allen C. Phelps for the Commission.

Smith, Buchanan, Scott & Ingersoll, of Pittsburgh, Pa., for Pittsburgh Plate Glass Co.

Marshall, Melhorn, Davies, Wall & Block, of Toledo, Ohio, for Libbey-Owens-Ford Glass Co.

Reed, Smith, Shaw & McClay, of Pittsburgh, Pa., for American Window Glass Co.

Sperry & Snider, of Clarksburg, W. Va., for Fourco Glass Co., Harding Glass Co., Adamston Flat Glass Co., Rolland Glass Co., with whom also appeared *Mr. William J. Brennan*, of Sistersville, W. Va., for Scohy Sheet Glass Co., and *Kessinger, Hill & Arterburn*, of Vincennes, Ind., for Blackford Window Glass Co.

Hines, Rearick, Dorr & Hammond, of New York City, for The Window Glass Manufacturers Ass'n, and its officers.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for the National Glass Distributors Ass'n, its officers, executive committee, and members thereof, with whom also appeared *Marshall, Melhorn, Davies, Wall & Block*, of Toledo, Ohio, for George L. Heater and Toledo Plate and Window Glass Co.

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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 Act) and pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (The Clayton Act), as amended by "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914 as amended (U. S. C. Title 15, Section 13), and for other purposes" (The Robinson-Patman Act), 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 Federal Trade Commission Act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest; and the Federal Trade Commission having reason to believe that the said respondents have violated and are now violating the provisions of Subsection "a" and Subsection "f" of Section 2 of said Clayton Act as amended, hereby issues its complaint against said respondents, stating its charges as follows:

Count 1

PARAGRAPH 1. Respondent Pittsburgh Plate Glass Company is a corporation organized and existing under the laws of Pennsylvania with its principal office and place of business located in the Grant Building, Pittsburgh, Pa.

Respondent Libbey-Owens-Ford Glass Co. is a corporation organized and existing under the laws of the State of Ohio with its principal office and place of business located in the Nickel Building, Toledo, Ohio.

Respondent American Window Glass Co. is a corporation organized and existing under the laws of Pennsylvania with its principal office and place of business located in the Farmers Bank Building, Pittsburgh, Pa.

Respondent Fourco Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Clarksburg, W. Va.

Respondent Harding Glass Co. is a corporation organized and existing under the laws of the State of Arkansas with its principal office and place of business located at Fort Smith, Ark.

Respondent Adamston Flat Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Clarksburg, W. Va.

Respondent Rolland Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Clarksburg, W. Va.

Respondent Scohy Sheet Glass Co. is a corporation organized and existing under the laws of the State of West Virginia, with its principal office and place of business located at Sistersville, W. Va.

Respondent Blackford Window Glass Co. is a corporation organized and existing under the laws of the State of Indiana with its principal office and place of business located at Vincennes, Ind.

PAR. 2. Respondent The Window Glass Manufacturers Association is an unincorporated association with its principal office and place of business located at 19 W. 44th St., New York, N. Y. The officers of said association are, or were in 1936 respondent William L. Monro, president, who is likewise president of respondent American Window Glass Co., Pittsburgh, Pa.; respondent Frank Bastin, vice president, who is the president of respondent Blackford Window Glass Co., Vincennes, Ind.; and respondent Charles R. Stevenson, secretary-treasurer, of 19 W. 44th St., New York, N. Y. The membership of said respondent association consists of respondents Adamston Flat Glass Co., American Window Glass Co., Blackford Window Glass Co., Harding Glass Co., Libbey-Owens-Ford Glass Co., Pittsburgh Plate Glass Co., Rolland Glass Co., and Scohy Sheet Glass Co. The board of directors of said respondent association consists of one representative of each of said respondent members. Said respondent members are hereinafter collectively referred to for convenience as "respondent manufacturers."

PAR. 3. Respondent The National Glass Distributors Association is an unincorporated association with its principal office and place of business located at 2217 Tribune Tower, Chicago, Ill.

The officers of said respondent association are, or were in 1936 respondent G. G. Postlewait, president and vice president, a representative of respondent Postlewait Glass Co., Kansas City, Mo.; respondent N. J. Klein, vice president, a representative of respondent Patek Bros. Inc., Milwaukee, Wis.; respondent J. J. Gibian, vice president, a representative of respondent Schrenk & Co., Hoboken, N. J.; respondent W. F. Bennett, vice president, a representative of respondent Bennett Glass Co., Salt Lake City, Utah; respondent T. W. Pritchard, vice president, a representative of respondent Pritchard Paint & Glass Co., Charlotte, N. C.; and respondent

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North Storms, secretary-treasurer, of 2217 Tribune Tower, Chicago, Ill.

The executive committee of said respondent association is composed of approximately twenty-four individuals who respectively represent individual members. Among such executive committeemen are, or were in 1936, respondent S. C. Gilmore, a representative of respondent Hires Turner Glass Co.; respondent George L. Heater, a representative of respondent Toledo Plate and Window Glass Co.; respondent A. H. Brawner, a representative of respondent W. P. Fuller and Co.; respondent S. E. Binswanger, a representative of respondent Binswanger and Co.; and respondents T. E. Jackson and R. B. Tucker, representatives of respondent Pittsburgh Plate Glass Co. at Dallas, Tex. and Pittsburgh, Pa. respectively. Said named executive committeemen are representative members of said committee, and all of said committeemen are also made respondents herein, as a class, of which those specifically named are representative of the whole.

The membership of said respondent association is principally made up of corporations, firms, and partnerships dealing in and distributing glass products, particularly window glass. Among the members of said respondent association are respondent Postlewait Glass Co., a corporation, with its principal office and place of business in Kansas City, Mo.; respondent Patek Bros. Inc., a corporation, with its principal office and place of business located at Milwaukee, Wis.; respondent Schrenk & Co., a corporation, with its principal office and place of business located at Hoboken, N. J.; respondent Bennett Glass Co., a corporation, with its principal office and place of business located in Salt Lake City, Utah; respondent Pritchard Paint & Glass Co., a corporation, with its principal office and place of business located in Charlotte, N. C.; respondent Hires Turner Glass Co.; a corporation, with its principal office and place of business located at Philadelphia, Pa.; respondent Toledo Plate and Window Glass Co., a corporation, with its principal office and place of business located at Toledo, Ohio; respondent W. P. Fuller and Co., a corporation, with its principal office and place of business located at San Francisco, Calif.; respondent Binswanger and Co., a corporation, with its principal office and place of business located at Richmond, Va. The above-named members of said association do not constitute the entire membership thereof but are representative members of said association. All members of said association are also made respondents herein, as a class, of which those specifically named are representative of the whole. Said respondent members are herein-

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after collectively referred to for convenience as "respondent distributors."

Respondent manufacturers, except respondent Pittsburgh Plate Glass Co., are associate members of said respondent National Glass Distributors Assn. Respondent Pittsburgh Plate Glass Co. is a member of said respondent association with approximately thirty-eight distributing establishments, for each of which it holds a full membership in said association.

PAR. 4. Respondent Pittsburgh Plate Glass Co. is engaged in the business of manufacturing window glass and other glass products, and of selling and distributing the same throughout the United States. It maintains and operates factories or manufacturing plants at Creighton, Pa., Ford City, Pa., Ellwood, Ind., Kokomo, Ind., Crystal City, Mo., Mt. Vernon, Ohio, Clarksburg, W. Va., and Henriette, Ohio. It also maintains and operates approximately seventy-three warehouses and controls approximately forty-two stores located in many different states of the United States, from which it sells and distributes its manufactured glass products to dealers and consumers located in the same and different States. In the sale and distribution of its glass products respondent causes the same to be shipped and transported from its said factories to such warehouses and to purchasers in the various States and from the said warehouses and stores to buyers located in many cases in states other than the State in which such warehouse or store is located. The major portion of respondent's said products are so transported from one State to another and between and among the several States of the United States. In the course and conduct of its said business, said respondent is engaged in making sales of and distributing its said products in the course of interstate commerce. Said respondent in numerous cases sells its glass products to distributors who are in competition with it in the sale of such products to other dealers and consumers.

PAR. 5. Respondents Libby-Owens-Ford Glass Co., American Window Glass Co., Adamston Flat Glass Co., Rolland Glass Co., Scohy Sheet Glass Co., Blackford Window Glass Co., and Harding Glass Co., are, and each of them is engaged in the business of manufacturing window glass and flat glass products and of distributing and selling the same in many different States of the United States. Certain of these respondents manufacture and sell other glass products. In the course and conduct of their respective businesses, said respondents and each of them causes to be shipped and transported the products so manufactured by them from the place of manufacture to, into and through States of the United States other than said state of manufacture, and receive and accept orders for such products

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which are filled by the shipment of such goods, to, into and through the various States of the United States. Each of said respondents is engaged in making sales of and distributing their said products in the course of interstate commerce.

PAR. 6. Respondent Fourco Glass Co. owns the capital stock of and controls respondent Harding Glass Co. Respondent Fourco Glass Co. is engaged in the business of selling and distributing the window glass manufactured by respondents Harding Glass Co., Adamston Flat Glass Co., Rolland Glass Co., Scohy Sheet Glass Co. and Blackford Window Glass Co. In the course and conduct of its business said respondent Fourco Glass Co. sells the products of said named respondents and acts generally as an exclusive selling agent for them on a commission basis. In the sale and distribution of said products respondent Fourco Glass Co. accepts orders for the same from purchasers and allocates said orders among and transmits them to said manufacturers. Said orders are so accepted from and transmitted to and through states of the United States other than the State of West Virginia, where said respondent has its principal place of business. Respondent Fourco Glass Co. is engaged in selling and distributing said products in the course of interstate commerce. Said respondent Fourco Glass Co. is an associate member of respondent National Glass Distributors Association.

PAR. 7. Respondent manufacturers are in competition among themselves, except insofar as their said competition has been hindered, lessened, restricted or restrained or potential competition among them forestalled by their practices and methods hereinafter particularly described and set forth. There are other manufacturers of glass products, particularly window glass, who sell and distribute said products in the various States of the United States, and who, in the ordinary course of their business, seek the same customers that are sought by one or more of respondent manufacturers. These non-member manufacturers also cause their glass products to be shipped and transported from the various points of production or importation in certain states through and into other states of the United States. They are also in competition among themselves and with respondent manufacturers except insofar as their said competition has been hindered, lessened, restricted or restrained or potential competition forestalled as a result of the use by respondent manufacturers of the practices and methods hereafter described. Respondent The Window Glass Manufacturers Association and its officers and directors are not engaged in commerce, but are engaged in unfair methods, hereafter described, which directly affect competition among respondent manufacturers, and substantially among respondent

manufacturers and other manufacturers, and also directly affect competition in the sale of window glass and other glass products, between and among dealers and distributors who sell said products for the manufacturer or buy them for resale and resell the same in commerce in and among the various States of the United States.

PAR. 8. Respondent National Glass Distributors Association was organized in 1914 for the avowed purpose of promoting the general welfare of its members engaged in the window glass jobbing business. Its membership purports to be limited to any form of enterprise (including jobbing warehouses owned, operated or controlled by manufacturers) whose business consists of the purchasing for resale of flat glass from manufacturers, (foreign and domestic); and the selling of same to glass dealers and to other wholesale buyers who purchase such products for re-sale and/or utilization; the warehousing and maintaining of such products in jobbing establishments commensurate with the needs of the community and the incidental rehandling, cutting, processing, or otherwise working or handling such products, excluding such processing as changes the products of this trade into the products of another trade or industry; but said membership includes many manufacturers, processors, and enterprises who do not do business in the manner stated, do not have the facilities specified, and who sell to consumers. The membership is divided into five (5) divisions covering the United States: Eastern Division with approximately 26 members; Western Division with approximately 66 members; Pacific Coast Division with approximately 15 members; Southeast Division with approximately 11 members; and Southwest Division with approximately 27 members. The activities and policies of said association are directed by its officers and executive committee named as respondents herein. Said association and its officers and executive committee are not engaged in commerce but are engaged in unfair methods, as hereafter described, which directly and substantially affect competition among manufacturers and among distributors and dealers selling and distributing glass products in interstate commerce in the United States.

PAR. 9. Respondent distributors, being the members of The National Glass Distributors Association, are in competition with one another in the sale or resale and distribution of glass products to dealers and consumers in the various localities and trade areas in the United States in which they respectively operate, except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by their practices and methods hereinafter specifically described and set forth. There are numerous other dealers and distributors dealing in glass products

who are engaged in the resale and distribution of such products to dealers and consumers in the various localities and trade areas in the United States in competition with one another and with one or more of respondent distributors, except insofar as such competition has been hindered, lessened, restricted or restrained by or potential competition among them forestalled by the use by respondent distributors and the other respondents named herein of the practices and methods hereafter described. All or nearly all of respondent distributors and their competitors above mentioned are engaged in purchasing glass products which are transported from one state to and through other states as a result of such purchases and in reselling said products in many instances to buyers ordering such products for delivery in States other than the State in which the seller and the product are located when the order is so placed. All of said respondent distributors are engaged in unfair methods, as hereafter set forth, which directly and substantially affect competition among themselves, and between themselves and other dealers, and among manufacturers of glass products.

PAR. 10. Respondent manufacturers above named, who constitute the membership of respondent Window Glass Manufacturers' Association, own and control practically all of the factories producing window glass in the United States and produce most of the window glass sold and distributed in this country. Such respondent manufacturers are able to and do determine and control the prices and terms at which and conditions under which window glass is sold and distributed by manufacturers throughout the United States. Said members of respondent National Glass Distributors Association constitute a group of distributors so large and influential in the trade as to be able by themselves and in cooperation with respondent manufacturers to control and influence the flow of trade and channels of distribution in window glass throughout the country, as well as the prices at which, and the terms and conditions under which non-member distributors of window glass buy and resell such products.

PAR. 11. Respondent officers, directors and members of the Window Glass Manufacturers' Association are banded and allied together in said association to carry into effect certain policies, practices, and methods relating to the manufacture, sale and distribution of window glass, hereinafter more particularly described. Respondent officers, executive committeemen, and members of respondent National Glass Distributors' Association are likewise banded and allied together in their said association to carry into effect certain policies, practices and methods relating to the sale and distribution of window glass, also hereinafter more specifically described. Said respondent officers,

directors, executive committeemen, and members direct and control the policies of their respective associations and act collectively and concertedly through said associations as a medium of enforcing such policies and making the same effective.

PAR. 12. Respondents named herein have since about 1935 agreed and 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, fix, and maintain throughout the United States, certain monopolistic prices, policies, sales methods and trade practices, hereinafter described, which said respondents have agreed to and adhered to themselves and which they have attempted to and have, by coercion and compulsion imposed upon and on glass manufacturers, distributors and dealers who were not permitted to be or did not desire to be members of either of respondent associations, and others, to the substantial or potential injury of some of such manufacturers, distributors, and dealers and of ultimate purchasers and consumers of glass generally.

PAR. 13. The said monopolistic policies, sales methods, trade practices and prices referred to in the preceding paragraph and which were so adopted, fixed and put into effect are as follows:

1. A policy and practice of requiring that all buyers of window glass from respondent manufacturers be arbitrarily classified either as "quantity buyers" or "carload lot buyers."

2. A policy and practice of requiring that each of respondent manufacturers publish only one window glass price list, showing prices to those classified as "quantity buyers" only and issued to and available to such "quantity buyers" exclusively.

3. A policy and practice of requiring that price lists for window glass to "carload lot buyers" be published only by respondent National Glass Distributors' Association, and distributed only by the members of said association.

4. A policy and practice of requiring that all "carload lot buyers" and other buyers except those classified as "quantity buyers" be required and compelled to purchase window glass from such so-called "quantity buyers" or from respondent manufacturers through such "quantity buyers."

5. A policy and practice of requiring that all "carload lot buyers" and other buyers except those classified as "quantity buyers" be required and compelled to pay 7½% more or a greater excess for window glass of the same grade and quality than the price quoted to and paid by those classified as "quantity buyers."

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6. A policy and practice of requiring that said 7½% differential be divided, 2½% to the manufacturer and 5% to the so-called "quantity buyer."

7. A policy and practice of requiring that quotations of price for window glass by those classified as "quantity buyers" be confined to a restricted trade area of the particular authorized "quantity buyer" and that such particular "quantity buyer" accept no orders for window glass for transmission to the manufacturer from dealers located outside a designated trade area.

8. A policy and practice of requiring that a "white list" of so-called "quantity buyers" be agreed upon, published and adhered to, and that no dealer not included in such "white list" be permitted to purchase window glass direct from the manufacturer at the price quoted by the manufacturer to those included in such list.

9. A policy and practice of requiring that admittance to such "white list" of quantity buyers be denied to all dealers until after complete investigation by the secretary of the respondent Window Glass Manufacturers Association and that admission to said list be arbitrarily denied for any reason sufficient to said secretary or to said association.

10. A policy and practice resulting in blacklisting certain dealers as ineligible for admittance to said "quantity buyers' white list" or as ineligible to continue to be included on such "white list."

11. A policy and practice of precluding any two or more dealers from making pooled purchases of window glass in carload lots.

12. A policy and practice of precluding a carload lot buyer of window glass from reconsigning or diverting said carload to some other dealer.

13. A policy and practice of enabling the so-called "quantity buyers" to purchase window glass from the manufacturers at the manufacturers' list price and of denying this privilege to all other buyers.

14. A policy and practice used by respondent manufacturers of simultaneously issuing and of using identical price lists for window glass, and making effective substantially the same trade discounts from each manufacturer's list.

15. A policy and practice used by respondent manufacturers of agreeing upon and fixing and maintaining the prices at which and the terms upon which their said window and other glass should be and was offered for sale and sold.

16. A policy and practice by which prices on window glass to "carload buyers" was and is fixed and maintained at 7½% more than the price quoted by respondent manufacturers to said approved "quantity buyers."

17. A policy and practice of supervising and directing the practices and policies of dealers reselling window glass to other dealers and consumers, of causing resale prices for such window glass to be fixed and maintained and generally of controlling resale markets and outlets for such product.

18. Generally, a policy and practice which was designed to and tended to monopolize the manufacture, sale, and distribution of window glass in the respondents named herein.

PAR. 14. That for the purpose of making such sales practices and policies and pricing methods effective, and of requiring compliance therewith and observance thereof by all dealers in window glass throughout the United States, said respondent associations, acting through their officers, directors, and executive committee, and with the knowledge, consent, approval, and active cooperation and participation of respondent members and other members, and the individual respondents named herein or one or more of them, acting in furtherance of and in pursuance of the general plan, undertaking, conspiracy, and policy, have collectively as groups or individually done the following things:

1. Formulated, adopted, followed, carried out, enforced, imposed, and made effective the policies, practices, and methods described in the preceding paragraph.

2. Held official and unofficial meetings of said associations at which the policies and practices hereinabove described were discussed, adopted and agreed to, and issued and distributed bulletins, circulars, letters, price lists, and other printed matter, and distributed the same among the members of said associations and others, announcing the adoption of the policies, practices and requirements referred to and the imposition of the same upon all affected thereby.

3. Classified all buyers of window glass from manufacturers throughout the United States either as "quantity buyers" or "carload lot buyers."

4. Each of respondent manufacturers has published a single window glass price list quoting prices to approved "quantity buyers" only and issued said price lists to such "quantity buyers" exclusively.

5. Respondent National Glass Distributors Association has issued price lists for window glass to "carload lot buyers" for glass to be purchased from respondent manufacturers.

6. Respondent manufacturers have and do refuse to sell window glass in carload lots directly to any buyer except approved "quantity buyers."

7. Respondent manufacturers have compelled all "carload lot buyers" of window glass to purchase such glass through the members

of the National Glass Distributors Association or through approved "quantity buyers."

8. Members of the National Glass Distributors Association have issued price lists to "carload lot buyers" and made the same available only to certain buyers whom they considered eligible to buy in carload lots.

9. Respondent distributors have refused to accept orders for carload lots of window glass for transmission to the manufacturers from dealers located outside of their respective restricted trade areas.

10. Respondents generally have formulated and published a "white list" of "quantity buyers" who were authorized to purchase direct from the manufacturers at the manufacturers' list price and arbitrarily included and excluded certain dealers from said "white list."

11. Respondent manufacturers have issued identical price lists simultaneously and offered substantially the same trade discounts from each particular list.

12. Respondents generally have issued bulletins, circulars and other printed matter listing the names and addresses of said authorized "quantity buyers" and setting forth the plan and policy which would be followed in marketing window glass to dealers in the United States.

13. Respondents generally have sought and obtained promises and assurances of cooperation from one another in establishing and making effective the sales practices, policies and pricing methods hereinabove described.

14. Respondent manufacturers have sold window glass to numerous "carload lot buyers" at prices $7\frac{1}{2}\%$ greater than those at which sales were made to "quantity buyers" for glass of the same grade and quality.

15. Respondent manufacturers have diverted orders for carloads of window glass from "carload lot buyers" to so-called "quantity buyers" and filled such orders by direct shipment to the carload lot buyer at a $7\frac{1}{2}\%$ mark-up over the manufacturers' list prices for such products.

16. Respondent manufacturers have agreed upon and fixed and maintained the prices, terms and trade discounts at which their said window glass was offered for sale and sold.

17. Respondent distributors have induced respondent manufacturers to grant them discriminatory prices and have received and accepted such discriminatory prices.

18. Respondents generally have exchanged information with reference to their respective businesses and activities which was used in furtherance of the policies and methods referred to.

19. Respondents generally have supervised and investigated the practices and policies of dealers engaged in reselling window glass to other dealers and to consumers and the prices at which such product was so resold, and have prevented some dealers who did not conform to their practices, policies, and prices from buying window glass at the manufacturers' list price or in carload lots, and have acted concertedly to maintain certain resale prices agreed upon, to control resale markets and to coercively require recalcitrant dealers to conform to such practices and methods.

PAR. 15. The capacity, tendency, and effect of said plan, agreement, combination, conspiracy, undertaking, policies, and methods, and the said acts and practices of said respondents in pursuance thereof, are and have been:

1. To monopolize in said respondent manufacturers the business of manufacturing and of selling and distributing window glass to distributors in the United States.

2. To monopolize in said respondent distributors the opportunity to purchase window glass from the manufacturers at the manufacturers' list price.

3. To fix and maintain the prices at and conditions under which such window glass is sold by the manufacturers.

4. To fix and maintain the prices at and conditions under which window glass is resold by distributors to dealers and consumers.

5. To bring about an unlawful discrimination in the prices at which window glass is sold by the manufacturers to different purchasers.

6. To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the window glass 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.

7. To substantially increase the cost to purchasers of such window glass.

8. To suppress, eliminate, and discriminate against small business enterprises which are or have been engaged or desire to engage in manufacturing, selling, or distributing window glass.

9. To obstruct and prevent the establishment of new distributors of window glass.

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10. To suppress and eliminate all price competition among manufacturers in the sale of window glass and among distributors in the resale thereof.

11. To eliminate all sales of window glass through sales agencies or brokers.

12. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in window glass, into, through and from the various States of the United States; and to injure the competitors of individual respondents by unfairly diverting business and trade from them, depriving them thereof, and otherwise driving or freezing them out of business.

13. To prejudice and injure manufacturers, dealers, distributors, and others who do not conform to respondent's 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. 16. The above alleged acts and things done by respondents have a dangerous tendency unduly to hinder competition in the window glass trade throughout the United States, 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 26th, 1914.

Count 2

PARAGRAPH 1. Paragraphs 1 to 15 inclusive of count 1 hereof are hereby adopted and made a part of this charge as fully as if set out herein verbatim.

PAR. 2. All of the respondents herein named have since sometime prior to June 16, 1936, conspired and confederated together to bring about and have brought about and made effective a policy and system whereby respondent manufacturers discriminate and have discriminated in price between different purchasers of window glass of like grade and quality, in the manner hereinabove set forth, with the effect of lessening competition and tending to create a monopoly in said line of commerce and with the effect of injuring, destroying and preventing competition between and among such "quantity buyers" and such "carload lot buyers" and between and among the customers of such buyers purchasing such product for resale to consumers.

PAR. 3. In the course and conduct of their respective businesses as above described, respondent manufacturers since sometime prior to June 19th, 1936, have discriminated in price and are now discriminating in price between different purchasers buying window glass

of like grade and quality in interstate commerce for re-sale to dealers and consumers, by charging some of their said purchasers of window glass higher prices than those charged other of their said purchasers, competitively engaged one with the other in the resale of said products within the United States. Said discriminations consist in the imposition of a mark-up of $7\frac{1}{2}\%$ upon all "carload lot buyers" over and above the manufacturers' list price at which window glass has been and is being sold to the so-called "quantity buyers."

PAR. 4. Respondent members of the National Glass Distributors Association have knowingly induced said respondent manufacturers to so discriminate in price as charged in the preceding paragraph hereof and have knowingly received such discriminations in price on purchase of window glass made by them.

PAR. 5. The general effect of said systematic discriminations in price so made by respondent manufacturers and induced and received by respondent distributors has been or may be substantially to lessen competition and tend to create a monopoly in the manufacture, sale, and distribution of window glass and to injure, destroy and prevent competition between and among respondent distributors and their competitors and between and among customers of each.

PAR. 6. The foregoing alleged acts of the said respondents are in violation of Section 2A and Section 2F of said Act of Congress approved June 19, 1936 entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914 as amended (U. S. C. Title 15, Section 13), 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 Act) and pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (the Clayton Act), as amended by "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914 as amended (U. S. C. Title 15, Section 13), and for other purposes" (the Robinson-Patman Act), the Federal Trade Commission, on June 16,

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1937, issued, and subsequently served, its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Federal Trade Commission Act, and with acts and practices in violation of subsections (a) and (f) of Section 2 of said Robinson-Patman Act.

After the issuance and service of said complaint, said respondents filed their answer to the complaint, in which respondents admitted, for the purposes of this proceeding only, all the material allegations of said complaint, except those contained in sub-paragraphs 14 and 15, paragraph 13, sub-paragraphs 11 and 16 of paragraph 14 and sub-paragraph 10 of paragraph 15, thereof. Said respondents also consented in said answer that the Commission might proceed to make its findings of fact without further proceedings and that an order might issue and be served upon the respondents requiring them to cease and desist from the unfair methods of competition and the violations of law alleged in the complaint. 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Pittsburgh Plate Glass Company is a corporation organized and existing under the laws of Pennsylvania with its principal office and place of business located in the Grant Building, Pittsburgh, Pa.

Respondent Libbey-Owens-Ford Glass Co. is a corporation organized and existing under the laws of the State of Ohio with its principal office and place of business located in the Nicholas Building, Toledo, Ohio.

Respondent American Window Glass Co. is a corporation organized and existing under the laws of Pennsylvania with its principal office and place of business located in the Farmers Bank Building, Pittsburgh, Pa.

Respondent Fourco Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Clarksburg, W. Va.

Respondent Harding Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Fort Smith, Ark.

Respondent Adamston Flat Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Clarksburg, W. Va.

Respondent Rolland Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Clarksburg, W. Va.

Respondent Scohy Sheet Glass Co. is a corporation organized and existing under the laws of the State of West Virginia, with its principal office and place of business located at Sistersville, W. Va.

Respondent Blackford Window Glass Co. is a corporation organized and existing under the laws of the State of Indiana with its principal office and place of business located at Vincennes, Ind.

PAR. 2. Respondent The Window Glass Manufacturers Association is an unincorporated association with its principal office and place of business located at 19 W. 44th St., New York, N. Y. The officers of said association in 1936 were respondent William L. Monro, president, who is likewise president of respondent American Window Glass Co., Pittsburgh, Pa.; respondent Frank Bastin, vice president, who was the president of respondent Blackford Window Glass Co., Vincennes, Ind.; and respondent Charles R. Stevenson, secretary-treasurer, of 19 W. 44th St., New York, N. Y. The officers of said Association are at present William L. Monro, president, who is likewise president of respondent American Window Glass Company; Eugene Rolland, vice president who is president of respondent Rolland Glass Company; and respondent, Charles R. Stevenson, secretary-treasurer. The membership of said respondent association consists of respondents Adamston Flat Glass Co., American Window Glass Co., Blackford Window Glass Co., Harding Glass Co., Libbey-Owens-Ford Co., Pittsburgh Plate Glass Co., Rolland Glass Co., and Scohy Sheet Glass Co. Said respondent members are hereinafter collectively referred to for convenience as "respondent manufacturers."

PAR. 3. Respondent The National Glass Distributors Association is an unincorporated association with its principal office and place of business located at 2217 Tribune Tower, Chicago, Ill.

The officers of said respondent association in 1936 were respondents G. G. Postlewait, president and vice president, a representative of respondent Postlewait Glass Co., Kansas City, Mo.; respondent N. J. Klein, vice president, a representative of respondent Patek Bros. Inc., Milwaukee, Wis.; respondent J. J. Gibian, vice president, a representative of respondent Schrenk & Co., Hoboken, N. J.; respondent W. F. Bennett, vice president, a representative of respondent

Bennett Glass Co., Salt Lake City, Utah; respondent T. W. Pritchard, vice president, a representative of respondent Pritchard Paint & Glass Co., Charlotte, N. C.; and respondent North Storms, secretary-treasurer, of 2217 Tribune Tower, Chicago, Ill. The present officers of said respondent association are: president, William Plummer, Jr., a representative of respondent Hires Turner Glass Co., Philadelphia, Pa.; vice presidents, Ben Newton of Semon Bache & Co., New York, N. Y.; N. J. Klein of Patek Brothers, Inc., Milwaukee, Wis.; Wallace F. Bennett of Bennett Glass & Paint Co., Salt Lake City, Utah; T. W. Pritchard of Pritchard Paint & Glass Co., Charlotte, N. C.; G. G. Postlewait of Postlewait Glass Co., Kansas City, Mo.; and Harold Florman of Florman Manufacturing Co., Pueblo, Colo.; and secretary-treasurer, respondent North Storms.

The executive committee of said respondent association is composed of approximately twenty-four individuals who respectively represent individual members. Among such executive committeemen in 1936 were respondent S. C. Gilmore, a representative of respondent Hires Turner Glass Co.; respondent George L. Heater, a representative of respondent Toledo Plate and Window Glass Co.; respondent A. H. Brawner, a representative of respondent W. P. Fuller and Co.; respondent S. E. Binswanger, a representative of respondent Binswanger and Co.; and respondents T. E. Jackson and R. B. Tucker, representatives of respondent Pittsburgh Plate Glass Co. at Dallas, Tex., and Pittsburgh, Pa. respectively. Said executive committee at the present time is composed of: J. J. Gibian of Schrenk & Company, Hoboken, N. J.; Geo. E. Hills of Boston Plate & Window Glass Co., Boston, Mass.; E. J. Lienert of Buffalo Plate & Window Glass Corp., Buffalo, N. Y.; Adolph Maeulen, of Williamsport Mirror & Glass Co., Williamsport, Pa.; J. J. Tanyan, of Pittsburgh Plate Glass Co., Brooklyn, N. Y.; G. Frank Wallace of Syracuse Glass Company, Syracuse, N. Y.; R. J. Clemens of Standard Glass & Paint Company, Des Moines, Iowa; A. E. Clerihew of Forman, Ford & Co., Minneapolis, Minn.; Arthur Dole, Jr., of Hooker Glass & Paint Mfg. Co., Chicago, Ill.; George L. Heater of The Toledo Plate & Window Glass Co., Toledo, Ohio; L. B. Huguenor of Pittsburgh Plate Glass Co., Chicago, Ill.; C. W. Kendle of Central Glass Co., Louisville, Ky.; D. H. Startzman of The Wm. Glenn Glass Company, Cincinnati, Ohio; Robert J. Fulton of Raphael Glass Co., Los Angeles, Calif.; Rudolph Habenicht of Habenicht & Howlett, San Francisco, Calif.; Ben Tyre of Tyre Bros. Glass & Paint Co., Inc., Los Angeles, Calif.; S. E. Binswanger of Binswanger & Company, Richmond, Va.; H. A. Birchall of Pittsburgh Plate Glass Co., Roanoke, Va.; B. G. Spille of Hires Turner Glass Co., Washington,

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D. C.; M. S. Binswanger of Binswanger & Co., Memphis, Tenn.; C. L. Dickmann of C. L. Dickmann Glass Co., Muskogee, Okla.; T. E. Jackson of Pittsburgh Plate Glass Co., Dallas, Tex.; A. G. Hardy of Pittsburgh Plate Glass Co., Denver, Colo.; W. R. McFarland of McMurtry Manufacturing Co., Denver, Colo.; G. A. Vaughan of Southwestern Sash & Door Co., Albuquerque, N. Mex.; and R. B. Tucker of Pittsburgh Plate Glass Co., Pittsburgh, Pa.

The membership of said respondent association is principally made up of corporations, firms, and partnerships dealing in and distributing glass products, particularly window glass. Among the members of said respondent association are respondent Postlewait Glass Co., a corporation, with its principal office and place of business in Kansas City, Mo.; respondent Patek Bros., Inc., a corporation, with its principal office and place of business located at Milwaukee, Wis.; respondent Schrenk & Co., a corporation, with its principal office and place of business in Hoboken, N. J.; respondent Bennett Glass Co., a corporation, with its principal office and place of business located in Salt Lake City, Utah; respondent Pritchard Paint & Glass Co., a corporation, with its principal office and place of business located in Charlotte, N. C.; respondent Hires Turner Glass Co.; a corporation, with its principal office and place of business located at Philadelphia, Pa.; respondent Toledo Plate and Window Glass Co., a corporation, with its principal office and place of business located at Toledo, Ohio; respondent W. P. Fuller and Co., a corporation, with its principal office and place of business located at San Francisco, Calif.; respondent Binswanger and Co., a corporation, with its principal office and place of business located at Richmond, Va. The above named members of said association do not constitute the entire membership thereof but are representative members of said association. All members of said association were also made respondents herein, as a class, of which those specifically named are representative of the whole. Said respondent members are hereinafter collectively referred to for convenience as "respondent distributors."

Respondent manufacturers, except respondent Pittsburgh Plate Glass Co., are associate members of said respondent National Glass Distributors Assn. Respondent Pittsburgh Plate Glass Co. is a member of said respondent association with approximately seventy distributing establishments, for thirty-eight of which it holds a full membership in said association.

PAR. 4. Respondent Pittsburgh Plate Glass Co. is engaged in the business of manufacturing window glass and other glass products, and of selling and distributing the same throughout the United

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States. It maintains and operates factories or manufacturing plants at Creighton, Pa., Ford City, Pa., Ellwood, Ind., Kokomo, Ind., Crystal City, Mo., Mt. Vernon, Ohio, Clarksburg, W. Va., and Henryetta, Okla. It also maintains and operates approximately seventy warehouses located in many different States of the United States, from which it sells and distributes its manufactured glass products to dealers and consumers located in the same and different States. In the sale and distribution of its glass products respondent causes the same to be shipped and transported from its said factories to such warehouses and to purchasers in the various States and from the said warehouses to buyers located in many cases in States other than the State in which such warehouse is located. The major portion of respondent's said products are so transported from one State to another and between and among the several States of the United States. In the course and conduct of its said business, said respondent is engaged in making sales of and distributing its said products in the course of interstate commerce. Said respondent in numerous cases sells its glass products to distributors who are in competition with it in the sale of such products to other dealers and consumers.

PAR. 5. Respondent Libbey-Owens-Ford Glass Co., American Window Glass Co., Adamston Flat Glass Co., Rolland Glass Co., Schohy Sheet Glass Co., Blackford Window Glass Co., and Harding Glass Co., are and each of them is engaged in the business of manufacturing window glass and flat glass products and of distributing and selling the same in many different States of the United States. Certain of these respondents manufacture and sell other glass products. In the course and conduct of their respective businesses, said respondents and each of them causes to be shipped and transported the products so manufactured by them from the place of manufacture to, into and through States of the United States other than said State of manufacture, and receive and accept orders for such products which are filled by the shipment of such goods, to, into and through the various States of the United States. Each of said respondents is engaged in making sales of and distributing their said products in the course of interstate commerce.

PAR. 6. Respondent Fourco Glass Co. owns the capital stock of and controls respondent Harding Glass Co. Respondent Fourco Glass Co. is engaged in the business of selling and distributing the window glass manufactured by respondents Harding Glass Co., Adamston Flat Glass Co., Rolland Glass Co., Schohy Sheet Glass Co., and Blackford Window Glass Co. In the course and conduct of its business said respondent Fourco Glass Co. sells the products of said named respondents and acts generally as an exclusive selling agent for

them on a commission basis. In the sale and distribution of said products respondent Fourco Glass Co. accepts orders for the same from purchasers and allocates said orders among and transmits them to said manufacturers. Said orders are so accepted from and transmitted to and through States of the United States other than the State of West Virginia, where said respondent has its principal place of business. Respondent Fourco Glass Co. is engaged in selling and distributing said products in the course of interstate commerce.

PAR 7. Respondent manufacturers are in competition among themselves, except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by their practices and methods hereinafter particularly described and set forth. There are other manufacturers of glass products, particularly window glass, who sell and distribute said products in the various States of the United States, and who, in the ordinary course of their business, seek the same customers that are sought by one or more of respondent manufacturers. These nonmember manufacturers also cause their glass products to be shipped and transported from the various points of production or importation in certain States through and into other States of the United States. They are also in competition among themselves and with respondent manufacturers except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition forestalled as a result of the use by respondent manufacturers of the practices and methods hereafter described. Respondent The Window Glass Manufacturers Association and its officers and directors are not engaged in commerce, but are engaged in unfair methods, hereafter described, which directly affect competition among respondent manufacturers, and also directly affect competition in the sale of window glass and other glass products, between and among dealers and distributors who sell said products for the manufacturer or buy them for resale and resell the same in commerce in and among the various States of the United States.

PAR 8. Respondent National Glass Distributors Association was organized in 1914 for the avowed purpose of promoting the general welfare of its members engaged in the window glass jobbing business. Its membership purports to be limited to any form of enterprise (including jobbing warehouses owned, operated or controlled by manufacturers) whose business consists of the purchasing for resale of flat glass from manufacturers (foreign and domestic); and the selling of same to glass dealers and to other wholesale buyers who purchase such products for resale and/or utilization; the warehousing and maintaining of such products in jobbing establishments

commensurate with the needs of the community and the incidental rehandling, cutting, processing, or otherwise working or handling such products, excluding such processing as changes the products of this trade into the products of another trade or industry; but said membership includes some manufacturers; and also includes enterprises who do not do business in the manner stated, do not have the facilities specified, and who sell to consumers. The membership is divided into five (5) divisions covering the United States: Eastern Division with approximately 34 members; Western Division with approximately 66 members; Pacific Coast Division with approximately 17 members; Southeast Division with approximately 11 members; Southwest Division with approximately 27 members; and Rocky Mountain Division with approximately 6 members. The activities and policies of said association are directed by its officers and executive committee. Said association and its officers and executive committee are not engaged in commerce but are engaged in unfair methods, as hereafter described, which directly and substantially affect competition among manufacturers and among distributors and dealers selling and distributing glass products in interstate commerce in the United States.

PAR. 9. Respondent distributors, being the members of The National Glass Distributors Association, are in competition with one another in the sale or resale and distribution of glass products to dealers and consumers in the various localities and trade areas in the United States in which they respectively operate, except insofar as their said competition has been hindered, lessened, restricted or restrained or potential competition among them forestalled by their practices and methods hereinafter specifically described and set forth. There are numerous other dealers and distributors dealing in glass products who are engaged in the resale and distribution of such products to dealers and consumers in the various localities and trade areas in the United States in competition with one another and with one or more of respondent distributors, except insofar as such competition has been hindered, lessened, restricted or restrained by or potential competition among them forestalled by the use by respondent distributors and the other respondents named herein of the practices and methods hereafter described. All or nearly all of respondent distributors and their competitors above mentioned are engaged in purchasing glass products which are transported from one State to and through other States as a result of such purchases and in reselling said products in many instances to buyers ordering such products for delivery in States other than the State in which the seller and the product are located when the

order is so placed. All of said respondent distributors are engaged in unfair methods, as hereafter set forth, which directly and substantially affect competition among themselves, and between themselves and other dealers, and among manufacturers of glass products.

PAR. 10. Respondent manufacturers above named, who constitute the membership of respondent Window Glass Manufacturers' Association, own and control practically all of the factories producing window glass in the United States and produce most of the window glass sold and distributed in this country. Such respondent manufacturers are able to influence the prices and terms at which and conditions under which window glass is sold by manufacturers throughout the United States. Said members of respondent National Glass Distributors Association constitute a group of distributors so large and influential in the trade as to be able by themselves and in cooperation with respondent manufacturers to influence the flow of trade and channels of distribution in window glass throughout the country, as well as the prices at which, and the terms and conditions under which distributors of window glass buy such products.

PAR. 11. Respondent officers, directors, and members of the Window Glass Manufacturers' Association have been associated and allied together in said association to carry into effect certain policies, practices and methods relating to the sale and distribution of window glass, hereinafter more particularly described. Respondent officers, executive committeemen and members of respondent National Glass Distributors' Association have been likewise associated and allied together in their said association to carry into effect certain policies, practices and methods relating to the sale and distribution of window glass, also hereinafter more specifically described. Said respondent officers, directors, executive committeemen, and members form and control the policies of their respective associations and act collectively and concertedly through said associations as a medium of making the same effective.

PAR. 12. Respondents named herein have since about 1935 agreed and 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 throughout the United States, certain policies, sales methods, and trade practices, hereinafter described, which said respondents have agreed to and adhered to themselves and which they have attempted to and have, by coercion and compulsion imposed upon glass distributors and dealers who were not permitted to be or did not desire to be members of respondent distributors association, and others, to the actual or potential

injury of some of such distributors and dealers and of ultimate purchasers and consumers of glass generally.

PAR. 13. The said policies, sales methods and trade practices referred to in the preceding paragraph and which were so adopted and put into effect are as follows:

1. A policy and practice by which all buyers of window glass from respondent manufacturers were classified either as "quantity buyers" defined as buyers purchasing a minimum of from 3,000 to 5,000 50-foot boxes of window glass for stock per year, or "carload lot buyers," and a list of such quantity buyers was formulated, printed and circulated among respondents.

2. A policy and practice by which each of respondent manufacturers published only one window glass price list, showing prices to those classified as "quantity buyers" only and issued to and intended for use by such "quantity buyers" exclusively.

3. A policy and practice as a result of which price lists for window glass to "carload lot buyers" were published exclusively by respondent National Glass Distributors' Association, and distributed only by the members of said association.

4. A policy and practice by which all "carload lot buyers" and other buyers except those classified as "quantity buyers" and placed on the "quantity buyers" list were required and compelled to purchase window glass from such so-called "quantity buyers" or from respondent manufacturers through such "quantity buyers."

5. A policy and practice by which all "carload lot buyers" and other buyers except those classified as "quantity buyers" were required and compelled to pay up to $7\frac{1}{2}\%$ more for window glass of the same grade and quality than the price quoted to and paid by those classified as "quantity buyers."

6. A policy and practice of agreeing that on sales of window glass to carload lot buyers, the manufacturers were to receive $2\frac{1}{2}\%$ and the quantity buyers 5% over the quoted list price charged quantity buyers by the manufacturers.

7. A policy and practice by which sales of window glass by those classified as "quantity buyers" were confined to a restricted trade area of the particular authorized "quantity buyer" and such particular "quantity buyer" accepted no orders or rarely accepted orders for window glass for transmission to the manufacturer from dealers located outside a designated trade area.

8. A policy and practice by which admittance to such list of "quantity buyers" was granted or denied only after complete investigation by the secretary of the respondent Window Glass Manufacturers

Association to determine eligibility as quantity buyers, the final decision being made by the association.

9. A policy and practice of precluding any two or more dealers from making pooled purchases of window glass in carload lots.

10. A policy and practice of precluding a carload lot buyer of window glass from reconsigning or diverting said carload to some other dealer.

11. A policy and practice of supervising and directing the practices and policies of dealers reselling window glass to other dealers and consumers, and generally of controlling distribution and outlets for such product.

12. Generally, a policy and practice which tended to lessen and restrain competition in the sale and distribution of window glass in the United States.

PAR. 14. That for the purpose of making such sales practices and policies and pricing methods effective, and of requiring compliance therewith and observance thereof by all dealers in window glass throughout the United States, said respondent associations, acting through their officers, directors and executive committee, and with the knowledge, consent, approval, and active cooperation and participation of respondent members and other members, and the individual respondents named herein or one or more of them, acting in furtherance of and in pursuance of the general plan, undertaking, conspiracy, and policy, have done the following things:

1. Formulated, adopted, followed, carried out, enforced, imposed, and made effective the policies, practices, and methods described in the preceding paragraph.

2. Held official and unofficial meetings of said associations at which the policies and practices hereinabove described were discussed, adopted, and agreed to, and issued and distributed bulletins, circulars, letters, and other printed matter, and distributed the same among the members of said association and others, announcing the adoption of and the intention to adhere to the policies and practices referred to.

3. Classified all buyers of window glass from manufacturers throughout the United States either as "quantity buyers" or "carload lot buyers."

4. Each of respondent manufacturers has published a single window glass price list quoting prices to approved "quantity buyers" only and issued said price lists to such "quantity buyers" exclusively.

5. Respondent National Glass Distributors Association has issued price lists for window glass to "carload lot buyers" for glass to be purchased from respondent manufacturers.

6. Respondent manufacturers have refused to sell window glass in carload lots directly to any buyer except approved "quantity buyers."

7. Respondents generally have issued bulletins, circulars and other printed matter listing the names and addresses of authorized "quantity buyers" and setting forth the plan and policy which would be followed in marketing window glass to dealers in the United States.

8. Respondents generally have sought and obtained promises and assurances of cooperation from one another in establishing and making effective the sales practices, policies and pricing methods hereinabove described.

9. Respondent manufacturers have indirectly sold window glass to numerous "carload lot buyers" at prices $7\frac{1}{2}\%$ more than the prices at which sales were made to "quantity buyers" for glass of the same grade and quantity.

10. Respondent manufacturers have referred orders for carloads of window glass from "carload lot buyers" to so-called "quantity buyers" and filled such orders by direct shipment to the carload lot buyer with a $2\frac{1}{2}\%$ mark-up over the manufacturers' list price, and with the understanding that said quantity buyers would add and receive an additional mark-up of 5%.

11. Respondent distributors have induced respondent manufacturers to grant them discriminatory prices as hereinbefore stated and have received and accepted such discriminatory prices.

12. Respondents generally have exchanged information with reference to their respective businesses and activities which was used in furtherance of the policies and methods referred to.

13. Respondents generally have supervised and investigated the practices and policies of dealers engaged in reselling window glass to other dealers and to consumers and the prices at which such product was so resold to effectuate the practices herein found to have been used; and have prevented some dealers who did not conform to their practices, policies and prices from buying window glass at the manufacturers' list price or in carload lots, and have acted concertedly to control channels of distribution and to require dealers to conform to such practices and methods.

PAR. 15. The capacity, tendency and effect of said plan, agreement, combination, conspiracy, undertaking, policies and methods, and the said acts and practices of said respondents in pursuance thereof, are and have been:

1. To tend to concentrate in said quantity buyers the opportunity to purchase window glass from the manufacturers at the manufacturers' discount from the list price.

2. To standardize the prices at and conditions under which window glass is sold by the manufacturers in carload lots to other than those classified as quantity buyers.

3. To bring about an unlawful discrimination in the prices at which window glass is sold by the manufacturers to different purchasers.

4. To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the window glass trade and industry and to tend 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 operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

5. To tend to increase the cost to purchasers of such window glass.

6. To discriminate against small business enterprises which are engaged or desire to engage in selling or distributing window glass.

7. To tend to obstruct the establishment of new distributors of window glass.

8. To tend to lessen and restrain price competition among manufacturers in the sale of window glass in carload lots to other than quantity buyers.

9. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in window glass, into, through and from the various States of the United States; and to injure the competitors of individual distributor-respondents by unfairly diverting business and trade from them, and otherwise depriving them unfairly of competitive advantages which they would receive under conditions of free and open competition.

10. To prejudice and injure 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.

PAR. 16. All of the respondents herein named have since sometime prior to June 19, 1936, conspired and confederated together to bring about and have brought about and have made effective a policy and system whereby respondent manufacturers discriminate and have discriminated in price between different purchasers of window glass of like grade and quality, in the manner hereinabove set forth, with the effect of lessening competition between and among manufacturers in said line of commerce and with the effect of injuring, destroying and preventing competition between and among such

"quantity buyers" and such "carload lot buyers" and between and among the customers of such buyers purchasing such product for resale to consumers.

PAR. 17. In the course and conduct of their respective businesses as above described, respondent manufacturers since sometime prior to June 19th, 1936, have discriminated in price between different purchasers buying window glass of like grade and quality in interstate commerce for resale to dealers and consumers, by charging some of their said purchasers of window glass higher prices than those charged other of their said purchasers, competitively engaged one with the other in the resale of said products within the United States. Said discriminations consist in the imposition of a markup of $2\frac{1}{2}\%$ by the manufacturer upon all "carload lot buyers" over and above the manufacturers' list price at which window glass has been and is being sold to the so-called "quantity buyers."

PAR. 18. Respondent members of the National Glass Distributors' Association have knowingly induced said respondent manufacturers to so discriminate in price as set forth in the preceding paragraph hereof and have knowingly received such discriminations in price on purchases of window glass made by them.

PAR. 19. The general effect of said systematic discriminations in price so made by respondent manufacturers and induced and received by respondent distributors has been or may be substantially to lessen competition and tend to create a monopoly in the sale and distribution of window glass and to injure, destroy and prevent competition between and among respondent distributors and their competitors and between and among customers of each.

CONCLUSION

The aforesaid acts and practices of respondents have a dangerous tendency unduly to hinder competition in the window glass trade throughout the United States, 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 26th, 1914; and the acts and practices set forth in paragraphs 16 to 19 inclusive of the said respondents are in violation of Section 2 (a) and Section 2 (f) of said Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October

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15, 1914, as amended (U. S. C. Title 15, Section 13), and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on October 26, 1937, by respondents, admitting all the material allegations of the complaint, except those contained in sub-paragraphs 14 and 15, paragraph 13, sub-paragraphs 11 and 16 of paragraph 14 and sub-paragraph 10 of paragraph 15 of said complaint, for the purpose of this proceeding only, and waiving the taking of further evidence and 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"; and the provisions of an Act of Congress approved June 19, 1936 entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Section 13), and for other purposes."

It is ordered, That respondent, The Window Glass Manufacturers Association, and its officers, directors, and members, in connection with the manufacture, sale and distribution of window glass in interstate commerce by respondents, Pittsburgh Plate Glass Company, Libbey-Owens-Ford Glass Company, American Window Glass Company, Fourco Glass Company, Harding Glass Company, Adamston Flat Glass Company, Rolland Glass Company, Scohy Sheet Glass Company, and Blackford Window Glass Company, or either or any of them, forthwith cease and desist:

1. From combining or conspiring among themselves or with other respondents to engage in, or pursuant to any such combination or conspiracy, directly or indirectly, from engaging in, any of the following acts, practices, or policies:

1. Formulating, adopting, or using any standard of classification of jobbers, wholesalers, or distributors dealing in window glass to be used as a test of eligibility for such dealers to purchase window glass from the manufacturers thereof;

2. Compiling or publishing any list of jobbers, wholesalers, or distributors for use by members of said Window Glass Manufacturers Association or other manufacturers for the purpose of accomplishing anything prohibited by this order.

3. Investigating, or collecting or disseminating information concerning the pricing policies, trade practices, facilities, or function of any jobber, wholesaler, or distributor dealing in window glass for the purpose of accomplishing anything prohibited by this order.

4. Collectively selecting the customers to whom members of said Window Glass Manufacturers Association will make direct sales of window glass;

5. Hindering, obstructing or preventing any jobber, wholesaler, or distributor from freely purchasing or obtaining window glass usually handled by members of the said Window Glass Manufacturers Association in the course of their business, or from freely competing with the members of the National Glass Distributors Association or others engaged in similar business;

6. Hindering, obstructing, or preventing two or more jobbers, wholesalers, or distributors from pooling purchases of window glass, or from reconsigning or diverting purchases of window glass;

7. Hindering, obstructing or preventing any jobber, wholesaler or distributor from purchasing or ordering window glass in carload lots from any manufacturer and directing the manufacturer to ship it to any desired designated point.

8. Giving oral, written, or other notices or communications to jobbers, wholesalers, or distributors dealing in window glass that any business concern is not entitled to purchase and obtain window glass upon the same terms and conditions usually accorded by members of the Window Glass Manufacturers Association to their customers generally.

9. Hindering, obstructing, or preventing any jobber, wholesaler, or distributor dealing in window glass from dealing with one or more of the members of the Window Glass Manufacturers Association upon as favorable terms and conditions as are usually accorded by said manufacturers to their customers generally.

10. Cooperating with or aiding any jobber, wholesaler, or distributor in putting into effect any understanding or agreement to add any amount to the manufacturer's price for window glass in carload lots for direct shipment in order to arrive at the invoice price of such glass to the purchaser thereof.

It is further ordered, That respondent, The National Glass Distributors Association, its officers, executive committee, and members, in connection with the purchase, sale and distribution of window glass in interstate commerce by the members of said Association, or either or any of them, forthwith cease and desist:

From combining or conspiring among themselves or with others, to engage in, or pursuant to any such combination or conspiracy,

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directly or indirectly, from engaging in, any of the following acts, practices or policies:

1. Inducing, persuading, or compelling members of respondent Window Glass Manufacturers Association to, or themselves formulating, adopting or using any standard of classification of jobbers, wholesalers, or distributors dealing in window glass or any test of eligibility for such dealers to purchase window glass from the manufacturers thereof, or classifying jobbers, wholesalers, or distributors dealing in window glass as quantity buyers and carload buyers;

2. Compiling or publishing any list of jobbers, wholesalers, or distributors for use by members of said Window Glass Manufacturers Association or other manufacturers, or investigating, collecting, or disseminating information concerning the pricing policies, trade practices, facilities, or function of any jobber, wholesaler, or distributor dealing in window glass for the purpose of accomplishing anything prohibited by this order;

3. Agreeing upon any amount to be added by them to the manufacturers' price for window glass in carload lots for direct shipment, in order to arrive at the invoice price of such glass to the purchaser thereof;

4. Coercing or compelling certain jobbers, wholesalers, or distributors dealing in window glass to purchase window glass in carload lots from or through other competing jobbers, wholesalers, or dealers;

5. Hindering, obstructing, or preventing any jobber, wholesaler, or distributor from freely purchasing or obtaining window glass usually handled by members of said Window Glass Manufacturers Association in the course of their business, or from freely competing with the members of the National Glass Distributors Association or others engaged in similar business;

6. Aiding, assisting or encouraging members of the Window Glass Manufacturers Association collectively to select the customers to whom they will make direct sales of window glass in carload lots;

7. Hindering, obstructing, or preventing two or more jobbers, wholesalers, or distributors from pooling purchases of window glass, or from reconsigning or diverting purchases of window glass;

8. Giving oral, written, or other notices or communications to manufacturers of window glass, that certain business concerns are not entitled to purchase and obtain window glass upon the same terms and conditions usually accorded by manufacturers to their customers generally;

9. Hindering, obstructing, or preventing any jobber, wholesaler, or distributor dealing in window glass from dealing with one or more of the members of the Window Glass Manufacturers Associa-

tion upon as favorable terms and conditions as are usually accorded by said manufacturers to their customers generally;

10. Inducing, persuading, or compelling any manufacturer of window glass to charge any jobber, wholesaler, or distributor more for window glass than the price usually accorded their customers generally;

11. Inducing, persuading, or compelling any jobber, wholesaler, or distributor to refrain from selling or accepting orders for window glass in carload lots for shipment to points outside of a certain restricted trade territory, designated or agreed upon.

It is further ordered, That respondents, Pittsburgh Plate Glass Company, Libbey-Owens-Ford Glass Company, American Window Glass Company, Fourco Glass Company, Harding Glass Company, Adamston Flat Glass Company, Rolland Glass Company, Scohy Sheet Glass Company, and Blackford Window Glass Company forthwith cease and desist from:

1. Discriminating in price between carload lot purchases of window glass, to whom shipment is made direct from the factory, by charging some of such purchasers, or causing them to be charged, two and one-half percent more than the price charged other of such purchasers for window glass of the same grade and quality, and of comparable strength, sizes, and kinds.

2. Discriminating in price between carload lot purchasers of window glass, to whom shipment is made direct from the factory, by charging some of such purchasers any amount more than the price charged other of such purchasers for window glass of the same grade and quality and of comparable strength, size and kinds, in violation of Section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, but the foregoing is not intended to prevent the jobbing warehouses of a manufacturer, whose functions parallel those of an independent jobber, from selling carload lots on a brokerage basis at prices commonly obtained by such independent jobbers.

It is further ordered, That respondent members of the National Glass Distributors Association forthwith cease and desist from:

1. Receiving or accepting any discriminatory price or the benefit of any discrimination in price prohibited by the preceding section of this order;

2. Inducing or attempting to induce any manufacturer of window glass to discriminate in price in the manner prohibited by the preceding section hereof.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a

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report in writing setting forth in detail the manner and form in which they have complied with this order.

ORDER DISMISSING AS TO CERTAIN RESPONDENTS

This matter coming on to be heard by the Commission upon the record, and it appearing to the Commission that respondents Frank Bastin and S. C. Gilmore, named in the complaint in this proceeding, are deceased and that the Commission being fully advised in the premises;

It is ordered, That the complaint herein as against said respondents Frank Bastin and S. C. Gilmore be, and the same hereby is, dismissed.

IN THE MATTER OF
THE WM. M. HARDIE COMPANY

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

Docket 3209. Complaint, Aug. 21, 1937—Decision, Nov. 1, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve, or which were designed to or might involve, use of a lottery scheme when sold and distributed to ultimate consumers thereof, and which were composed of two packages separately packed, as a subterfuge and in an effort to avoid effect of selling candy to be distributed by lottery scheme, and sometimes separately billed, but with knowledge and intent that assortments might be, and in many cases would be, resold at retail by lottery scheme, and containing, respectively, number of small penny pieces of uniform size and shape, a few of which had centers of a color different from that of those of majority, and number of larger pieces or bars of candy, to be given without charge to those securing, by chance, one of said penny pieces, colored center of which differed, as aforesaid, from that of the majority of pieces—

Sold, to wholesalers, jobbers, and 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, and by which they did conduct, 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 as above described, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said product in preference to candy offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof as above described, and were thereby induced to purchase its candy, so packed and sold by it, in preference to that offered and sold by its competitors who do not use same or equivalent method, and with tendency and capacity, because of said game of chance, to divert trade and custom from its competitors as aforesaid, exclude from candy trade all competitors who are unwilling to and do not use such or an equivalent method as unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors as do use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential competitors who do not adopt and use such or an equivalent method:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission

Bulkley, Hawthurst, Inglis & Sharp, of Cleveland, 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 The Wm. M. Hardie 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. The respondent, The Wm. M. Hardie Company, is a corporation organized and doing business under the laws of the State of Ohio, with its principal office and place of business located at 1584 East 19th Street, Cleveland, Ohio. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of candy to wholesale dealers and jobbers and to retail dealers 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 the city of Cleveland, State of Ohio, to purchasers thereof in Ohio and in other States of the United States at their respective points of location. 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, 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 business, as described in paragraph 1 hereof, the respondent sells and has sold to wholesale dealers and jobbers and retail dealers various assortments of candy so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and dis-

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tributed to the ultimate consumers thereof. Said assortments are composed of two separate packages of candy. One package contains a number of small pieces of candy of uniform size and shape, the majority of which have centers of the same color, but a small number of which have centers of a different color. The other package contains a number of larger pieces or bars of candy, the number thereof being approximately the same as the number of small pieces of candy of uniform size and shape with centers colored differently from the majority in the package first above described. The color of the centers of the small pieces of candy in the package first above described is effectively concealed from customers and prospective customers until a selection has been made and the piece of candy selected broken open. The said pieces of candy of uniform size and shape retail at the price of 1¢ each, but the purchaser who procures one of the said candies having a center colored differently from the majority is entitled to receive and is to be given free of charge one of the larger pieces or bars of candy contained in the second package referred to above. The aforesaid purchasers of said candy of uniform size and shape, who procure a piece of candy having a center colored differently from the majority, thus procure one of the said larger pieces or bars of candy wholly by lot or chance.

While the two packages above described are sometimes billed separately, the respondent sells, in practically all instances, the same number of each to its customers. The purpose of respondent in so packing this assortment in separate packages is a subterfuge and an effort to avoid the effect of selling candy to be distributed by a lottery scheme, and the respondent is placing in commerce merchandise to be sold by means of a lottery scheme. Respondent packs this assortment so that it may be resold at retail by a lottery scheme, and respondent knows that in many cases it will be and is sold by means of a lottery scheme.

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 products 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 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 larger pieces or 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 candy trade 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 an equivalent method. 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 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. The aforementioned method, acts, and practices of 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, 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 21, 1937, issued and on August 23, 1937, served its complaint in this proceeding upon the respondent, The Wm. M. Hardie Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 29, 1937, respondent filed its answer dated September 15, 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, this 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 matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, The Wm. M. Hardie Company, is a corporation organized and doing business under the laws of the State of Ohio, with its principal office and place of business located at 1584 East 19th Street, Cleveland, Ohio. Respondent is now and for several years last past has been, engaged in the manufacture, sale, and distribution of candy to wholesale dealers and jobbers and to retail dealers 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 the city of Cleveland, State of Ohio, to purchasers thereof in Ohio and in other States of the United States at their respective points of location. 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, 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 business, as described in paragraph 1 hereof, the respondent has sold to wholesale dealers and jobbers and to retail dealers various assortments of candy so packed and assembled as to involve, or which were designed to or might involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof. Said assortments were composed of two separate packages of candy. One package contained a number of small pieces of candy of uniform size and shape, the majority of which had centers of the same color but a small number of which had centers of a different color. The other package contained a number of larger pieces or bars of candy, the number thereof being approximately the same as the number of small pieces of candy of uniform size and shape with centers colored differently from the majority in the package first above described. The color of the centers of the small pieces of candy in the package first above described was effectively concealed from customers and prospective customers until a selection had been made and the piece of candy selected broken open. The said pieces of candy of uniform size and shape retailed at the price of 1¢ each, but the purchaser who procured one of the said candies having a center colored differently from the majority was entitled to receive and was to be given free of charge one of the larger pieces or bars of candy contained in the second package referred to above. The aforesaid purchasers of said candy of uniform size and shape, who procured a piece of candy having a center colored differently from the majority, thus procured one of the said larger pieces or bars of candy wholly by lot or chance.

While the two packages above described were sometimes billed separately, the respondent sold in practically all instances the same number of each to its customers. The purpose of respondent in so packing said assortment in separate packages was a subterfuge and an effort to avoid the effect of selling candy to be distributed by a lottery scheme, and the respondent was placing in commerce merchandise to be sold by means of a lottery scheme. Respondent packed this assortment so that it might be resold at retail by a lottery scheme, and the respondent knew that in many cases it would be and was sold by means of a lottery scheme.

PAR. 3. The wholesale dealers and jobbers to whom respondent sold its assortments resold the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sold direct exposed said assortments for sale and sold said candy to the purchasing public

in accordance with the aforesaid sales plan. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth; and said sales plan had the capacity and tendency of inducing purchasers thereof to purchase respondent's said 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 described involves a game of chance or the sale of a chance to procure larger pieces or 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 candy trade 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, sell or distribute candy in competition with respondent are unwilling to offer for sale or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy were attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and were thereby induced to purchase said candy so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who do or did not use the same or an equivalent method. The use of said method by the respondent had the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do or did 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 in 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

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method by respondent had the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors, who do or did not adopt and use said method or an equivalent method.

The answer of the respondent states, and the Commission finds, that the respondent discontinued the sale and distribution of the assortments described in paragraph 2 hereof prior to the issuance of the said complaint.

CONCLUSION

The aforesaid method, acts and practices of the respondent, The Wm. M. Hardie Company, a corporation, 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 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 the 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 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, The Wm. M. Hardie Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alternation or rearrangement of the contents of such assortments, to conduct a lottery, gaming device,

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or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling, for sale to the public at retail, assortments of candy composed of two separate packages of candy, one package containing small pieces of candy of uniform size and shape having centers of different colors, and the other package containing larger pieces or bars of candy, which said larger pieces or bars of candy are to be given as prizes to the purchaser procuring a piece of candy having a center of a particular color from the first above described package.

It is further ordered, That the respondent, The Wm. M. Hardie Company, a corporation, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

D. GOLDENBERG, INC., IN ITS OWN NAME AND RIGHT
AND TRADING AS P. C. SALES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1810. Complaint, May 19, 1937¹—Decision, Nov. 2, 1937*

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve, or which were designed to or might involve use of a lottery scheme when sold and distributed to ultimate consumers thereof, and which included assortments composed of (1) number of penny pieces of chocolate covered candy of uniform size and shape, together with number of larger pieces of candy to be given as prizes to chance purchasers of one of a relatively small number of said penny pieces, color of centers of which differed from that of those of the majority, and also together with small package of candy to be given, likewise free of charge, to purchaser of last of said penny pieces in assortment; and (2) number of individually wrapped bars of uniform size, shape and quality, price of which was one cent, two cents, or three cents, as determined by figure contained on slip of paper enclosed as concealed within the individual wrappings of said various pieces—

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 and by which they did conduct, lotteries in the sale of such products in accordance with such plans, 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, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said products in preference to candy offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by its said methods and manner of packing same, and by element of chance involved in sale thereof, as above set forth, and thereby induced to purchase its said 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 and custom from its said competitors as aforesaid, exclude from said trade all competitors who are unwilling to and do not use such or equivalent methods as unlawful, lessen competition therein and tend to create a monopoly thereof in it and such other distributors of candy as do use same or equivalent method, and deprive purchasing public of benefit of free competition in trade in question, and eliminate

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from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use such or equivalent methods:
Held, That such methods, acts, and practices, under the conditions and circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition in commerce.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

Mr. William Ginsburg and *Mr. Isaac Ash*, of Philadelphia, Pa., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on May 1, 1930, issue its complaint herein charging and alleging that respondent herein was and had been guilty of 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"; 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 D. Goldenberg, Inc., a corporation, in its own name and right and trading as P. C. Sales Company, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized and doing business 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. Respondent is, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States. Respondent causes and has caused its said products when sold to be transported from its principal place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof in Pennsylvania and in other States of the United States at their re-

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spective points of location. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candy between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers assortments of candy so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof.

(a) One of said assortments of candy is composed of a number of pieces of chocolate covered candy of uniform size and shape, together with a number of larger pieces of candy and a small package of candy, which larger pieces of candy and small package of candy are to be given as prizes to purchasers of said chocolate covered candies in the following manner: the majority of the said chocolate covered candies in said assortment have centers of the same color, but a small number of said chocolate covered candies have centers of a different color. The said pieces of candy of uniform size and shape in said assortment retail at the price of 1¢, but the purchaser who procures one of the said candies having a center of a color different from the majority of said candy is entitled to receive and is to be given free of charge one of the said larger pieces of candy, and the purchaser of the last piece of the aforesaid chocolate covered candy of uniform size and shape in said assortment is entitled to receive and is to be given free of charge the small package of candy heretofore referred to. The aforesaid purchasers of said candy, who procure a piece of candy having a center colored differently from the majority of the said pieces of candy, and the purchaser of the last piece of candy in said assortment, are thus to procure one of the said larger pieces of candy or the small package of candy wholly by lot or chance.

(b) Another assortment of candy which respondent was formerly distributing was composed of a number of candy bars of uniform size, shape, and quality, and each of said bars of candy was contained within a wrapper. Also, within each of said wrappers was a slip of paper which had printed thereon the retail price at which said piece of candy was to be sold to the consuming public. Said printed slip was effectually concealed from consumers and prospective consumers until a purchase had been made and the wrapper removed. The

retail prices printed on said slips were 1¢, 2¢, or 3¢, and these were the prices which the purchaser paid the retail merchant. The ultimate consumers thus procured bars of candy of uniform size, shape and quality at a price of 1¢, 2¢, or 3¢, the said price being determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells and has sold its assortments resell the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose and have exposed said assortments for sale and sell and have sold 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; and said sales plans have the capacity and tendency 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 larger pieces of candy or small packages of candy or bars of candy at a price less than 3¢. The use by respondent of said methods in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said methods, 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 methods 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 candy trade competitors who do not adopt and use the same methods or equivalent or similar methods 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 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. 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 equivalent methods; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said candy trade and to tend to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods by respondent has the tendency and capacity 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.

PAR. 6. The aforementioned methods, acts and practices of 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, 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 19, 1937, issued and on May 20, 1937, served its amended and supplemental complaint in this proceeding upon the respondent, D. Goldenberg, Inc., a corporation in its own name and right and trading as P. C. Sales Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On September 30, 1937, respondent filed its answer in which answer it admitted all the material allegations of the amended and supplemental complaint to be true and stated that it waived hearing on the charges set forth in said amended and supplemental 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 amended and supplemental complaint. Thereafter, this proceeding regularly came on for final hearing before the Commission

on the said amended and supplemental complaint and the answer 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. Respondent is a corporation organized and doing business 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. Respondent is, and for several years last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers located at points in the various States of the United States. Respondent causes and has caused its said products when sold to be transported from its principal place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof in Pennsylvania and in other States of the United States at their respective points of location. 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, the respondent sold to wholesale and retail dealers assortments of candy so packed and assembled as to involve, or which were designed to or might involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof.

(a) One of said assortments of candy was composed of a number of pieces of chocolate covered candy of uniform size and shape, together with a number of larger pieces of candy and a small package of candy, which larger pieces of candy and small package of candy were given as prizes to purchasers of said chocolate covered candies in the following manner: The majority of the said chocolate covered candies in said assortment had centers of the same color, but a small number of said chocolate covered candies had centers of a different color. The said pieces of candy of uniform size and shape in said assortment retailed at the price of 1¢, but the purchaser who procured one of the said candies having a center of a color

different from the majority of said candy was entitled to receive and was to be given free of charge one of the said larger pieces of candy, and the purchaser of the last piece of the aforesaid chocolate covered candy of uniform size and shape in said assortment was entitled to receive and was to be given free of charge the small package of candy heretofore referred to. The aforesaid purchasers of said candy, who procured a piece of candy having a center colored differently from the majority of the said pieces of candy, and the purchaser of the last piece of candy in said assortment, were thus to procure one of the said larger pieces of candy or the small package of candy wholly by lot or chance.

(b) Another assortment of candy which respondent was formerly distributing was composed of a number of candy bars of uniform size, shape, and quality, and each of said bars of candy was contained within a wrapper. Also, within each of said wrappers was a slip of paper which had printed thereon the retail price at which said piece of candy was to be sold to the consuming public. Said printed slip was effectually concealed from consumers and prospective consumers until a purchase had been made and the wrapper removed. The retail prices printed on said slips were 1¢, 2¢, or 3¢, and these were the prices which the purchaser paid the retail merchant. The ultimate consumers thus procured bars of candy of uniform size, shape, and quality at a price of 1¢, 2¢, or 3¢, the said price being determined wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sold its assortments resold the same to retail dealers, and said retail dealers and the retail dealers to whom respondent sold direct have exposed said assortments for sale and have sold said candy to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plans hereinabove set forth; and said sales plans had the capacity and tendency 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 described involves a game of chance or the sale of a chance to procure (a) larger pieces of candy or small packages of candy, or (b) bars of candy at a price less than 3¢. The use by the respondent of said methods in the sale of candy, and the sale of candy by and through the use thereof and by the aid of said methods, is a practice of the sort which the common law and crim-

inal 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 methods 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 candy trade competitors who do not adopt and use the same methods or equivalent or similar methods 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 are unwilling to offer for sale or sell candy so packed and assembled as above described or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy were attracted by respondent's said methods and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and were thereby induced to purchase said candy so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who do or did not use the same or equivalent methods. The use of said methods by the respondent had the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do or did 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 because the same are unlawful; to lessen competition in said candy trade and to tend to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods by respondent had the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors who do or did not adopt and use said methods or equivalent methods.

The answer of the respondent states, and the Commission finds, that the respondent discontinued the sale and distribution of the assortments described in paragraph 2 hereof prior to the filing of its answer.

CONCLUSION

The aforesaid methods, acts and practices of the respondent, D. Goldenberg, Inc., a corporation in its own name and right and trading as P. C. Sales Company, under the conditions and circum-

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stances 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 within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended and supplemental complaint of the Commission and the answer of the respondent, admitting all the material allegations of the amended and supplemental 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 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, D. Goldenberg, Inc., a corporation, in its own name and right and trading as P. C. Sales Company, or trading under any other name, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size and shape having centers of different colors, together with larger pieces of candy and a small package of candy, which said larger pieces of candy and small package of candy are to be given as prizes to the purchaser procuring a piece of candy having a center of a particular color.

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4. Packing or assembling in the same package or assortment of candy for sale to the public at retail, bars of candy of uniform size, shape and quality containing within their wrappers tickets or printed slips bearing different prices.

It is further ordered, That the respondent, D. Goldenberg, Inc., a corporation 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 the order to cease and desist hereinabove set forth.

Complaint

IN THE MATTER OF
HOFFMAN BEVERAGE COMPANY

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

Docket 2819. Complaint, May 26, 1936—Decision, Nov. 2, 1937

Where a corporation engaged in sale of beer, subjected to treatment and process making pasteurization unnecessary, and in distribution of said product in trade and commerce among the various States and in the District of Columbia, in substantial competition with those engaged in similar sale and distribution of such product—

Falsely and misleadingly disparaged products of competitors through representing, in advertising of its said product, that "Heat treating beer during bottling operations spoils the fresh taste," in conjunction with statement that such treating "is necessary in all other American breweries" except its own, and that its product was only unpasteurized bottled beer in America and through such label statements as that, due to avoidance of pasteurization, as above noted, "its fine vat quality is fully retained"; facts being that heat treating does not spoil fresh taste of properly pasteurized beer, as now treated pasteurization flavor is avoided, and ordinary consuming public would not be able to detect difference in taste due to pasteurization between pasteurized and other beer;

With effect of misleading and deceiving dealers and purchasing public into belief that beer products of its competitors were inferior in quality, purity or taste to its own, and with result that such dealers and purchasing public were induced, in reliance upon truth of its aforesaid representations, to purchase its said beer in preference to other products which were competitive as to price, quality, taste, and purity, and with effect of thereby diverting trade to it from its competitors who do not, in the aforesaid or any other manner, falsely disparage competitive 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* and *Mr. John W. Norwood*, trial examiners.

Mr. PGad B. Morehouse for the Commission.

Mr. Walter H. Free of Hoguet, Neary & Campbell, of New York City, and *Mr. Edwin L. Gidley*, 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 Hoffman Beverage Company, a corporation, hereinafter referred to as

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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 1913, 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 402 Grove Street, in the city of Newark, in said State. It now is, and since July 1934 has been, engaged in the sale and distribution of beer in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business as aforesaid it causes said beer to be bottled and, when sold, to be shipped and transported from its place of business in Newark, N. J., 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 sale and distribution of beer in trade and 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, in soliciting the sale of and selling its beer, has falsely disparaged the products of its aforesaid competitors through publication and dissemination of the following statements, to wit:

Heat-treating beer during bottling operations spoils the fresh taste. This is necessary in all other American breweries except Hoffman.

The vat-fresh taste of Hoffman Bottled Beer is due to the fact that Hoffman Beer is not heat-treated after bottling. Protection from impurities at every step preserves the fine vat-fresh flavor by making pasteurization unnecessary. You taste the difference at the first sip! The only unpasteurized bottled beer in America.

The difference in taste between draught beer and the usual bottled beer is due chiefly to the fact that bottled beer—with a single exception—is pasteurized (heat-treated) in the bottle * * *

Pasteurization affects the taste of beer.

Hoffman Beer is not pasteurized.

On the labels attached to the bottles in which respondent's beer is sold appears the statement:

Because of extraordinary biological control pasteurizing this beer is avoided. Thus its fine vat quality is fully retained.

By means of the foregoing statements respondent represents that the beer sold by its competitors is stale and inferior in quality, purity, and taste, and in other ways less desirable for human consumption than is the beer of respondent, when in truth and in fact such is not the case.

PAR. 3. The representations by respondent, as set forth in the foregoing paragraph hereof, and each of them, have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the beer products of respondent's competitors are inferior in quality, purity and taste to the beer of respondent, and such dealers and purchasing public, relying upon the truth of the aforesaid representations, are thereby induced to purchase Hoffman Beer in preference to other beer products which are competitive as to price, quality, taste, and purity, thus diverting trade to respondent from its competitors who do not in the aforesaid or any other manner falsely disparage competitive products, and thereby respondent does substantial injury to substantial competition in interstate commerce.

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 May 26, 1936, issued, and on May 27, 1936, served its complaint in this proceeding upon respondent Hoffman Beverage Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by PGad B. Morehouse, attorney for the Commission, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Walter H. Free, attorney for the respondent, before John W. Norwood, an examiner of the Commission duly designated to take testimony and receive evidence in the place and stead of John L.

Hornor; 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, Hoffman Beverage Company, is a corporation organized in 1911, 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 402 Grove Street, in the city of Newark, in said State.

It is now, and since August 1934, has been, engaged in the sale and distribution of beer in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business as aforesaid, it causes said beer to be bottled and, when sold, to be shipped and transported from its place of business in Newark, N. J., 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 sale and distribution of beer in trade and 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, in soliciting the sale of and selling its beer, has made, through publication of advertisements, the following statements:

1. Heat treating beer during bottling operations spoils the fresh taste. This is necessary in all other American breweries except Hoffman;

2. The vat-fresh taste of Hoffman Bottled Beer is due to the fact that Hoffman Beer is not heat treated after bottling. Protection from impurities at every step preserves the fine vat-fresh flavor by making pasteurization unnecessary. You taste the difference at the first sip! The *only* unpasteurized bottled beer in America;

3. The difference in taste between fine draught beer and the usual bottled beer is due chiefly to the fact that bottled beer—*with a single exception*—is pasteurized (heat-treated) in the bottle;

4. Pasteurization affects the taste of beer ;
5. Hoffman Beer is *not* pasteurized ;

On the labels attached to the bottles in which the respondent's beer is sold appears the statement :

6. Because of extraordinary biological control, pasteurizing this beer is avoided. Thus its fine vat quality is fully retained.

The statement contained in subparagraph (1) was not made by respondent subsequent to March, 1935, and was made as a one-time insertion in approximately eight papers, including the New York "Herald Tribune," the said papers having interstate circulation. Statement (2) appeared about May 29th, 1935, in the New York "Journal," "World," "Sun," the Newark "News," and other papers. Statements (3), (4), (5), or (6) were contained in advertisements published in the New York "World Telegram," the Newark, N. J., "Star-Eagle," and other papers, statement (6) being shown on the reproduction of the bottle label appearing in the advertisements.

Respondent's representation, (1), that "heat treating beer during bottling operations spoils the fresh taste" and that "this is necessary in all other American breweries except Hoffman," was and is contrary to fact so far as it might be construed to convey the meaning that all other bottled beer than Hoffman's was stale or of such inferior quality, purity, or taste as to be less fit for human consumption than respondent's beer. It was shown by experts, and is so found, that heat-treating does not ordinarily spoil the fresh taste of beer but does so only when the pasteurization is improperly done by the application of too much heat. Thermostatic control is employed in modern brewing to keep uniform temperatures and prevent spoiling. Beer is now treated in such a way as not to give a pasteurization flavor.

With respect to respondent's representation (2) above, which in substance is that the absence of pasteurization or heat-treating produces a vat-fresh taste in respondent's beer that can be distinguished "with the first sip" and that respondent's is the only unpasteurized bottled beer in America, it was shown (a) that the distinction between pasteurized and unpasteurized beer could not ordinarily be detected by taste, although experts in the science of beer making, notably those in Germany and France, agree that such a difference is appreciable. When beer is improperly pasteurized by the application of too much heat there is a "bread taste," but when pasteurization is properly done the taste is not affected adversely. There is a difference in taste between bottled and draught beer which is not due to pasteurization or the lack of it. Prior to thirty or thirty-five years ago pasteurization affected the taste of beer, such effect

being known as a "pasteurized taste," but that has not been so in recent years. It was agreed that respondent's product, up to the time of the publication of the above advertisements, was the only unpasteurized bottled beer produced in America. Since that date other unpasteurized beers have appeared. Draught beer is not pasteurized.

PAR. 3. That the implication arising from respondent's concurrent use of the representations hereinbefore set out are disparaging to competitive beer products is apparent from the advertisements themselves as well as shown by the testimony to be false or misleading insofar as they might be construed to disparage competing products. By the use of a process known as the Nathan System, respondent's beer is subjected to a filtration treatment whereby yeast and other organisms which might result in later spoiling of the beer after bottling, are removed, and it is not necessary to pasteurize it. At the time of the appearance of the above advertised claims, all other breweries than Hoffman's subjected their beer, after bottling, to pasteurization, i. e., a heat treatment of approximately 145° F., for the purpose of killing the yeast and other organisms so that the beer would keep indefinitely. The Commission finds from the evidence that while some experts might be able to detect a difference in taste due to pasteurization between pasteurized beer and other beer, the ordinary consuming public would not be able to do so.

PAR. 4. The representations by respondent, as set forth in the foregoing paragraph hereof, and each of them, have the capacity and tendency to and do mislead and deceive dealers and the purchasing public into the belief that the beer products of respondent's competitors are inferior in quality, purity or taste to the beer of respondent, and such dealers and purchasing public, relying upon the truth of the aforesaid representations, are thereby induced to purchase Hoffman Beer in preference to other beer products which are competitive as to price, quality, taste and purity, thus diverting trade to respondent from its competitors who do not in the aforesaid or any other manner falsely disparage competitive products, and thereby respondent does substantial injury to substantial competition in interstate commerce.

PAR. 5. The record in this case shows that since 1935 respondent has not repeated the disparaging statements set forth, but in this proceeding it has asserted its legal right to do so, wherefore the Commission can have and has no assurance whatever that in the absence of any inhibition, respondent might not resume such practice.

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CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence, taken before John L. Hornor and John W. Norwood, 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 PGad B. Morehouse, counsel for the Commission, and by Walter H. Free, 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, Hoffman Beverage Company, a corporation, its officers, agents, representatives, and employees, in the sale and distribution of beer in interstate commerce and in the District of Columbia, do cease and desist from:

Representing that "Heat treating beer during bottling operations spoils the fresh taste" in conjunction with the statement that such heat treating "is necessary in all other American breweries except Hoffman," or in any other manner falsely or misleadingly disparaging competing products.

Provided further, that nothing herein contained shall restrict respondent from making any legitimate claims regarding the desirability or distinctive taste of its beer so long as such claims are not coupled with false or misleading disparaging references to competing products.

It is further ordered, That said respondent shall, within 60 days from the date of service of this order upon it, make a report or reports to the Commission in writing, showing the manner and form of its compliance herewith.

IN THE MATTER OF
EUCATHOL COMPANY, INC.¹

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

Docket 3069. Complaint, Mar. 4, 1937—Decision, Nov. 3, 1937

Where a corporation engaged in manufacture and sale of "Eucathol," compound or medicine for use in treatment of coughs, colds, burns, sunburn, insect bites, hay fever, asthma, influenza, and other afflictions, and as after-shaving cream, through rubbing or massaging same on flesh or through inhalation of vapors thereof, in substantial competition with those engaged in sale or offer to general public of compounds, medicines, salves, and ointments used for purposes for which its said preparation was offered—

Represented, in advertising its said product in newspapers and periodicals of general circulation, and through radio broadcasts, and in pamphlets, and through printed testimonials, photographs, and pictures and legends on cartons containing said compound, and in circulars enclosed in cartons thereof, and through other advertising matter, that use of such "Eucathol" would prevent or cure, or was beneficial in treatment of, insect bites, sunburn, piles, hemorrhoids, asthma, hay fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, influenza, pneumonia, and other ailments, facts being said statements and representations as to the efficacy thereof in the treatment of piles, hemorrhoids, asthma, hay fever, catarrh, influenza (flu) or pneumonia were each and all false and misleading;

With tendency and capacity to induce members of public and prospective purchasers to form mistaken and erroneous belief that said statements and representations were true, and with result that such purchasing public, acting on such erroneous belief, was induced to buy, and bought, its said products, and trade was thereby unfairly diverted to it from its said competitors; to the injury of competition in commerce among the States, and to the injury of the public:

Held, That such acts and practices in sale, offer and advertisement of aforesaid product as a preventive or cure, or as beneficial in treatment of piles, hemorrhoids, asthma, hay fever, catarrh, influenza (flu) or pneumonia, were to the prejudice of the public and competitors and constituted unfair methods of competition in commerce.

Mr. E. J. Hornibrook for the Commission.

Stanard, Carey & Stanard, of Shawnee, Okla., 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 Euca-

¹ See original findings and order as of June 29, 1937, in this matter, at page 313, supra.

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thol Company, Inc., a corporation, 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 and states its charges in that respect as follows:

PARAGRAPHS 1. Respondent, The Eucathol Company, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located in the city of Shawnee, in said State. Respondent is now, and has been for several years last past, engaged at said location in the manufacture and sale of a compound for use in the treatment of coughs, colds, scalds, burns, sunburn, insect bites, hay fever, asthma, and other human afflictions. Said compound is also sold for use as an after shaving cream. Said compound is put up in containers and is to be applied by rubbing or massaging it onto the flesh, or by inhaling its vapors. Respondent has designated said compound as "Eucathol." Respondent sells said product to wholesale druggists who sell said product to retail druggists, and also direct to retail druggists. The retail druggists sell said product directly to the consumers thereof.

In the course and conduct of said business respondent ships, or causes to be shipped or transported, said product when so sold from the city of Shawnee in the State of Oklahoma to said wholesale and retail druggists, many of whom are located in points in various States other than the State of Oklahoma. There is now, and has been during all of the times herein mentioned, a constant current of trade in said product so sold by said respondent 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 said business, respondent is now, and has been during all of the times herein mentioned, engaged in substantial competition with various corporations, firms, and individuals selling, or offering for sale, to the general public compounds, medicines, salves, and ointments and other remedies used for the purposes described in paragraph 1 hereof.

PAR. 3. In the course and conduct of the business as aforesaid, respondent, in soliciting the sale of and selling said products, has advertised the same in newspapers, magazines, periodicals of general circulation, by means of radio broadcasts, and in pamphlets, printed testimonials, and other printed matter. It has also made use of photographs, other pictures and legends on cartons containing said compound and in circulars inclosed in said cartons, and in other advertising media. In and through each and all of the advertising

media above enumerated, respondent has made, and is making, expressly or by implication, the following representations:

That the use of Eucathol will prevent and cure, or is beneficial in the treatment of: insect bites, sunburn, piles and hemorrhoids, asthma and hay fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, flu and pneumonia, and other ailments.

PAR. 4. The representations described and set forth in paragraph 3 above are false and misleading, in that the use of Eucathol will not prevent and cure, and is not beneficial in the treatment of, insect bites, sunburn, piles and hemorrhoids, asthma and hay fever, catarrh, colds, skin irritations, skin disorders, scalds and burns, flu and pneumonia, or other ailments or afflictions of the human body for which it is recommended by the respondent.

PAR. 5. Said statements and representations set forth in paragraph 3 so made by respondent have, and have had, the tendency and capacity to induce members of the public and prospective purchasers to form the mistaken and erroneous belief that said statements and representations are true, and, acting in such erroneous belief, the said purchasing public has been induced to purchase, and has purchased, respondent's product, thereby unfairly diverting trade to respondent from its said competitors, to the injury of competition in commerce among and between the various States of the United States, and to the injury of the public.

PAR. 6. The above alleged acts and practices 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 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 4th day of March 1937, issued and served its complaint in this proceeding upon respondent, Eucathol Company, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer, the Commission, by order entered therein, granted respondent's motion for permission to withdraw said answer and 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 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, made and entered its findings of facts and conclusion on the 29th day of June, A. D., 1937, and the Commission now being desirous of modifying its said findings, as is provided for under the provisions of said Act of Congress, makes this its modified findings as to the facts and conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, the Eucathol Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma, with its office and principal place of business located in the city of Shawnee, in said State.

Respondent is now, and has been for several years last past, engaged at said location in the manufacture and sale of a compound, or medicine, for use in the treatment of coughs, colds, scalds, burns, sunburn, insect bites, hay fever, asthma, influenza and other human afflictions. Said compound is also sold for use as an after-shaving cream. Said compound is put up in containers and is to be applied by rubbing or massaging it on the flesh, or by inhaling its vapors. Respondent has designated the said compound as "Eucathol." Respondent sells said product direct to retail druggists and to wholesale druggists, who also sell the same to retail druggists. The said retail druggists sell said product directly to the consumer thereof.

In the course and conduct of said business respondent ships, or causes to be shipped or transported, said product, when so sold, from the city of Shawnee in the said State of Oklahoma, to said wholesale and retail druggists, many of whom are located at points in various States other than the State of Oklahoma. There is now, and has been, during all of the times herein mentioned, a constant current of trade in said product so sold by said respondent 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 said business, respondent is now, and has been, during all of the times herein mentioned, engaged in substantial competition with various corporations, copartnerships, firms, and individuals, selling, or offering for sale to the general public, compounds, medicines, salves and ointments used for the purposes described in paragraph 1 hereof.

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PAR. 3. In the course and conduct of the business, as aforesaid, respondent, in soliciting the sale and selling said product has advertised the same in newspapers, magazines, periodicals of general circulation, by means of radio broadcasts, and in pamphlets, and by, in and through the use of printed testimonials and other printed matter, photographs, and other pictures and legends on cartons containing said compound, and in circulars enclosed in said cartons, and in and upon other advertising media. In and through each and all of the advertising media above enumerated respondent has made, expressly or by implication, the following representations:

That the use of "Eucathol" will prevent or cure, or is beneficial in the treatment of, insect bites, sunburn, piles, hemorrhoids, asthma, hay fever, catarrh, colds, skin irritations, scalds and burns, skin disorders, influenza, pneumonia, and other ailments.

PAR. 4. The use of "Eucathol" will not prevent or cure, nor is its use beneficial in the treatment of piles, hemorrhoids, asthma, hay fever, catarrh, influenza (flu), or pneumonia, nor is its use beneficial in the treatment of other human ailments, except in cases of head colds and the coughs associated therewith and in afflictions wherein a counter-irritant is indicated.

PAR. 5. The said statements and representations as to the efficacy of "Eucathol" in the treatment of piles, hemorrhoids, asthma, hay fever, catarrh, influenza (flu) or pneumonia are each and all false and misleading, and said statements so made by respondent with respect to such last-named afflictions have, and have had, a tendency and capacity to induce members of the public and prospective purchasers to form the mistaken and erroneous belief that said statements and representations are true, and, acting on such erroneous belief, the said purchasing public has been induced to purchase and has purchased respondent's said product, thereby unfairly diverting trade to respondent from its said competitors to the injury of competition in commerce among and between the various States of the United States and to the injury of the public.

CONCLUSION

The acts and practices of the respondent, Eucathol Company, Inc., a corporation, in selling, offering for sale, and advertising as aforesaid, the product "Eucathol" as a preventive or cure, or as beneficial in the treatment of piles, hemorrhoids, asthma, hay fever, catarrh, influenza (flu) or pneumonia, 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

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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 substitute answer filed herein, on the 1st day of May 1937, by respondent, admitting all of the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission, on the 29th day of June, A. D., 1937, having made its findings as to the facts and its conclusion that said respondent had violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and having issued its order to cease and desist on the said 29th day of June, A. D., 1937, and the Commission having on the 3rd day of November, A. D., 1937, modified its said findings of facts and conclusion, and now being desirous of modifying its order so as to conform with its said modified findings of facts and conclusion, and being advised in the premises,

It is ordered, That the said order to cease and desist be, and the same is hereby, modified to read as follows:

Respondent Eucathol Company, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of a pharmaceutical preparation now designated as "Eucathol" or in the sale and distribution of any other pharmaceutical preparation composed of substantially the same ingredients, whether sold under the name "Eucathol" or any other name, in interstate commerce or in the District of Columbia, forthwith cease and desist from:

Representing, directly or by implication, that said preparation will prevent or cure, or is beneficial in the treatment of, piles, hemorrhoids, asthma, hay fever, catarrh, influenza (flu) or pneumonia, or any other ailments, conditions, and afflictions of the human body, provided, however, that respondent is not hereby prohibited from representing that said preparation may be beneficial in the treatment of head colds, and coughs associated therewith, or in the treatment of other conditions wherein a counter-irritant is indicated.

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

IN THE MATTER OF
GEORGE EARL McKEWEN, ET AL., DOING BUSINESS AS
HERBAL MEDICINE COMPANY AND NATEX COMPANY
COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3075. Complaint, Mar. 12, 1937—Decision, Nov. 3, 1937

Where partners engaged in distribution and sale of "Herb Doctor Compound" and "Natex," medicinal preparations, compounded from practically the same ingredients and sold and distributed between and among the various States and in the District of Columbia for substantially same use and conditions, in substantial competition with those likewise engaged in distribution and sale in commerce as aforesaid, of medicinal preparations, and including among its competitors many who distribute and sell preparations designed, intended and sold as aids or adjuncts in the treatment of the same or similar conditions and who do not in any way misrepresent the effectiveness of their respective products—

Represented, directly or through implication, in their advertising in newspapers of general interstate circulation and by circulars and pamphlets sent by mail into the various States, and by radio, that said preparations were new remedies and that they constituted competent and effective cures, remedies, or treatments for stomach troubles, rheumatism, neuritis, liver troubles, deranged kidney, nervousness, headaches due to constipation, general run-down condition, indigestion, constipation, dizziness, gastritis, colds, billiousness and similar maladies, ailments and conditions of the human body, facts being they were not new remedies and did not constitute competent cures, remedies or treatments for any of the ills, maladies and conditions named, or for any other similar ailments and maladies, and representations made by them with respect to the nature of their products, their therapeutic value and effectiveness in use, were grossly exaggerated, false, misleading, and untrue;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all said representations were true, and that results claimed by them would be obtained by purchaser users of such products, and with result that substantial number of the consuming public, as a true consequence of the mistaken and erroneous beliefs induced by their said acts, advertisements, and representations, purchased substantial volume of their preparations, and trade in such commerce was unfairly diverted to them from those engaged in the distribution and sale of products intended for similar usage, and who truthfully advertise their respective products; to the substantial injury of competitors in commerce:

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

Mr. Wm. T. Chantland for the Commission.

Mr. Clinton Robb, of Washington, D. C., for respondents.

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COMPLAINT¹

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that George Earl McKewen, George McKewen, Mrs. George McKewen, Samuel Oler, Mrs. Samuel Oler, Albert W. Oler, Leroy Burdette, Mrs. Leroy Burdette, James Howard, Jr., and Publicity Engravers, copartners doing business under the firm names of Herbal Medicine Company and Natex Company, hereinafter referred to as "respondents," have been, and are now, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, George Earl McKewen, George McKewen, Mrs. George McKewen, Samuel Oler, Mrs. Samuel Oler, Albert W. Oler, Leroy Burdette, Mrs. Leroy Burdette, James Howard, Jr., and Publicity Engravers, copartners doing business under the firm names of Herbal Medicine Company and Natex Company, have their principal office and place of business in the city of Baltimore, State of Maryland. Respondents are now, and for some time have been engaged in the business of distributing and selling, in commerce as herein set out, certain medicinal preparations designated "Herb Doctor Compound" and "Natex."

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said products, when sold, to be transported from their office and place of business in the State of Maryland to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondents now maintain a constant current of trade in commerce, in said products distributed and sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling medicinal preparations for use in connection with treatment for various human ailments, in com-

¹ The complaint as published omits, in the interest of brevity, quoted statements, claims and representations set forth at length in Par. 3 thereof, as allegedly made by respondent in advertising the asserted qualities or properties of its preparations here involved, said various quoted matter being set forth verbatim in Par. 4 of the findings, infra, at page 1301.

merce, among and between the various States of the United States and in the District of Columbia.

In the course and operation of said business, and for the purpose of inducing the purchase of said medicinal preparations as a remedy for persons suffering from any one or more of numerous ailments, respondents, in their advertising in newspapers of general interstate circulation, by circulars and pamphlets sent by mail into various States of the United States, and by radio, have made, published, or caused to be published, among others, the following statements, claims and representations:²

Similar and almost identical representations to those set forth above are being made by respondents for their preparation Natex, which is compounded from practically the same ingredients as Herb Doctor Compound, and both preparations are sold for substantially the same use and conditions.

The aforesaid statements, together with other similar statements not herein set out with reference to respondents' products "Herb Doctor Compound" and "Natex," purport to be descriptive of said products, their therapeutic value and their effectiveness in use. All of said statements serve as representations, either directly or through implication, that said products form competent and effective cures, remedies or treatments for stomach troubles, rheumatism, neuritis, liver troubles, deranged kidney, nervousness, headaches due to constipation, general run-down condition, indigestion, constipation, dizziness, gastritis, colds, biliousness and similar maladies, ailments and conditions of the human body.

PAR. 4. The representations made by respondent, as above set out, with respect to the nature of its products, their therapeutic value and effectiveness in use are grossly exaggerated, false, and misleading and untrue. Said products are not new remedies and they do not constitute competent cures, remedies or treatments for any of the ills, maladies and conditions of the human body named in paragraph 3 above, or for any other similar ailments and maladies of the human body.

PAR. 5. There are among respondents' competitors many who distribute and sell preparations, designed, intended and sold as aids or adjuncts in the treatment of the same or similar conditions, who do not in any way misrepresent the effectiveness of their respective products.

²The quoted matter which follows here at length, dealing with the qualities or properties claimed by respondent for its said preparations, and therapeutic value and effectiveness in use, are set forth verbatim in the findings, *infra*, at page 1301, and are accordingly omitted here in the interest of brevity.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondents as to the effectiveness of their said products, as hereinabove set out, in their advertising in the course of distributing their products, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondents will be obtained by the purchasers thereof upon the use of said products. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and representations of respondents as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondents' preparations with the result that trade has been unfairly diverted to the respondents from individuals, firms, and corporations likewise engaged in the business of distributing and selling products intended for similar uses, who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondents to competitors, in commerce, among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above and foregoing acts, practices and representations of the respondents have been, and are, all to the prejudice of the public and respondents' competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 12th day of March 1937, issued, and on the 13th day of March, 1937, served, its complaint in this proceeding upon respondents, George Earl McKewen, George McKewen, Mrs. George McKewen, Samuel Oler, Mrs. Samuel Oler, Albert W. Oler, Leroy Burdette, Mrs. Leroy Burdette, James Howard, Jr., and Publicity Engravers, copartners doing business under the firm names of Herbal Medicine Company and Natex 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 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, 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. Respondents, George Earl McKewen, George McKewen, Mrs. George McKewen, Samuel Oler, Mrs. Samuel Oler, Albert W. Oler, Leroy Burdette, Mrs. Leroy Burdette, James Howard, Jr., and Publicity Engravers, copartners doing business under the firm names of Herbal Medicine Company and Natex Company, have their principal office and place of business in the city of Baltimore, State of Maryland. Respondents are now, and for some time have been engaged in the business of distributing and selling, in commerce as herein set out, certain medicinal preparations designated "Herb Doctor Compound" and "Natex."

PAR. 2. Said respondents, being engaged in business as aforesaid, cause said products, when sold, to be transported from their office and place of business in the State of Maryland to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondents now maintain a constant current of trade in commerce, in said products distributed and sold by them, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now, and have been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of distributing and selling medicinal preparations for use in connection with treatment for various human ailments, 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 the purchase of said medicinal preparations as a remedy for persons suffering from any one or more of numerous ailments, respondents, in their advertising in newspapers of general

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interstate circulation, by circulars and pamphlets sent by mail into various States of the United States, and by radio, have made, published, or caused to be published, among others, the following statements, claims, and representations:

For sufferers from

STOMACH TROUBLES
RHEUMATISM
NEURITIS
LIVER TROUBLES
DERANGED KIDNEYS
LOSS OF SLEEP
NERVOUSNESS
HEADACHES DUE TO CONSTIPATION
GENERAL RUNDOWN CONDITIONS

THE BIRTH OF A NEW MEDICINE

ENDS INDIGESTION

Neutralized acidity

Quick relief from * * * indigestion, that stuffy feeling around the heart, and other simple pains in the stomach.

Regulates Bowels

* * * * *

Furthermore, HERB DOCTOR contains certain elements which not only move the bowels, but *tend to regulate them so that they remain normal.*

A TONIC FOR WHOLE SYSTEM

Herb Doctor acts as a tonic for the whole system. It has been the means of restoring health and strength to thousands who have suffered the agonies of *stomach troubles, constipation, rheumatic pains, sleepless nights, lack of pep and vigor and other ailments due to poisonous waste matter in the system and general rundown condition.*

* * * Herb Doctor contains two special ingredients which when acting together not only quickly move the bowels and give the entire system a thorough cleansing, but also tend to regulate them so that the continuous use of laxatives becomes unnecessary.

Herb Doctor is different from ordinary medicines and tonics. Herb Doctor *gets to the roots* of your trouble, *relieves the cause*, and in this way builds up sound health that does not disappear as soon as you have stopped the treatment.

Herb Doctor flushes the bowels and the blood of impurities in a mild, pleasant yet highly efficient manner. It tones up the stomach so that you can once more eat heartily and digest every mouthful. It acts as a diuretic to the kidneys and is a valuable alterative and tonic.

In this way *Herb Doctor ends the suffering caused by constipation, indigestion, gas on the stomach, nervousness, poor sleep, bad breath, rheumatism, neuritis, headaches, dizzy spells, general weakness* and lack of vitality and the many other complaints caused by the failure of the stomach, kidneys, liver and bowels to function properly.

NEW MEDICINE ENDED 20 YEARS STOMACH MISERY IN ONE MONTH.

* * * * *

Also *ended* Liver Trouble and Nervousness.

* * * * *
 Persons suffering with indigestion, gastritis, blood impurities, rheumatic pains, shattered nerves, bilious attacks, dizziness and similar complaints *need suffer no longer*.

There is a wonderful new way to win that glorious health, the clear complexion, the vigor and vitality that everyone so greatly desires, * * * .

HERB DOCTOR COMPOUND * * * restoring rundown, ailing people to health and strength.

If you are suffering with annoying pains and aches throughout the body, if you are troubled with indigestion or sudden sharp pains; if you suffer with dizziness * * * if you are * * * nervous, then it is time for you to consider better health. You will find HERB DOCTOR COMPOUND just the medicine that you need.

HERB DOCTOR is being used with great success by sufferers from many ailments which can be traced to liver complaint. HERB DOCTOR'S most enthusiastic users have taken it for such complaints and are pleased to testify to the relief they have obtained.

HERB DOCTOR COMPOUND is compounded especially for people who suffer from indigestion, headaches, poor sleep, dizziness, constipation and lack of vitality.

A four weeks' treatment of HERB DOCTOR built up health quickly, relieved of biliousness, dizzy spells and indigestion, and made the patient no longer subject to colds.

HERB DOCTOR helps in the case of indigestion, so it will when it comes to faulty elimination, rheumatic pains, dizziness, headaches, and many other ailments.

Persons who suffered continuously day and night, with various ailments, including disorders and indigestion, gas on stomach, faulty elimination, severe headaches interfering with sleep, improve daily after beginning to take HERB DOCTOR, and are made to feel like new persons.

Similar and almost identical representations to those set forth above are being made by respondents for their preparation Natex, which is compounded from practically the same ingredients as Herb Doctor Compound, and both preparations are sold for substantially the same use and conditions.

The aforesaid statements, together with other similar statements not herein set out with reference to respondents' products "Herb Doctor Compound" and "Natex," purport to be descriptive of said products, their therapeutic value and their effectiveness in use. All of said statements serve as representations, either directly or through implication, that said products form competent and effective cures, remedies or treatments for stomach troubles, rheumatism, neuritis, liver troubles, deranged kidney, nervousness, headaches due to constipation, general run-down condition, indigestion, constipation, dizziness, gastritis, colds, biliousness, and similar maladies, ailments, and conditions of the human body.

PAR. 5. The representations made by respondents, as above set out, with respect to the nature of their products, their therapeutic value and effectiveness in use are grossly exaggerated, false, and misleading and untrue. Said products are not new remedies and they do not constitute competent cures, remedies, or treatments for any of the ills, maladies and conditions of the human body named above, or for any other similar ailments and maladies of the human body.

PAR. 6. There are among respondents' competitors many who distribute and sell preparations, designed, intended and sold as aids or adjuncts in the treatment of the same or similar conditions, who do not in any way misrepresent the effectiveness of their respective products.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents as to the effectiveness of their said products, as hereinabove set out, in their advertising, in the course of distributing their products, were and are calculated to, and had, and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that the results claimed by the respondents will be obtained by the purchasers thereof upon the use of said products. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts, advertisements and representations of respondents as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondents' preparations with the result that trade in said commerce has been unfairly diverted to the respondents from individuals, firms, and corporations likewise engaged in the business of distributing and selling products intended for similar uses, who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondents to competitors, in said commerce, among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The above and foregoing acts, practices, and representations of the respondents, George Earl McKewen, George McKewen, Mrs. George McKewen, Samuel Oler, Mrs. Samuel Oler, Albert W. Oler, Leroy Burdette, Mrs. Leroy Burdette, James Howard, Jr., and Publicity Engravers, copartners doing business under the firm names of Herbal Medicine Company and Natex 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 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, George Earl McKewen, George McKewen, Mrs. George McKewen, Samuel Oler, Mrs. Samuel Oler, Albert W. Oler, Leroy Burdette, Mrs. Leroy Burdette, James Howard, Jr., and Publicity Engravers, copartners doing business under the firm name of Herbal Medicine Company and Natex Company, themselves, their representatives, agents and employees, in connection with the offering for sale, sale and distribution of "Herb Doctor," "Herb Doctor Compound" and "Natex," or any preparation or compound composed of the same or similar ingredients and possessing the same or similar therapeutic properties, under the same or any other name or designation, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said preparations, or any of them, are competent or effective cures, remedies or treatments for stomach troubles, rheumatism, neuritis, liver troubles, deranged kidney, nervousness, general run-down condition, indigestion, dizziness, gastritis, colds, biliousness and other similar maladies, ailments and conditions of the human body; or that said preparations, or any of them, will cure constipation or headaches due to constipation;

2. Representing that said preparations, or any of them, are new remedies.

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

ELITE GLOVE 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 3187. Complaint, July 24, 1937—Decision, Nov. 3, 1937

Where a corporation engaged in manufacture, sale, and distribution of gloves, in commerce among the various States and in the District of Columbia, in substantial competition with others similarly engaged, and including among such competitors manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, and origin of their respective products and refrain from advertising or representing, through catalogs, brand marks, or other advertising media, that the merchandise offered by them has a merit, value, and origin which it does not have; in advertising its said product through price lists, newspapers, periodicals and other advertising matter circulated through the mails to its customers and prospective customers—

Represented, through used of word "British," and through sale and distribution of gloves with such brands as "Lady Daphne A British Doeskin MADE IN U. S. A." and "Lady Daphne A British Suede MADE IN U. S. A.," that the leather used in the manufacture thereof was processed or made into the finished leather in England, such as long distinctly preferred by a substantial part of the consuming public in gloves, shoes, and other personal wearing effects, and was imported therefrom into the United States, facts being the hides used in making its said products were imported from the Sudan of Egypt into the United States, and there tanned and processed into finished leather product;

With result of misleading customers and prospective customers into the belief that leather in question was processed into finished leather product in England and imported therefrom into the United States and there made into gloves, and with tendency and capacity to mislead substantial portion of consuming public into erroneous belief that all of its said representations were true with respect to its said products, and source or origin of materials entering into manufacture thereof, and into purchase thereof on account of such belief, and with result that trade was diverted to it from competitors engaged in similar businesses as hereinbefore set forth; 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. S. Brogdyn Teu, II 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,"

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the Federal Trade Commission, having reason to believe that Elite Glove Company, Inc., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Elite Glove Company, Inc., is a corporation organized and doing business under the laws of the State of New York, and having its principal place of business in the city of Gloversville, State of New York. It is now, and for more than one year last past has been, engaged in the manufacture, sale, and distribution of women's purses and gloves in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When said products are sold, respondent transports or causes the same to be transported from its principal place of business in the city of Gloversville, State of New York, 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 and commerce in said above described products sold by 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, and with individuals, partnerships, and firms likewise engaged in the business of manufacturing, selling, and distributing women's purses and gloves in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its said business, and for the purpose of inducing the purchase of its products, respondent has caused to be printed and circulated through the United States mails, to its customers and prospective customers in the various States of the United States, catalogs, price lists, and other printed matter.

The respondent has also caused and still causes advertisements to be inserted in newspapers and magazines having a general interstate circulation. And further, it has caused and still causes to be imprinted on said finished products and on the containers thereof as herein set out words and phrases purporting to be descriptive of its said product. Among the statements made in the aforesaid catalogs, price lists, newspapers, and magazine advertisements, and

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among the words and phrases imprinted on respondent's said products, and upon the containers thereof, the following are representative:

1. Lady Daphne
 A British Doeskin
 MADE IN U. S. A.

2. Lady Daphne
 A British Suede
 MADE IN U. S. A.

In the above set out quoted representations appearing on respondent's products the old English letters in the words "Lady Daphne—A British Doeskin" and "Lady Daphne—A British Suede" are approximately three times the size of the letters, all capitals, in the phrase "Made in U. S. A." The words appearing in large type Old English as contrasted with the phrase "Made in U. S. A.," in very much smaller letters, serve to heighten and to unduly stress the words "Lady Daphne—A British Doeskin" and "Lady Daphne—A British Suede."

PAR. 5. All of the foregoing false and misleading statements and representations made by the respondent, particularly the use of the words "Lady Daphne," said words being indicative of English Royalty, in connection with the words "A British Doeskin" or "A British Suede," and the disparity of the size of the letters used therein as compared to the size of the letters used in the phrase "Made in U. S. A.," serve as representations to customers and prospective customers that the leather used in the manufacture of the respondent's products is processed into a finished leather in England and imported into the United States.

The said representation is further heightened by the use of the phrase "Made in U. S. A." in conjunction with the above set out words in that it leads customers and prospective customers into the belief that the leather is processed into a finished leather in England and imported into the United States, where it is made into gloves and purses.

PAR. 6. In truth and in fact, the leather used in the manufacture of respondent's products is not processed into a finished leather in England and imported into the United States, but is tanned and processed into finished leather in this country and therefrom made directly into the purses and gloves manufactured by the respondent.

PAR. 7. For many years, a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for purses, gloves, and particularly shoes, and other personal wearing effects made of leather, which are manufactured in England or manu-

factured in this country from leathers processed in England and then imported into the United States.

PAR. 8. There are among the competitors of the respondent in commerce as herein set out manufacturers and distributors of like and similar commodities who truthfully advertise and represent the nature, merit, and origin of their respective products, and who refrain from advertising or representing through their catalogs, brand marks, and other advertising media that the merchandise offered for sale by them has a merit, value, and origin that it does not have.

PAR. 9. Each and all of the false and misleading statements and representations made by the respondent in designating or describing its products, and the source of origin of the materials entering into their manufacture, in offering for sale and selling its said products, were and are calculated to, and had, and now have, a tendency and capacity to mislead a substantial portion of the consuming public into the erroneous belief that all of the said representations are true, and into the purchase of respondent's said products on account of said beliefs.

PAR. 10. As a result thereof trade has been diverted from those competitors of respondent engaged in similar businesses herein referred to. As a consequence thereof substantial injury has been and is being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 11. The aforementioned methods, acts and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on July 26, 1937, issued and served its complaint in this proceeding upon respondent, Elite Glove 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, a stipulation as to the facts was entered into between W. T.

Kelley, Chief Counsel for the Commission, and H. Andrew Schlusberg, counsel for respondent, which said stipulation was thereafter approved by the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto and the stipulation as to the facts (respondent having waived the filing of a 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. The respondent, Elite Glove Company, Inc., is a corporation having its principal office and place of business in the city of Gloversville, State of New York.

PAR. 2. The respondent has been, for more than one year last past, engaged in the business of manufacturing, selling, and distributing gloves in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the sale of said products respondent has transported or caused the same to be transported from its principal place of business in the State of New York to purchasers thereof located in States of the United States other than the State from which the shipment originated, and in the District of Columbia.

There has been for more than one year last past, and there still is, a constant current of trade and commerce in said gloves so sold and distributed between and among the various States of the United States and in the District of Columbia.

PAR. 4. For more than one year last past the respondent has been engaged in substantial competition with other individuals, partnerships, and corporations engaged in the manufacture, 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. 5. In the course and conduct of its business the respondent, in soliciting the sale of, and in selling, its products, and for the purpose of creating a demand upon the part of the consuming public for said products, has for more than one year last past caused its products to be advertised through the media of price lists, newspapers, magazines, and other advertising media, printed, published, and circulated through the United States mails to its customers and prospective customers located in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means the respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by it. The price lists and other printed matter published and distributed by respondent, and hereinbefore referred to, contain misleading descriptions and representations concerning respondent's products. Certain of the gloves manufactured, sold, and distributed by it are branded and represented to the purchasing public in the following manner:

1. Lady Daphne
A British Doeskin
MADE IN U. S. A.
2. Lady Daphne
A British Suede
MADE IN U. S. A.

PAR. 6. The foregoing statements and representations made by respondent in connection with the words "A British Doeskin" or "A British Suede," and the disparity of the size of the letters used therein as compared with the size of the letters used in the phrase "MADE IN U. S. A.," serve as representations to customers and prospective customers that the leather used in the manufacture of respondent's products is processed into the finished-leather in England and imported into the United States.

The use of the words and phrases set out immediately above leads customers and prospective customers into the belief that the leather is processed into the finished leather in England and imported into the United States, where it is made into gloves.

PAR. 7. The leather used in the manufacture of respondent's products is not processed into a finished leather in England and imported into the United States, but is tanned and processed into a finished leather in this country and therefrom made directly into the gloves made by respondent. The hides used in the making of respondent's products are imported from the Sudan of Egypt into this country, and after the hides are imported into this country they are tanned and processed into the finished leather product.

PAR. 8. For many years a substantial part of the consuming public has had, and still has, and has so expressed, a marked preference for gloves, and particularly shoes, and other personal wearing effects made of leather which are manufactured in England, or manufactured in this country from leather processed in England and then imported into the United States.

PAR. 9. There are among the competitors of respondent in commerce as herein set out manufacturers and distributors of like and

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similar commodities who truthfully advertise and represent the nature, merit, and origin of their respective products, and who refrain from advertising or representing through their catalogs, brand marks, or other advertising media that the merchandise offered for sale by them has a merit, value, and origin that it does not have.

PAR. 10. All the statements and representations made by respondent in designating or describing its products and the source of origin of the materials entering into their manufacture in offering for sale, and selling, said products were, and are, calculated to, and had, and now have, a tendency and capacity to mislead a substantial portion of the consuming public into the erroneous belief that all the said representations are true, and into the purchase of respondent's said products on account of said belief.

As a result of the representations made by respondent trade has been diverted from those competitors of respondent engaged in similar businesses hereinbefore referred to. As a consequence thereof substantial injury has been 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, Elite Glove 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, and the stipulation as to the facts entered into between W. T. Kelley, Chief Counsel of the Commission, and H. Andrew Schlusberg, 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, Elite Glove Company, Inc., a corporation, its representatives, agents, and employes, in connection with the offering for sale, sale and distribution of gloves in com-

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merce among and between the various States of the United States and in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly, through the use of the word "British," or any other word or words of similar import and meaning, alone or in conjunction with other words, or through any other means or device, or in any manner, that its gloves, or the leather from which said gloves are made, were imported from or made from hides processed into finished leather in England or any other part of the British Empire.

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

ACME 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 3204. Complaint, Aug. 16, 1937—Decision, Nov. 4, 1937*

Where a corporation engaged in sale and distribution of life preservers to purchasers in other States and in District of Columbia, in substantial competition with those engaged in manufacture, sale and distribution, as aforesaid, of like and similar products, and including therein manufacturers and distributors of such products who truthfully advertise and represent the merit of their respective goods and refrain from advertising or representing that merchandise offered by them has a merit which it does not have, or, falsely, that it has met the requirements of the Steamboat Inspection Service—

Represented, through brand on certain of its said life preservers, "Guaranteed to comply with the Rules and Regulations of the Steamboat Inspection Service; allowing cushions as Life Preservers on Pleasure Boats," that life preservers in question complied with rules and regulations of the United States Steamboat Inspection Service and might lawfully be used as life preservers on pleasure boats, facts being that they did not so comply and might not lawfully be used as such;

With result of misleading a substantial portion of consuming public in the several States and in aforesaid District by inducing them mistakenly and erroneously to believe that its said life preservers were guaranteed as above set forth, and might lawfully be used as hereinbefore stated, and with tendency and capacity to mislead and deceive purchasing public into erroneous and mistaken belief that such statements and representations were true, and with effect of inducing them to buy such preservers of it by reason of such erroneous beliefs, and with result of thereby unfairly diverting trade to it from those competitors similarly engaged who do not make use of similar 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.

Mr. S. Brogdyne Tew, II for the Commission.

Woodruff, Klein & White, of New Haven, Conn., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Acme Products Company, a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress,

and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Acme Products Company, is a corporation having its principal office and place of business at 152 Brewery Street, city of New Haven, State of Connecticut. It has been for more than one year last past engaged in the sale and distribution of life preservers.

In the course and conduct of its business respondent, for more than one year last past, offered said products for sale, sold, and sells the same in commerce between the State of Connecticut and the several States of the United States and in the District of Columbia. When said products are sold respondent transports or causes same to be transported from its place of business in the State of Connecticut to purchasers thereof located in States of the United States other than the State of Connecticut 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 sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now and for more than one year last past has been engaged in substantial competition with other individuals, firms, partnerships, and corporations engaged in the manufacture, sale, and distribution of, or in the sale and distribution of, like and similar products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent, in soliciting the sale of, and in selling, its products, and for the purpose of creating a demand on the part of the consuming public for said commodities, has advertised its commodities through the media of price lists and other printed matter published and circulated through the United States mails to their customers and prospective customers located in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means respondent makes and has made to the general public false and misleading statements with reference to the commodities offered for sale by it.

PAR. 4. The said price lists and other printed matter published and distributed by respondent as aforesaid contain misleading descriptions and representations concerning its products. For example, certain of the cushions sold and distributed by it are branded and represented to the purchasing public in the following manner:

Guaranteed to comply with the Rules and Regulations of the Steamboat Inspection Service; allowing cushions as Life Preservers on Pleasure Boats.

The aforementioned branding and representations appearing on the aforesaid articles and their containers serve to lead purchasers and prospective purchasers into the erroneous and mistaken belief that the commodities so branded and represented comply with the rules and regulations of the U. S. Steamboat Inspection Service; that said products meet the requirements of the said Service; and said cushions may be lawfully used as life preservers on boats.

The aforementioned requirements of the U. S. Steamboat Inspection Service are that a life preserver must be capable of sustaining afloat for a continuous period of 24 hours a weight so arranged as to provide a continuous downward gravitation pull of 20 pounds.

PAR. 5. In truth and in fact the aforesaid commodities do not meet the requirements of the U. S. Steamboat Inspection Service and cannot be lawfully used as life preservers on boats. Respondent's life preservers are not capable of sustaining afloat for a continuous period of 24 hours a weight so arranged as to provide a continuous downward gravitation pull of 20 pounds, and may not lawfully be used as life preservers on boats.

PAR. 6. There are among the competitors of the respondent manufacturers and distributors of like and similar products who truthfully advertise and represent the merit of their respective products, and who refrain from advertising or representing that the merchandise offered for sale by them has a merit that it does not have, or that it has met the requirements of the U. S. Steamboat Inspection Service.

PAR. 7. The effect of the foregoing false and misleading representations and acts of respondent in selling and offering for sale such items of merchandise as hereinbefore referred to is to mislead a substantial part of the purchasing and consuming public in the several States of the United States and in the District of Columbia by inducing them to mistakenly believe that the articles hereinabove set out and described in paragraph 1 will meet the requirements of the U. S. Steamboat Inspection Service, and that the said commodities, as a result of meeting the requirements of the said service, may and can be lawfully used as life preservers on boats.

PAR. 8. The aforesaid false and misleading representations and statements on the part of respondent have induced and still induce a substantial number of consumer purchasers of said commodities to buy products offered for sale, sold, and distributed by the respondent on account of the aforesaid erroneous and mistaken belief. As a result thereof trade has been unfairly diverted to respondent from those competitors of respondent engaged in similar businesses referred to in paragraph 6. As a consequence thereof substantial injury has been and is being done by respondent to competition in

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

PAR. 9. The aforementioned methods, acts, and practices of respondent are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on August 17, 1937, issued and served its complaint in this proceeding upon respondent, Acme Products 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 entered into between W. T. Kelley, Chief Counsel of the Commission, and Woodruff, Klein and White, counsel for respondent, which said stipulation was thereafter approved by the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and answer thereto, and the stipulation as to the facts (respondent having waived the filing of a 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. The respondent, Acme Products Company, is a corporation having its principal office and place of business at 152 Brewery Street, city of New Haven, State of Connecticut.

PAR. 2. The respondent has been for more than one year last past engaged in the business of selling and distributing life preservers.

PAR. 3. In the sale of said products respondent has transported or caused the same to be transported from its principal place of business in the State of Connecticut to purchasers thereof located

in States of the United States other than the State from which shipment originated, and in the District of Columbia.

There has been for more than one year last past, and there still is, a constant current of trade and commerce in said life preservers so sold and distributed by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 4. For more than one year last past the respondent has been engaged in substantial competition with other individuals, partnerships, and corporations engaged in the manufacture, 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. 5. In the course and conduct of its business the respondent, in soliciting the sale of, and in selling, its products, and for the purpose of creating a demand on the part of the consuming public for said products, has for more than one year last past caused its products to be advertised through the media of price lists and other printed matter published and circulated through the United States mails to their customers and prospective customers located in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means the respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by it. The price lists and other printed matter published and distributed by respondent, and hereinbefore referred to, contain misleading descriptions and representations concerning its products. Certain of the life preservers sold and distributed by it are branded and represented to the purchasing public in the following manner:

Guaranteed to comply with the Rules and Regulations of the Steamboat Inspection Service; allowing cushions as Life Preservers on Pleasure Boats.

The branding and representations above set out and appearing on respondent's articles and their containers serve to lead customers and prospective customers into the erroneous and mistaken belief that the commodities so branded and represented comply with the rules and regulations of the U. S. Steamboat Inspection Service; that the products meet the requirements of the Steamboat Inspection Service, and further that the products may be lawfully used as life preservers on boats.

The requirements of the U. S. Steamboat Inspection Service are that a life preserver must be capable of sustaining afloat for a continuous period of 24 hours a weight so arranged as to provide a continuous downward gravitation pull of 20 pounds.

PAR. 6. In truth and in fact the respondent's commodities do not meet the requirements of the U. S. Steamboat Inspection Service. The respondent's life preservers are not capable of sustaining afloat for a continuous period of 24 hours a weight so arranged as to provide a continuous downward gravitation pull of 20 pounds, and may not lawfully be used as life preservers on boats.

PAR. 7. There are among the competitors of the respondent manufacturers and distributors of like and similar products who truthfully advertise and represent the merit of their respective products, and who refrain from advertising or representing that the merchandise offered for sale by them has a merit that it does not have, or that it has met the requirements of the U. S. Steamboat Inspection Service when such is not the fact.

PAR. 8. The effect of the foregoing false and misleading representations of the respondent in selling and offering for sale its life preservers is to mislead a substantial portion of the consuming public in the several States of the United States and in the District of Columbia by inducing them to mistakenly and erroneously believe:

(1) That the respondent's life preservers are guaranteed to comply with the rules and regulations of the U. S. Steamboat Inspection Service, and (2) that said life preservers may be lawfully used as life preservers on pleasure boats.

PAR. 9. The use of each and all of the foregoing false and misleading statements and representations as herein set out has had, and now has, a tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that said statements and representations are true, and has induced and now induces members of the public to purchase the life preservers of the respondent on account of such erroneous beliefs.

Said representations have thereby unfairly diverted trade to said respondent from those competitors of respondent engaged in similar businesses who do not make use of similar acts and practices, and substantial injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent Acme 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

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and the stipulation as to the facts entered into between W. T. Kelley, Chief Counsel of the Commission, and Woodruff, Klein and White, 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, Acme Products Company, a corporation, its representatives, agents, and employes, in connection with the offering for sale, sale, and distribution of life preservers in commerce among and between the various States of the United States and in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly, through advertisements, price lists, circulars, labels, containers, or any other form of printed matter, or by radio broadcasting, or in any other manner:

1. That the said life preservers comply with the rules and regulations of the U. S. Steamboat Inspection Service; and
2. That said life preservers may be lawfully used as life preservers on pleasure boats.

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

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IN THE MATTER OF
THE MASONITE CORPORATION

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

Docket 2614. Complaint, Nov. 6, 1935—Decision, Nov. 6, 1937

Where a corporation engaged in manufacture of wall board and wall coverings compounded from wood chips and fibers and other substances under a process resulting in a hard durable sheeting or covering upon which were scored or stamped squares resembling, when painted or lacquered by others with different color from remainder of the sheet, mortar lines upon completely installed ceramic surface, and in the sale and distribution, in other States and in the District of Columbia, of such products, in competition, among others, with many engaged in manufacture, sale and transportation, as aforesaid, of tile made from clay and baked in kilns and properly described and designated as such, and with others who make, sell, and distribute wall board and wall coverings and various other products, including copper tile, glass tile, wood tile, rubber tile, cork tile, and the like, properly thus designated and described—

Made use of designation "Temprtle" as designation of its said products in extensively advertising the same, notwithstanding fact its aforesaid board and coverings were not that baked clay or ceramic product connoted by word "tile" standing alone and without qualifying prefix as hereinbefore set forth; with tendency and capacity to mislead and deceive substantial portion of purchasing public, to its damage and injury, into the belief that aforesaid products, thus designated, were made from baked clay, and with tendency to and effect of diverting trade from tile or baked clay products of competitor-manufacturers who make and sell, as aforesaid, tile products:

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*, *Mr. John J. Keenan* and *Mr. John L. Hornor*, trial examiners.

Mr. Alden S. Bradley and *Mr. Morton Nesmith* for the Commission.
Dyke & Schaines, of New York City, for respondent.

Hines, Rearick, Dorr & Hammond, of New York City, for Tile Manufacturers' Assn., Inc., amicus curiae.

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 Masonite Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce"

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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:

PARAGRAP^H 1. Said respondent The Masonite Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located in Chicago in the State of Illinois. Respondent has been, during its entire corporate existence, engaged in the manufacture, sale, and distribution in interstate commerce of insulating board and wall board manufactured out of wood refuse.

Respondent, in the course and conduct of its business as aforesaid, has manufactured, sold, distributed, and transported, or caused to be transported, from its factory in Laurel, Miss., and from other warehouses used by the respondent in the State of Mississippi and in the State of Illinois for the purpose of storing its said products, insulating board and wall board, and has caused such products to be transported from the place where the same is manufactured or stored in the States aforesaid into States other than the State of origin of such shipments, and has maintained a constant current of trade and commerce between and among the various States of the United States.

PAR. 2. Respondent is the sole owner and patent holder of the process of the manufacture of the various commodities above described as being manufactured and vended by it, and in the course and conduct of its business has manufactured and sold under the trade name of "Temprtile" a commodity manufactured solely of wood or wood refuse, and has displayed and featured the name so adopted and attached to such commodity in advertisements and advertising matter issued and circulated by it, and has caused, either separately or in immediate conjunction with such trade name the following statements to appear:

Aristocrat in Beautiful Low Cost Tile.

There are two methods of installing Temprtile. One is to cement the tile over plaster * * *.

This new, modern all wood Temprtile is made of all new Presdwood * * *.

It is furnished in $\frac{1}{8}$ inch and $\frac{3}{8}$ inch thicknesses; 4 feet by 12 feet panels, with indentations compressed in the surface. When properly finished it produces the effect of 4 inch by 4 inch tile and in several ways it is superior to regular tile.

PAR. 3. The use of the trade name "Temprtile," and the use of the advertisements and advertising matter as quoted above, have the capacity and tendency to, and do, in fact, mislead and deceive a substantial portion of the purchasing public into the belief that

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the product so described is "tile" as that word is understood in the building trade and by the general public.

The word "tile" as understood in the building trade and by the general public designates a product consisting of clay or earth; such product being manufactured by a process of baking in a kiln or oven.

PAR. 4. In the course and conduct of the business of the respondent as above related, it manufactures for sale to and resale by non-manufacturing individuals, firms, copartnerships and corporations engaged in competition with respondent in the merchandising of similar products, a commodity identical, or virtually identical, in its composition and processing with the commodity last above described, and distributes such commodity in interstate commerce among such competitors, prohibiting, however, the use by them of the trade name "Temprtle," but permitting, encouraging, and directing the selection of various other names which it approves and which names are trade names under which the identical or virtually identical, product is marketed by such competitors to the public. Some of the names so selected and approved by the respondent are as follows:

Celotex Hard Tile

Hamasote Tempered Tile

Armstrong Temwood Tile

Tuffwood Tile

Canic Dense Tile

Gold Bond Hard Board Tile

Beaver Dense Tile

and other similar names, all of which contain as part thereof, the word "tile."

In addition to the practice last above set forth, the said respondent prepared and furnished and does now prepare and furnish to such competitors, advertisements and advertising matter which they used and now use in soliciting the sale of and selling said products in interstate commerce, and which advertisements and advertising matter contained and do contain expressions and representations similar to those set forth in paragraph 1 of this complaint.

In truth and in fact, none of the products so sold to competitors, as above related, are clay products, nor are they baked in a kiln, and they are not and have not been "tile" as that word is understood in the building trade and by the general public.

PAR. 5. There are, among the competitors of respondent, a substantial number of persons, partnerships, and corporations engaged in the manufacture of insulating boards and wall boards out of wood or pulp refuse, who do not falsely represent the product so manufactured by them to be "tile."

There are, among the competitors of respondent, a substantial number of persons, partnerships, and corporations engaged in the manufacture of "tile," which said "tile" is made by a process and of basic materials in consonance with the conception of "tile" as understood in the building trade and by the general public. The acts and practices of the respondent as above set forth have had and have the capacity and tendency to divert trade unfairly to respondent from the aforesaid competitors.

PAR. 6. The acts and practices done by the respondent are all to the injury and prejudice of the public and 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 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 6, 1935, issued, and on November 8, 1935, served its complaint in this proceeding upon respondent, The Masonite Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Alden S. Bradley and Morton Nesmith, attorneys 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 Dyke and Schaines, 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 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. The respondent, The Masonite Corporation, is a corporation organized and existing under and by virtue of the laws of

the State of Delaware, with its office and principal place of business located at Chicago in the State of Illinois. Respondent has been, during its corporate existence, engaged, among other things, in the business of manufacturing, selling, and distributing wall board and wall coverings, which products are manufactured from wood fibre, and which respondent designates as "Temprtle." Respondent owns and operates a factory wherein its products are manufactured in the city of Laurel, State of Mississippi.

Respondent, in the course and conduct of its business, has sold, distributed, and transported or caused to be transported, its aforesaid product from its factory in the State of Mississippi to purchasers thereof located in various points of the States of the United States other than the State of Mississippi, and has maintained a constant current of trade and commerce between and among the various States of the United States and in the District of Columbia.

There are among competitors of respondent many persons, firms, and corporations located and doing business in the United States, engaged in the manufacture, sale, and transportation of tile in commerce between and among the various States of the United States, which tile is manufactured from clay and baked in kilns, whose products are properly described and designated as tile. There are others who manufacture, sell and distribute wall board and wall coverings, and various other products, such as copper tile, glass tile, wood tile, rubber tile, cork tile, and the like, whose products are properly designated and described by such names.

PAR. 2. The term "tile," when used alone and not in conjunction with other words is generally understood in the building trade and by the general public to be a hard clay product which has been baked in kilns and in its final form shaped into comparatively small-sized units. Tile, as so understood, is compounded from clays and a mixture of clays, feldspar, flint, talc, ball clays, prophyllite, aluminum hydroxid, silica, and some chemicals for coloring purposes. These materials are mixed in various proportions to produce various qualities in the tile. They are mixed in large mixing vats containing agitators, until the mixture of the ceramic materials with the admixture of water approaches the consistency of a thick soup. Then it is put in a filter press, the water being reduced to a certain percentage of the total content of the materials, and the materials coming from the filter presses are dried until they have a moisture content ranging from ten to fifteen percent. The materials are then pulverized into a dust form, which is pressed into tiles of various shapes. The tiles are then dried down to approximately zero per cent moisture content and fired in a kiln at a temperature exceeding red heat, which may

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run from 1,200° Fahrenheit upward. The purpose of this firing is to harden the ceramic material until it is an impervious, dense, durable mass. There are glazed and unglazed types of tiles. The unglazed tile has a rough, unfinished surface, while the glazed tile has a shiny glass or decorative surface, the glaze being matured after the first firing operation by the addition of certain mineral oxides; after which it is put through a process known as "gloss firing." Floor and wall tiles are produced in relatively small individual units, the extreme permissible size of the units being about six by twelve inches, the reason being that the manufacturers of ceramic products are confronted with the fact that clays and mixtures of clays with other materials, when formed into wares, undergo shrinkage during the drying and firing processes. Therefore, one of the problems of the tile manufacturer is to produce ware free from warping or cracking, and the larger the unit the greater the liability of warping and cracking resulting from shrinkage of the mixture.

Floor and wall tile of baked clay is installed upon a proper base and set in cement by workmen known as "tile setters." The term "tile" when used alone and without descriptive words, means ceramic tile, which is a more complete name for the product just described.

The use of the word "tile," standing alone and without descriptive words, dates back some four thousand years to the Egyptians, who, according to man's knowledge, were the first to discover the art of molding and baking clay into hard units, as above described.

There are manufacturers, however, of other products designed to be used as floor and wall coverings, whose said products are properly designated and described as rubber tile, glass tile, copper tile, acoustical tile, cork tile, wood tile, composition tile, metal tile, cement tile, linoleum tile, asphaltum tile, stone tile, and the like. These products are generally understood in the building trade and by a substantial portion of the general public as being coverings made from the substances so indicated by word or words preceding the word "tile."

The respondent's product, known as "Temprtile," is compounded from wood chips and wood fibres and other substances and siccative materials, which are unique, and are baked in an oven at a high temperature, pressed and tempered, so that the final product is a hard, durable sheeting or covering. These sheets can be cut in practically any size desired, but the general size ordinarily sold by respondent is three by four feet. The surface of this sheeting or covering known as "Temprtile" is scored or stamped so that lines forming squares are impressed upon the sheeting and when painted or lacquered by others with a different color from the remainder of

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the sheeting appear similar to mortar lines upon a completely installed ceramic surface.

PAR. 3. Many experts, including prominent architects, tile manufacturers, tile contractors, tile jobbers, professors of ceramic, structural engineers, architectural and structural standardists and contractors, testified, and the Commission finds it to be a fact, that the word "tile" when standing alone means or connotes a baked clay or ceramic product; further, that the term "tile" standing alone does not have to be accompanied by the word "ceramic" to denote a ceramic tile. By the use of the word "tile" alone a ceramic tile is meant. There are different types of tiles, or ceramic tiling, such as roofing tiles, hollow tiles, drain tiles, and decorative wall tiles. The term "tile," if used in conjunction with some other word or words, descriptive of the material or substance of which the product is composed, means or connotes not a baked clay or ceramic product, but a product manufactured from the other material or substance employed. Examples of this are rubber tile, asbestos tile, cork tile, wood tile, tin tile, glass tile, and cement tile. These various products have been so known to the building trade and to a portion of the general public for a number of years. Several experts and others, including prominent architects, manufacturers, building contractors, jobbers, and members of the general purchasing public, testified that the word "tile" when standing alone meant nothing to them, and they had to be informed of the substance of which the tile was made.

The Government of the United States, through the Procurement Department of the Treasury, in asking for bids on public buildings, includes in its specifications references to various products under the designations of cork tile, rubber tile, linoleum tile, acoustical tile, and others.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, in extensive advertising of its products, uses the name "Temprtle." The aforesaid designation, when used alone by respondent as descriptive of or as a designation for its products, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that the products so described are manufactured from baked clay, all of which is to the damage and injury of said purchasing public, and tends to and does divert trade from competitors of respondent, who manufacture and sell tile products manufactured from baked clay.

PAR. 5. The designation and description by respondent of its products as "Temprtle" as heretofore described, is deceptive and misleading and has the capacity and tendency to deceive purchasers of

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said product into the belief that said products are manufactured from baked clay.

CONCLUSION

The aforesaid acts and practices of the respondent, The Masonite 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 J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, no briefs being filed and oral argument not having been requested 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 Masonite Corporation, a corporation its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its wall board and wall covering in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. Directly or indirectly, by the use of the words, "Temprtle" or "tile" that its products are "tile" unless in immediate conjunction with the words "Temprtle" or "tile" wherever used, in the same conspicuous type, there appear a word or words designating the material or substance of which the products are made, such as wood tile, glass tile, rubber tile, asbestos tile, copper tile, cork tile, or metal tile.

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.

IN THE MATTER OF
STANDARD WALL COVERING 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 2773. Complaint, Apr. 17, 1936—Decision, Nov. 6, 1937

Where a corporation dealing, among other things, in interior fiber wall covering, compounded from wood chips and fibers and other substances, under process resulting in a hard durable sheeting or covering upon which were scored or stamped squares resembling, when painted or lacquered by it with different color from remainder of the sheet, mortar lines on a completely installed ceramic surface, and in selling and distributing, in other States and in the District of Columbia, such products, in competition among others, with many engaged in sale and transportation, as aforesaid, of tile made from clay and baked in kilns and properly thus described and designated, with others who sell and distribute interior wall coverings and various other products, including copper tile, glass tile, wood tile, rubber tile, cork tile, and the like, properly thus designated and described, and with those who sell and distribute wall coverings made from quarried marble and who, as "marble," properly describe their products—

- (a) Made use of names "Stancotile," "Mono-tile," and "Wall Tile" as designations of its said products in extensively advertising same, notwithstanding fact its said products, thus designated, were not that baked clay or ceramic product connoted, to building trade and general public, by word "tile" standing alone and without qualifying prefix as hereinbefore set forth; with tendency and capacity to mislead and deceive substantial portion of purchasing public, to its damage and injury, into the belief that aforesaid products, thus described, were made from baked clay, and with tendency to and effect of diverting trade from competitors who sell and distribute, thus made, tile products; and
- (b) Made use of name "Mono-Marble" as designation of product made and sold by it as aforesaid; with capacity and tendency to and effect of misleading and deceiving substantial portion of purchasing public into belief that product thus described was marble; to the damage and injury of said public, and with tendency to and effect of diverting trade from competitors who quarry and finish such substance:

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*, *Mr. John J. Keenan* and *Mr. John L. Hornor*, trial examiners.

Mr. Alden S. Bradley and *Mr. Morton Nesmith* for the Commission.

Dyke & Schaines, of New York City, for respondent.

Hines, Rearick, Dorr & Hammond, of New York City, for Tile Manufacturers' Ass'n, Inc., amicus curiae.

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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 Standard Wall Covering Company, Inc., hereinafter referred to as "respondent," has been, and is now, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Standard Wall Covering Company, Inc., is a Delaware corporation, which has its principal office and place of business at 1819 North 9th Street, in the City of Philadelphia, State of Pennsylvania. Respondent is now, and has been for some time, engaged in the business of manufacturing, distributing, and selling, in commerce, as herein set out, a line of interior fiber wall coverings designated variously as "Tile," "Stanco-tile," "Mono-Tile," "Wall Tile," and "Mono-Marble."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said fiber wall coverings, when sold, to be transported from its place of business in the State of Pennsylvania to purchasers thereof located in various points of the States of the United States other than the State from which said shipments are made. Respondent now maintains a constant current of trade in commerce in said fiber wall coverings, manufactured, distributed, and sold by it between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, respondent is now, and has been, in substantial competition with other individuals and with firms and corporations engaged in the business of manufacturing, distributing and selling wall coverings, particularly ceramic or burned clay tile, and marble, for use as wall coverings, in commerce, among and between the various States of the United States and in the District of Columbia. In the course and operation of said business and for the purpose of inducing the purchase of its said line of wall coverings, respondent has issued and circulated throughout the various States, and to customers and prospective customers, advertising folders, and literature. Some of respondent's said advertising and literature, so transmitted and circulated by respondent, is intended to convey the impression that respondent's products are clay tile and marble, respectively, by omitting there-

from any reference to indicate that its product, which resembles tile, is other than burned clay tile, or to indicate that its product which resembles marble is other than marble.

The general public preference is for genuine tile and marble, over any substitutes or simulations. Historically "tile" is a ceramic or kiln or oven-baked product of comparatively small sizes to make them available both for places and designs. It is so understood in the building trade and by the general public. Respondent's products are neither tile nor marble.

On its letters, bill heads and price lists, respondent states:

Originators of one-piece tile in 1908

Originators of one-piece marble in 1932

On its bill heads appear also the following:

Mono-Tile—Tile in Sheets Not a Metal or Cement

Mono-Marble

On its circulars appears the following:

Stanco One-Piece Tile Non-Metallic A Modern Wall Tile at a Reasonable Cost

On its retail price lists and some of its circulars appears the following:

MONO-TILE: SIZES AND COLORS

Number	Field	Mortar Line
110	White	Warm Gray.
120	White	Chinese Red.
130	White	Black.
210	Ivory	Warm Gray.
310	Nile Green	Light Ivory.
320	Ocean Green	Olive Green.
410	Blue	Light Ivory.
510	Black	Light Ivory.
610	Apricot	Light Ivory.

In some of its advertisements appear the following:

Mono-Tile Mono-Marble * * * for bath, kitchen Any Interior * * *
We are manufacturers and contractors of these one-piece wall coverings which simulate ordinary tile and are photographic reproductions of quarry marble

On some of its circulars appear illustrations in color of Mono-Marble which closely resembles photographs of genuine mottled marble, and are designated as follows:

"Verde," "Breche Rose," "Light Skyros," "Black and Gold."

PAR. 4. There are among respondent's competitors many who manufacture, distribute and sell, for use as interior wall coverings, silica, burned clay tile, and also marble.

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Burned clay tile is ordinarily made and sold in slabs or pieces of comparatively small size, and set in place with cement. Marble, in somewhat larger slabs, is also set in place with mortar or cement. To further simulate tile and marble, respondent has made its tile products with a glazed surface with scores and lines of various colors in such manner and at such intervals as to make its said wood fiber products more closely resemble tile slabs with various colored cement between them. Its fiber Mono-Marble slabs are made with a polished marble-like surface, with color schemes which make them resemble genuine marble as closely as an ordinary photographic reproduction.

PAR. 5. Such products so produced, advertised, sold, and shipped by respondent, have the capacity and tend to put the means and power into the hands of unscrupulous builders, architects, and speculative builders and dealers to confuse, impose upon and deceive those who buy houses and those for whom houses are built, into the belief that when they are buying respondent's wood fiber tile products and installations, they are buying and receiving silica or burned clay tile products and installations, to the injury of said buying and owning public, and also to the injury of those who manufacture and sell, in interstate commerce, genuine silica and clay surface tile for similar purposes, in competition with respondent.

Likewise, in the production, advertising, and distribution of its product, Mono-Marble, a product glazed and colored to imitate and resemble genuine marble, respondent puts the means and power into the hands of unscrupulous builders, architects, speculative builders and dealers, to confuse, impose upon and deceive those who buy houses and those for whom houses are built, into the belief that when they are buying respondent's Mono-Marble, they are buying and receiving genuine marble or receiving genuine marble installation, to their injury, and also to the injury of those who produce and sell, in interstate commerce, genuine marble for similar purposes, in competition with respondent.

The effect of such actions, representations, and dealings of respondent is also to divert to respondent some trade of those who desired and intended to purchase or own genuine tile and marble products and installations, from competitors who make such genuine products; and the effect is also to divert to respondent certain trade from those competitors who make and sell similar products but who represent their products truthfully, all to the injury of said competitors.

PAR. 6. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on April 17, 1936, issued, and on April 20, 1936, served its complaint in this proceeding upon respondent, Standard Wall Covering 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 Alden S. Bradley and Morton Nesmith, attorneys for the Commission, before C. F. Diggs, an examiner of the Commission theretofore duly designated by it, and the witnesses for the Commission were cross-examined by Dyke and Schaines, attorneys for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the respondent, through its attorneys, filed a motion to withdraw the original answer filed on June 1, 1936, and in lieu thereof to substitute its answer annexed to said motion, in which answer respondent admitted all the material allegations of the complaint to be true, and stated that it waived hearings on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusions and an order to cease and desist from the violations of law charged in the complaint. Thereafter the Commission granted the respondent's motion to withdraw its original answer, and received and filed respondent's substitute answer. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, substitute answer and the record; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

Findings

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Standard Wall Covering Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business and office located at 1819 North Ninth Street in the city of Philadelphia, State of Pennsylvania. Respondent has been, during its entire corporate existence, engaged, among other things, in the business of selling and distributing interior fibre wall coverings designated variously as "tile," "Stancotile," "Mono-tile," "Wall Tile," and "Mono-Marble."

Respondent, in the course and conduct of its business, has sold, distributed and transported or caused to be transported, its aforesaid products from its place of business in the State of Pennsylvania to purchasers thereof located in various points of the States of the United States other than the State of Pennsylvania, and has maintained a constant current of trade and commerce between and among the various States of the United States and in the District of Columbia.

There are among competitors of respondent many persons, firms, and corporations located and doing business in the United States, engaged in the sale and transportation of tile in commerce between and among the different States of the United States, which tile is manufactured from clay and baked in kilns, whose products are properly described and designated as tile. There are others who sell and distribute interior wall coverings and various other products, such as copper tile, glass tile, wood tile, rubber tile, cork tile, and the like, whose products are properly designated and described by such names. There are also competitors of respondent who sell and distribute wall coverings manufactured from quarried marble, who properly describe their products as marble.

PAR. 2. The term "tile," when used alone and not in conjunction with other words, is generally understood in the building trade and by the general public to be a hard clay product which has been baked in kilns and in its final form shaped into comparatively small-sized units. Tile, as so understood, is compounded from clays and a mixture of clays, feldspar, flint, talc, ball clays, prophyllite, aluminum hydroxid, silica, and some chemicals for coloring purposes. The materials are mixed in various proportions to produce various qualities in the tile. They are mixed in large mixing vats containing agitators, until the mixture of the ceramic materials with the admixture of water approaches the consistency of a thick soup. Then it is put in a filter press, the water being reduced to a certain percent-

age of the total content of the materials, and the materials coming from the filter press are dried until they have a moisture content ranging from ten to fifteen percent. The materials are then pulverized into a dust form, which is pressed into tiles of various shapes. The tiles are then dried down to approximately zero percent moisture content and fired in a kiln at a temperature exceeding red heat, which may run from twelve hundred degrees Fahrenheit upward. The purpose of this firing is to harden the ceramic material until it is an impervious, dense, durable mass. There are glazed and unglazed types of tiles. The unglazed tile has a rough, unfinished surface, while the glazed tile has a shiny glass or decorative surface; the glaze being matured after the first firing operation by the addition of certain mineral oxides, after which it is put through a process known as "gloss firing." Floor and wall tiles are produced in relatively small individual units, the extreme permissible size of the units being about six by twelve inches, the reason being that the manufacturers of ceramic products are confronted with the fact that clays and mixtures of clays with other materials, when formed into wares, undergo shrinkage during the drying and firing processes. Therefore, one of the problems of the tile manufacturer is to produce ware free from warping or cracking, and the larger the unit the greater the liability of warping and cracking resulting from shrinkage of the mixture.

Floor and wall tile of baked clay is installed upon a proper base and set in cement by workmen known as "tile setters." The term "tile" when used alone and without descriptive words, means ceramic tile, which is a more complete name for the product just described.

The use of the word "tile," standing alone and without descriptive words, dates back some four thousand years to the Egyptians, who, according to man's knowledge, were the first to discover the art of molding and baking clay into hard units as above described.

There are sellers and distributors, however, of other products designed to be used as interior wall coverings, whose said products are properly designated and described as rubber tile, glass tile, copper tile, acoustical tile, cork tile, composition tile, metal tile, cement tile, linoleum tile, wood tile, asphaltum tile, stone tile, and the like. These products are generally understood in the building trade and by a substantial portion of the general public as being coverings made from the substances so indicated by word or words preceding the word "tile."

The respondent's products, known as "Staucotile," "mono-tile," and "Wall Tile" are compounded from wood chips and wood fibres and other substances, and siccative materials, which are unique, and are

baked in an oven at a high temperature, pressed and tempered, so that the final product is a hard, durable sheeting or covering. These sheets can be cut in practically any size desired, but the general size ordinarily sold by respondent is three by four feet. The surfaces of these sheetings or coverings known as "Stancotile," "Mono-tile" and "Wall Tile," are scored or stamped by the manufacturer from whom respondent purchases, so that lines forming squares are impressed upon the sheets or coverings, and when painted or lacquered by respondent a different color from the remainder of the sheeting appear similar to mortar lines on a completely installed ceramic surface. The respondent, after finishing these products, brands and labels them "Stancotile," "Mono-Tile," or "Wall Tile."

"Marble," as generally understood in the building trade and by the purchasing public, is a natural, one-piece, solid formation which is quarried out of the earth and cut and finished from the solid mass formation, and is capable of taking a polish.

PAR. 3. Many experts, including prominent architects, tile manufacturers, tile contractors, tile jobbers, professors of ceramics, structural engineers, architectural and structural standardists, and contractors, testified, and the Commission finds it to be a fact, that the word "tile" when standing alone means or connotes a baked clay or ceramic product; further, that the term "tile" standing alone does not have to be accompanied by the word "ceramic" to denote a ceramic tile. By the use of the word "tile" alone a ceramic tile is meant. There are different types of tiles, or ceramic tiling, such as roofing tiles, hollow tiles, drain tiles, and decorative wall tiles. The term "tile," if used in conjunction with some other word or words, descriptive of the material or substance of which the product is composed, means or connotes not a baked clay or ceramic product but a product manufactured from the other material or substance employed. Examples of this are rubber tile, asbestos tile, cork tile, wood tile, tin tile, glass tile, and cement tile. These various products have been so known to the building trade and to a portion of the general public for a number of years. Several experts and others, including prominent architects, manufacturers, building contractors, jobbers, and members of the general purchasing public, testified that the word "tile" when standing alone meant nothing to them, and they had to be informed of the substance of which the tile was made.

The Government of the United States, through the Procurement Department of the Treasury, in asking for bids on public buildings, includes in its specifications references to various products under the designations of cork tile, rubber tile, linoleum tile, acoustical tile, and others.

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PAR. 4. Respondent, in the course and conduct of its business as aforesaid, in extensive advertising of its products, uses the names "tile," "Stancotile," "Mono-tile," and "Wall Tile." The aforesaid designations, when used alone by respondent as descriptive of or as a designation for its products, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that the products so described are manufactured from baked clay, all of which is to the damage and injury of said purchasing public, and tends to and does divert trade from competitors of respondent, who sell and distribute tile products manufactured from baked clay.

The use by the respondent of the words "Mono-Marble" has a tendency and capacity to and does in fact mislead and deceive a substantial portion of the purchasing public into the belief that the product so described is marble, to the damage and injury of the purchasing public, and tends to and does divert trade from competitors of respondent who quarry and finish marble.

PAR. 5. The designation and description by respondent of its products as "tile," "Stancotile," "Mono-tile," and "Wall Tile," as heretofore described, is deceptive and misleading, and has the capacity and tendency to deceive purchasers of said products into the belief that said products are manufactured from baked clay.

The designation and description by respondent of its product as "Mono-Marble," as heretofore described, is deceptive and misleading, and has the capacity and tendency to deceive purchasers of said product into the belief that said product is marble, as before described.

CONCLUSION

The aforesaid acts and practices of the respondent Standard Wall Covering 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 John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition

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thereto, no briefs being filed and oral argument not having been requested 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 Standard Wall Covering Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its interior wall coverings in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. Directly or indirectly, by the use of the words "tile," "Stanco-tile" and "Mono-tile," that its products are "tile," unless in immediate conjunction with the words "tile" "Stanco-tile" or "Mono-tile" wherever used, in the same conspicuous type, there appear a word or words designating the material or substance of which the products are made, such as wood tile, glass tile, rubber tile, asbestos tile, copper tile, cork tile, or metal tile; and

2. Directly or indirectly, by the use of the words "Mono-Marble" that its products are marble when such is not the fact.

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.

IN THE MATTER OF
THE MARSH LUMBER COMPANY, TRADING AS MARSH
WALL TILE COMPANY

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

Docket 2827. Complaint, May 29, 1936—Decision, Nov. 6, 1937

Where a corporation dealing, among other things, in wall coverings and counter coverings compounded from wood chips and fibers and other substances under process resulting in hard durable sheeting or covering upon which were scored or stamped, by manufacturer, squares resembling, when painted or lacquered by it with different color from remainder of the sheeting, mortar lines on a completely installed ceramic surface, and in selling and distributing, in other States and in District of Columbia, such products, in competition, among others, with many engaged in sale and transportation, as aforesaid, of tile made from clay and baked in kilns and properly thus described and designated, with others who sell and distribute wall coverings and counter coverings and various other products, including copper tile, glass tile, wood tile, rubber tile, cork tile, and the like, properly thus designated and described by such names, and with those who sell and distribute such coverings made from quarried marble and who, as marble, properly describe their said products—

- (a) Made use of names "Marstile" and "Marsh Wall Tile" as designations of its said products in extensively advertising same, notwithstanding fact its said products, thus designated, were not that baked clay or ceramic product connoted, to building trade and general public, by word "tile" standing alone and without qualifying prefix, as hereinbefore set forth; with tendency and capacity to mislead and deceive substantial portion of purchasing public, to its damage and injury, into the belief that aforesaid products, thus described, were made from baked clay, and with tendency to and effect of diverting trade from competitors who sell and distribute thus made, tile products; and
- (b) Made use of name "Marsh Marble" as designation of product made and sold by it as aforesaid; with tendency and capacity to mislead and deceive substantial portion of purchasing public into belief that product thus described was marble, to the damage and injury of said public, and with tendency to and effect of diverting trade from competitors who quarry and finish such substance:

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*, *Mr. John J. Keenan* and *Mr. John L. Hornor*, trial examiners.

Mr. Alden S. Bradley and *Mr. Morton Nesmith* for the Commission. *Dyke & Schaines*, of New York City, and *Wilkins, Fisher & Limbach*, of New Philadelphia, Ohio, for respondent.

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Hines, Rearick, Dorr & Hammond, of New York City, for Tile Manufacturers' Assn, Inc., amicus curae.

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 Marsh Lumber Company, a corporation, trading as Marsh Wall Tile Company, hereinafter designated 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 the charges in that respect as follows:

PARAGRAPH 1. The respondent, Marsh Lumber Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its offices and principal place of business located at 535-611 Tuscarawas Avenue, in the city of Dover, State of Ohio. Respondent is now and for more than one year last past has been engaged, under its corporate name of Marsh Lumber Company, and also under the trade-name and style of Marsh Wall Tile Company, in the business of selling wall coverings and counter coverings, which are products manufactured from wood fibre, and which respondent designates and terms "Marsttile" and "Marsh Marble." Respondent distributes said products to purchasers thereof, and when orders are received therefor they are filled by respondent by shipping said wall coverings and counter coverings to purchasers from the city of Dover, Ohio, in and through other States of the United States, and in the District of Columbia, and there is now, and has been during the time hereinbefore mentioned, a constant current of trade in commerce in said wall coverings and counter coverings so distributed and sold by said respondent, between and among the various States of the United States, and in the District of Columbia.

In the course and conduct of its business, respondent was and is in substantial competition with other individuals, firms, partnerships, and corporations likewise engaged in the sale and distribution of wall coverings and counter coverings, between and among the various States of the United States, and in the District of Columbia.

PAR. 2. Respondent, in the course and operation of its business as described in paragraph 1 hereof, in soliciting the sale of, and selling its products in interstate commerce, sells its wall coverings and coun-

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ter coverings under the trade name and style of "Marsh Wall Tile Company," which name respondent caused and causes to be conspicuously displayed on its letterheads and advertising matter, and also caused and causes said products to be described in its advertisements, letterheads, billheads, contracts, and specifications circulated in interstate commerce as "Marshtile," "Marsh Wall Tile," "tile," "wall tile," "Marsh Marble."

PAR. 3. The aforesaid wall coverings and counter coverings sold and distributed by respondent, as set forth in paragraph 1 hereof, are made by exploding pine wood chips with high pressure steam treating with oil welding together, and compressing into sheets by subjecting to high pressure in steam heated hydraulic presses. The products are then glazed with lacquer and processed in such a manner as to give said products the appearance of tile or marble respectively. To further simulate tile the products are made with a glazed surface with scores and lines of various colors in such manner and at such intervals as to make the said wood fibre products more closely resemble tile slabs, with various colored cement between them; and to simulate marble the products are grained, giving said product the appearance of marble. The use of the words "Marshtile," "Marsh Wall Tile," "tile," "wall tile," and "Marsh Marble," in said trade name and in said advertising literature hereinabove referred to, and the placing of said wall coverings and counter coverings in the hands of builders and dealers, enables builders, architects and speculative builders, and dealers to confuse, impose upon, and deceive those members of the purchasing public who buy houses, and also those for whom houses are built, into the belief that when they are buying respondent's wood fibre products and installations, they are buying and receiving silica or burned clay tile products and installations, or marble as the case may be.

PAR. 4. The word "tile" is understood in the building trade, and by the general public, to mean a clay product shaped in comparatively small sized units and baked in a kiln or oven.

Marble is understood by the building trade and the purchasing public to be a stone, which is a product of nature and which is capable of taking a polish.

PAR. 5. A substantial number of the members of the purchasing public, who have occasion to purchase buildings or equipment wherein wall coverings and counter coverings form an integral and necessary part thereof, have a preference in many instances, for wall coverings and counter coverings, made from tile or from marble, believing that tile and marble are products of a quality and durability superior for the purposes herein named, to other products, such as wood, irre-

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spective of any method of processing. Such members, when they observe such wall coverings and counter coverings already installed that have the same appearance, such as graining in various types of marble or marking simulating mortar joints in tile construction, as marble or tile respectively, believe that said products are actually tile or marble, and not a product made of wood; and said members of the purchasing public, when buying wall coverings and counter coverings having the appearance of tile or marble and unaccompanied by any explanation or description of said products and which have been installed as aforesaid, are entitled to receive tile or marble, as the case may be, and not wall coverings or counter coverings manufactured from wood fibre.

PAR. 6. The acts and practices of respondent, as herein set forth, are calculated to and do have the capacity and tendency of inducing many of the purchasing public to purchase said wall coverings and counter coverings as aforesaid, in the mistaken belief that they are purchasing wall coverings and counter coverings made of tile or marble.

PAR. 7. There are among the competitors of respondent engaged in the sale of wall coverings and counter coverings, as mentioned in paragraph 1 hereof, corporations, individuals, firms and partnerships, who sell and distribute wall coverings and counter coverings manufactured by the same methods as respondent's products, but who truthfully represent that the counter coverings and wall coverings sold by them are not tile or marble but are imitations of tile or marble. There are also among the competitors of respondent engaged in the sale and distribution of wall coverings and counter coverings, corporations, individuals, firms, and partnerships, who sell and distribute wall coverings and counter coverings which are made of clay baked in a kiln or oven, or wall coverings and counter coverings which are marble, and who truthfully represent the same to be tile or marble.

The acts and practices of respondent, as herein set forth, are calculated to, tend to and do unfairly divert trade to respondent from such corporations, individuals, firms and partnerships, engaged in the sale of wall coverings and counter coverings in interstate commerce, throughout the various States of the United States, and in the District of Columbia. By the acts and practices of the respondent hereinbefore set forth, substantial injury is done to competitors in interstate commerce.

PAR. 8. 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 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 29, 1936, issued, and on June 3, 1936, served its complaint in this proceeding upon respondent, The Marsh Lumber 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 Alden S. Bradley and Morton Nesmith, attorneys 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 Dyke and Schaines, 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 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. The respondent, The Marsh Lumber Company, is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 535-611 Tuscarawas Avenue, city of Dover, State of Ohio. Respondent has been, during its corporate existence, engaged, among other things, in the business of selling and distributing wall coverings and counter coverings, which products are manufactured from wood fibre and which respondent designates as "Marshtile," "Marsh Wall Tile," and "Marsh Marble."

Respondent, in the course and conduct of its business, has sold, distributed, and transported or caused to be transported, its aforesaid products from its place of business in the State of Ohio to

purchasers thereof located in various points of the States of the United States other than the State of Ohio, and has maintained a constant current of trade and commerce between and among the various States of the United States and in the District of Columbia.

There are among competitors of respondent many persons, firms and corporations located and doing business in the United States, engaged in the sale and transportation of tile in commerce between and among the different States of the United States, which tile is manufactured from clay and baked in kilns, whose products are properly described and designated as tile. There are others who sell and distribute wall coverings and counter coverings and various other products, such as copper tile, glass tile, wood tile, rubber tile, cork tile, and the like, whose products are properly designated and described by such names. There are also competitors of the respondent who sell and distribute wall coverings and counter coverings manufactured from quarried marble, who properly describe their products as marble.

PAR. 2. The term "tile," when used alone and not in conjunction with other words, is generally understood in the building trade and by the general public to be a hard clay product which has been baked in kilns and in its final form shaped into comparatively small-sized units. Tile, as so understood, is compounded from clays and a mixture of clays, feldspar, flint, talc, ball clays, prophyllite, aluminum hydroxide, silica, and some chemicals for coloring purposes. The materials are mixed in various proportions to produce various qualities in the tile. They are mixed in large mixing vats containing agitators, until the mixture of the ceramic materials with the admixture of water approaches the consistency of a thick soup. Then it is put in a filter press, the water being reduced to a certain percentage of the total content of the materials, and the materials coming from the filter press are dried until they have a moisture content ranging from ten to fifteen percent. The materials are then pulverized into a dust form, which is pressed into tiles of various shapes. The tiles are then dried down to approximately zero percent moisture content and fired in a kiln at a temperature exceeding red heat, which may run from twelve hundred degrees Fahrenheit upward. The purpose of this firing is to harden the ceramic material until it is an impervious, dense, durable mass. There are glazed and unglazed types of tiles. The unglazed tile has a rough, unfinished surface, while the glazed tile has a shiny glass or decorative surface, the glaze being matured after the first firing operation by the addition of certain mineral oxides, after which it is put

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through a process known as "gloss firing." Floor and wall tiles are produced in relatively small individual units, the extreme permissible size of the units being about six by twelve inches, the reason being that the manufacturers of ceramic products are confronted with the fact that clays and mixtures of clays with other materials, when formed into wares, undergo shrinkage during the drying and firing processes. Therefore, one of the problems of the tile manufacturer is to produce wares free from warping or cracking, and the larger the unit the greater the liability of warping and cracking resulting from shrinkage of the mixture.

Floor and wall tile of baked clay is installed upon a proper base and set in cement by workmen known as "tile setters." The term "tile" when used alone and without descriptive words, means ceramic tile, which is a more complete name for the product just described.

The use of the word "tile," standing alone and without descriptive words, dates back some four thousand years to the Egyptians, who, according to man's knowledge, were the first to discover the art of molding and baking clay into hard units, as above described.

There are sellers and distributors, however, of other products designed to be used as wall and counter coverings, whose said products are properly designated and described as rubber tile, glass tile, copper tile, acoustical tile, cork tile, composition tile, metal tile, cement tile, linoleum tile, wood tile, asphaltum tile, stone tile, and the like. These products are generally understood in the building trade and by a substantial portion of the general public as being coverings made from the substances so indicated by word or words preceding the word "tile."

The respondent's products, known as "Marsttile" and "Marsh Wall Tile," are compounded from wood chips and wood fibres and other substances, and siccative materials, which are unique, and are baked in an oven at a high temperature, pressed and tempered, so that the final product is a hard, durable sheeting or covering. These sheets can be cut in practically any size desired, but the general size ordinarily sold by respondent is three by four feet. The surfaces of these sheetings or coverings known as "Marsttile" and "Marsh Wall Tile," are scored or stamped by the manufacturer from whom respondent purchases, so that lines forming squares are impressed upon the sheets or coverings, and when painted or lacquered by respondent a different color from the remainder of the sheeting appears similar to mortar lines on a completely installed ceramic surface. The respondent, after finishing these products, brands and labels them "Marsttile" and "Marsh Wall Tile."

"Marble," as generally understood in the building trade and by the purchasing public, is a natural, one-piece, solid formation which is quarried out of the earth and cut and finished from the solid mass formation, and is capable of taking a polish.

PAR. 3. Many experts, including prominent architects, tile manufacturers, tile contractors, tile jobbers, professors of ceramics, structural engineers, architectural and structural standardists, and contractors, testified, and the Commission finds it to be a fact, that the word "tile" when standing alone means or connotes a baked clay or ceramic product; further, that the term "tile" standing alone does not have to be accompanied by the word "ceramic" to denote a ceramic tile. By the use of the word "tile" alone a ceramic tile is meant. There are different types of tiles, or ceramic tiling, such as roofing tiles, hollow tiles, drain tiles, and decorative wall tiles. The term "tile," if used in conjunction with some other word or words, descriptive of the material or substance of which the product is composed, means or connotes not a baked clay or ceramic product, but a product manufactured from the other material or substance employed. Examples of this are rubber tile, asbestos tile, cork tile, wood tile, tin tile, glass tile, and cement tile. These various products have been so known to the building trade and to a portion of the general public for a number of years. Several experts and others, including prominent architects, manufacturers, building contractors, jobbers and members of the general purchasing public, testified that the word "tile" when standing alone meant nothing to them, and they had to be informed of the substance of which the tile was made.

The Government of the United States, through the Procurement Department of the Treasury, in asking for bids on public buildings, includes in its specifications references to various products under the designation of cork tile, rubber tile, linoleum tile, acoustical tile, and others.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, in extensive advertising of its products, uses the names "Marshtile" and "Marsh Wall Tile." The aforesaid designations, when used alone by respondent as descriptive of or as a designation for its products, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that the products so described are manufactured from baked clay, all of which is to the damage and injury of said purchasing public, and tends to and does divert trade from competitors of respondent, who sell and distribute tile products manufactured from baked clay.

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The use by the respondent of the words "Marsh Marble" has a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that the product so described is marble, to the damage and injury of the purchasing public, and tends to and does divert trade from competitors of respondent who quarry and finish marble.

PAR. 5. The designation and description by respondent of its products as "Marshtile" and "Marsh Wall Tile" as heretofore described, is deceptive and misleading, and has the capacity and tendency to deceive purchasers of said products into the belief that said products are manufactured from baked clay.

The designation and description by respondent of its product as "Marsh Marble," as heretofore described is deceptive and misleading, and has a capacity and tendency to deceive purchasers of said product into the belief that said product is marble, as before described.

CONCLUSION

The aforesaid acts and practices of the respondent, The Marsh Lumber 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, no briefs being filed and oral argument not having been requested 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 Marsh Lumber Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its wall boards, wall coverings and counter coverings in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

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1. Directly or indirectly, by the use of the words "Marshtile," "Marsh Wall Tile," "Wall Tile," or "tile" that its products are "tile" unless in immediate conjunction with the words "tile," "Marshtile," "Marsh Wall Tile," or "Wall Tile" wherever used, in the same conspicuous type, there appear a word or words designating the material or substance of which the products are made, such as wood tile, glass tile, rubber tile, asbestos tile, copper tile, cork tile, or metal tile; and
2. Directly or indirectly, by the use of the words "Marsh Marble" or "Marble" that its products are marble, when such is not the fact.

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.

IN THE MATTER OF
LEWYN DRUG, INC.

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

Docket 2934. Complaint, Sept. 30, 1936—Decision, Nov. 6, 1937

Where a corporation engaged in the sale and distribution of various pharmaceutical preparations including, in tablet and capsule form, so-called "Dr. Haller's Prescription 5000," made for it by others and sold and distributed by it, through wholesale and retail druggists and direct to the consuming public on mail order, to purchasers in other States, in active competition with those engaged in manufacture and sale, or sale, of various preparations for treatment of conditions similar to those for which it recommended its aforesaid preparation—

(a) Represented, in advertisements thereof in newspapers and periodicals of general circulation, and in circular letters distributed among its customers and prospective customers, that preparation in question was a safe and dependable remedy for delayed or suppressed menstruation, and that through the use thereof women suffering therefrom would end such condition and obtain relief safely, quickly and dependably, and that preparation in question had been dispensed to American women through ethical channels for almost half a century; and

(b) Represented, as aforesaid, that said preparation was best product in the world for cases of unnaturally delayed menstruation and successfully relieved some of the longest and most stubborn cases, and that with it countless women had obtained and were obtaining most gratifying results; Facts being it would not bring about such relief or end such delay safely, quickly, and dependably, and was completely ineffectual in many cases, and use thereof was always dangerous, it was not best product in such unnaturally delayed cases, and did not successfully relieve some of the longest and most stubborn cases, and was not a dependable product nor a safe or competent abortifacient, and various representations aforesaid were false;

With effect of misleading and deceiving many members of the purchasing public and causing them erroneously to believe that said representations were true, and, because of such erroneous belief, to purchase substantial quantities of its said preparation, and of thereby diverting trade in such commerce to it from its competitors who truthfully represent their products; to their substantial injury and to that of public:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Reuben J. Martin for the Commission.

COMPLAINT

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

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sion, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Lewyn Drug Incorporated has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Lewyn Drug Incorporated, 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 at 1928 Taft Avenue in the city of Hollywood, within the State of California. Said respondent is now and for more than one year last past has been engaged in the sale of a preparation recommended for the treatment of unnaturally delayed menstruation and known and designated as "Dr. Haller's Famous Prescription 5000," and the distribution thereof in commerce between and among the various States of the United States. It causes said "Dr. Haller's Famous Prescription 5000" when sold by it 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, for more than one year last past, a constant current of trade and commerce by respondent in said "Dr. Haller's Famous Prescription 5000" between and among the various States of the United States.

In the course and conduct of its said business, said respondent is now and for a long time, to wit, for more than one year last past has 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 preparations recommended for the treatment of unnaturally delayed menstruation.

PAR. 2. The preparation "Dr. Haller's Famous Prescription 5000" is manufactured for said respondent by several manufacturers and is sold and distributed by said respondent through drug stores located in the various States of the United States and also directly to consumers located in the various States of the United States.

PAR. 3. Said respondent, in the course and conduct of its said business as hereinbefore set out in paragraphs 1 and 2, has been and now is engaged in extensive advertisement of its said product as a means of furthering and aiding in the interstate sale and distribution of "Dr. Haller's Famous Prescription 5000," and as a medium of advertising it has been and now is using various magazines of national circulation and distribution.

Said respondent in its said advertisements of the preparation known as "Dr. Haller's Famous Prescription 5000," sold and distributed by it, has made and is now making various false, deceptive and misleading statements concerning said preparation. Among the said statements which said respondent has used and is now using in its advertisements in magazines and in its circulars distributed with its said preparation are the following:

In Europe women are not distressed about unnatural delay—when the calendar passes the danger mark. They use Dr. Haller's Famous Prescription 5000, and end delay safely, quickly, dependably.

For almost half a century Prescription 5000 has also been dispensed to American women through ethical channels.

Dr. Haller's Prescription 5000 is the best product in the world for cases of unnaturally delayed menstruation.

Whereas in truth and in fact "Dr. Haller's Famous Prescription 5000" does not end delay safely, quickly, dependably, has not been dispensed to American women through ethical channels for almost a half a century, and is not the best product in the world for cases of unnaturally delayed menstruation.

Respondent in its said advertising has created and is now creating upon the public the impression and the belief that "Dr. Haller's Famous Prescription 5000" is a safe and dependable preparation for use in ending cases of unnaturally delayed menstruation, whereas in truth and in fact said "Dr. Haller's Famous Prescription 5000" is not safe and dependable and its use may produce serious results, and it will not end cases of unnaturally delayed menstruation.

PAR. 4. The use by said respondent, Lewyn Drug Incorporated, 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 "Dr. Haller's Famous Prescription 5000" is in truth and in fact a safe and harmless preparation which will end unnaturally delayed menstruation. Acting in such erroneous belief, the consuming public and especially women suffering from delayed menstruation, have been induced and are now induced to purchase "Dr. Haller's Famous Prescription 5000" in preference to other preparations designed to end delayed menstruation offered for sale by manufacturers, retail dealers, and distributors. As a result of such false, deceptive, and misleading representations on the part of said respondent, trade is unfairly diverted to respondent from such manufacturers, retail dealers, or distributors of other preparations for ending delayed menstruation who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof.

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PAR. 5. Said false, deceptive, and misleading representations of said respondent contained in its advertisements have resulted in injury to respondent's competitors and to retail dealers and in prejudice to the buying 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, and entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on September 30, 1936, issued and served its complaint in this proceeding upon respondent Lewyn Drug, 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 Reuben J. Martin, attorney for the Commission, before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it (no testimony or other evidence being introduced by the 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 and brief in support of the complaint (no brief having been filed on behalf of respondent and respondent not having requested oral argument); and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Lewyn Drug, Inc., is a corporation, organized under the laws of the State of California with its principal place of business at 655 North Arden Blvd., in the city of Hollywood, State of California, and with a branch office or place of business at Steubenville, Ohio. Respondent, in 1934, succeeded to the business of a partnership conducted under the name and style of Lewyn Drug Company. Respondent is engaged in the sale and distribution of

various pharmaceutical preparations, including a preparation in tablet and capsule form designated "Dr. Haller's Prescription 5000." Said preparation is manufactured for respondent by others and is sold and distributed by the respondent through wholesale and retail druggists and direct to the consuming public on mail orders. Respondent causes the preparation, "Dr. Haller's Prescription 5000," when sold by it, to be transported from its principal place of business or its branch office through and into various other States of the United States to the respective purchasers thereof, located at various points in such States of the United States other than the States of California and Ohio. In the course and conduct of its said business, respondent has been, and is now, in active competition with various persons, partnerships, and corporations, engaged in the manufacture and sale, or the sale, of various preparations for the treatment of conditions similar to those for which respondent recommends the use of its said preparation, "Dr. Haller's Prescription 5000."

PAR. 2. Respondent, in the course and conduct of its business, represents and recommends its preparation, "Dr. Haller's Prescription 5000," as a safe, dependable remedy for delayed or suppressed menstruation, and claims that, by its use, women suffering from delayed or suppressed menstruation will obtain relief safely, quickly, and dependably.

PAR. 3. In the course and conduct of its business, respondent has caused and is causing advertisements in aid of the sale of its said preparation, "Dr. Haller's Prescription 5000," to be published in newspapers and magazines of general circulation in various States of the United States and has also used and is using advertising in the form of circular letters which it causes to be distributed among its customers and prospective customers. In its said advertisements, respondent has made and is making numerous claims and representations concerning the therapeutic qualities of and the benefits accruing to the users of said preparation, "Dr. Haller's Prescription 5000," and the uses for which said preparation is recommended by the respondent. Among said representations so made by said respondent are representations to the effect:

That in Europe women are not disturbed about unnatural delay, for in such cases they use said prescription and end the delay safely, quickly, and dependably;

That for almost half a century the prescription has been dispensed to American women through ethical channels;

That said preparation, "Dr. Haller's Prescription 5000," is the best product in the world for cases of unnaturally delayed menstruation;

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That "Dr. Haller's Prescription 5000" successfully relieves some of the longest and most stubborn cases; and

That with this dependable product countless women have obtained most gratifying results.

PAR. 4. The claims made by the respondent for its preparation "Dr. Haller's Prescription 5000" are false, deceptive, and misleading. Said preparation does not have a wide distribution through the usual wholesale and retail drug channels and it has not been dispensed to American women through ethical channels for almost half a century.

Respondent's said preparation, "Dr. Haller's Prescription 5000" consists of tablets, capsules and ampules, whose respective contents are as follows:

Each white tablet contains:

Ext. Cotton Root Bark.....	1	Grain
Ext. Black Hellebore.....	½	"
Ergotin (Bonjean).....	1	"
Aloes (Curacao).....	2½	"
Iron Sulphate dried.....	1	"
Oil Pennyroyal.....	¼	Minim
Oil Savin.....	¼	"

Each red tablet contains:

Quinine Sulphate.....	5	Grains
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Each capsule contains:

Ergotin (Bonjean).....	1	Grain
Oil Savin.....	½	Minim
Aloin.....	⅓	Grain
Apiol Green q. s. to.....	5	Minims

Each ampule contains:

Pituitary Extract.....	½	cc
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The ingredients composing said preparation are known to the medical profession and to pharmacists as "emmenagogues."

Delayed menstruation may be functional due to a misbalance of the endocrine glands. Delayed menstruation may be due to or caused by any of the severe major diseases, such as tuberculosis, cancer, pneumonia, or hyperthyroidism, or it may be due to pregnancy.

Medical testimony is that where the delayed menstruation is functional due to a misbalance of the endocrine glands or where it is due to such diseases as tuberculosis, cancer, pneumonia or hyperthyroidism, the use of "Dr. Haller's Prescription 5000" would in no way correct the situation, end the delay and bring about menstruation, and

its use would be definitely dangerous. If the user is suffering from high blood pressure, its use would be dangerous due to the adverse effect on the pressure caused by some of the ingredients, notably pituitary extract, contained in the preparation. In cases where pregnancy exists it would be definitely dangerous because the drugs contained in said preparation are entirely too potent to be administered without the attendance of a physician, and when given without the attendance of a physician and in an overdose it will possibly produce excessive uterine hemorrhage or rupture of the uterus with the invariable danger of puerperal sepsis or secondary infection of the uterine contents with resulting high mortality rate. In many cases said preparation will not expel the uterine contents.

The use of "Dr. Haller's Prescription 5000" will not bring about relief in cases of delayed or suppressed menstruation. It will not end delay safely, quickly and dependably, but is completely ineffectual in many cases and its use is always dangerous. It is not the best product in cases of unnaturally delayed menstruation and it does not successfully relieve some of the longest and most stubborn cases of delayed menstruation. It is not a dependable product and it is not a safe or competent abortifacient.

PAR. 5. Respondent, in its newspaper and magazine advertisements, has made use of various letters of the alphabet preceding its corporate name so that the corporate name would appear to be V. B. Lewyn Drug, Inc., U. S. Lewyn Drug, Inc., etc. Different letters or combinations of letters of the alphabet are used in each advertisement and a number of different combinations were used and are so being used. This was done and is being done for identification purposes in order that respondent might be able to tell which of its advertisements were producing the most results, but each of said advertisements so used were and are published on the authority of the respondent.

PAR. 6. The representations and implications used by the respondent, as above set out, in connection with the offering for sale and sale of the preparation herein described in said commerce, are false, misleading and deceptive and have had, and now have, the tendency and capacity to, and do, mislead and deceive many members of the purchasing public and cause them erroneously to believe that said representations are true and cause them, because of said erroneous belief, to purchase substantial quantities of respondent's said preparation, thereby unfairly diverting trade in said commerce to the respondent from its competitors who truthfully represent their product, to the substantial injury of said competitors in said commerce and to the injury of the public.

Order

CONCLUSION

The aforesaid acts and practices of the respondent, Lewyn Drug, Inc., are to the prejudice of the public and 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 approved September 26, 1914, 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 P. Vicini, 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 introduced by the respondent), and the brief filed herein (respondent having filed no brief and not having requested an oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondent, Lewyn Drug, Inc., has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Lewyn Drug, Inc., its officers, agents, employees, representatives, or successors, whether acting under said name of Lewyn Drug, Inc., or under any other name or in any other manner, in connection with the offering for sale, sale and distribution of the preparation now known and sold under the name "Dr. Haller's Prescription 5000," or any other preparation, under whatever name sold, composed of the same or similar ingredients, and possessing similar properties, in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said preparation is a safe, dependable remedy for delayed or suppressed menstruation;
2. Representing that by the use of said preparation women suffering from delayed or suppressed menstruation will end such delay or suppression and will obtain relief safely, quickly and dependably;
3. Representing that said preparation has been dispensed to American women through ethical channels for almost a half century;
4. Representing that said preparation is the best product in the world for cases of unnaturally delayed menstruation;
5. Representing that said preparation successfully relieves some of the longest and most stubborn cases of delayed menstruation, and

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that with this said preparation countless women have obtained and are obtaining most gratifying results;

6. And from making any other similar representations of like import or effect as to the therapeutic or medicinal value of said preparation or the benefits accruing from the use thereof.

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

Complaint

IN THE MATTER OF
AL HARTMAN, INC.

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

Docket 3241. Complaint, Oct. 9, 1937—Decision, Nov. 6, 1937

Where a corporation engaged in manufacture of dresses and sale and distribution thereof to retail dealers and other customers in the various States and in the District of Columbia, in substantial competition with others engaged in such sale and distribution of dresses; in advertising the same in newspapers of interstate circulation—

- (a) Represented, designated and referred thereto as "Indo China Washable Crepe Prints"; and
- (b) Set forth on tags attached to dresses thus advertised, offered and sold, language stating that "Owing to the peculiar delicacy of all silk weaves, manufacturers will not guarantee them as flawless," etc., and that "There are certain characteristics appearing in the weave of all silks that should not be considered as imperfections," etc.;

Notwithstanding fact dresses thus advertised and offered were not composed of silk, product of cocoon of silk worm, as long definitely understood in mind of retail dealers and consuming public from word "silk," products of which have long held, and still hold, great public esteem and confidence for their preeminent qualities, and as understood from word "crepe" without descriptive qualification, as applied to dress goods and other items of wearing apparel, as meaning one of terms applied to fabrics resulting from different types of weaving silk fiber, and fabric made from cocoon of silk worm, and as commonly known and understood by public generally, "silk";

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such dresses were made of silk, and to cause them to purchase said dresses by reason of such erroneous beliefs, thus engendered, and to divert trade unfairly to it from competitors engaged in manufacture and sale of silk dresses who do not misrepresent the kind of dresses made and offered for sale by them; 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. 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 Al Hartman, Inc., a corporation, hereinafter referred to as respondent, has

been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Al Hartman, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1400 Broadway in the city of New York, in said State. It is now, and for many years last past has been, engaged in the business of manufacturing dresses. It sells, and has sold and distributed, such dresses to retail dealers and other customers located in the various States of the United States and in the District of Columbia. It causes, and during the time above mentioned has caused, its said dresses, 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 said respondent in said dresses, so sold by it, 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 persons, firms, and partnerships engaged in the sale and distribution of dresses 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 described in paragraph 1 herein, respondent, in soliciting the sale of and selling certain of its dresses, caused, and causes, advertisements and advertising matter to be inserted in newspapers having an interstate circulation. In said advertisements, such dresses offered for sale and sold by respondent were represented, designated and referred to as "Indo China Washable Crepe Prints." The dresses so advertised and offered for sale, and sold, had, and have, attached thereto tags bearing the following language:

Owing to the peculiar delicacy of all silk weaves, manufacturers will not guarantee them as flawless, or against perspiration, slipping or roughing. There are certain characteristics appearing in the weave of all silks that should not be considered as imperfections. They are unavoidable results for which the manufacturer cannot be held responsible.

The foregoing statements and representations made by the respondent, as in this paragraph set out, serve as representations to members of the purchasing public and to retail dealers that such dresses so advertised and offered for sale were, and are, silk dresses.

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The representations hereinabove set forth are, and were, grossly false and misleading in that said dresses so represented, designated and referred to are not, and were not, composed of silk, the product of the cocoon of the silkworm, but are, and were, composed of materials other than silk.

PAR. 3. The word "silk" for many years last past has had, and still has, in the mind of the retail dealers and consuming public generally a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk products 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. A variety of distinctive terms has been applied to the fabrics resulting from different types of weaving of silk fibre. Dress goods and other items of wearing apparel designated, described and referred to as "crepe" have been for a long time, and at the present time still are, associated in the public mind with the fabric made from the cocoon of the silkworm, commonly known and understood by the public generally as "silk."

PAR. 4. There are among the competitors of respondent mentioned in paragraph 1 herein corporations, individuals, partnerships, and firms engaged in the manufacture and sale of silk dresses who do not misrepresent the kind of dresses manufactured and offered for sale by them.

PAR. 5. The use by respondent of the representations set forth herein have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are, and were, true and to cause them to purchase said products as a result of such erroneous beliefs engendered as above set forth. The use by respondent of the representations aforesaid has unfairly diverted, and does unfairly divert, trade in said commerce to the respondent from its said competitors, and thereby substantial injury is being, and has been done, by respondent to competition in commerce among and between the various States of the United States.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 9th day of October 1937, issued and subsequently served its complaint in this proceeding upon respondent Al Hartman, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On November 3, 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 consented 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. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Al Hartman, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1400 Broadway in the city of New York, in said State. It is now, and for many years last past has been, engaged in the business of manufacturing dresses. It sells, and has sold and distributed, such dresses to retail dealers and other customers located in the various States of the United States and in the District of Columbia. It causes, and during the time above mentioned has caused, its said dresses, 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 said respondent in said dresses, so sold by it, 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 persons, firms, and partnerships engaged in the sale and

distribution of dresses 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 described in paragraph 1 herein, respondent, in soliciting the sale of and selling certain of its dresses, caused, and causes, advertisements and advertising matter to be inserted in newspapers having an interstate circulation. In said advertisements, such dresses offered for sale and sold by respondent were, and are, represented, designated and referred to as "Indo China Washable Crepe Prints." The dresses so advertised and offered for sale, and sold, had, and have, attached thereto tags bearing the following language:

Owing to the peculiar delicacy of all silk weaves, manufacturers will not guarantee them as flawless, or against perspiration, slipping or roughing. There are certain characteristics appearing in the weave of all silks that should not be considered as imperfections. They are unavoidable results for which the manufacturer cannot be held responsible.

PAR. 3. In the manner and through the means above stated, respondent represented, and represents, to retail dealers and to members of the purchasing public generally that such dresses so advertised and offered for sale were, and are, silk dresses. The representations hereinabove set forth are, and were, false and misleading in that said dresses so represented, designated and referred to were not, and are not, composed of silk, the product of the cocoon of the silkworm, but were, and are, composed of materials other than silk.

PAR. 4. The word "silk" for many years last past has had, and still has, in the mind of the retail dealers and consuming public generally a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, great public esteem and confidence for their pre-eminent qualities. Silk fibre has long been woven into a variety of fabrics. A variety of distinctive terms has been applied to the fabrics resulting from different types of weaving of silk fibre. Dress goods and other items of wearing apparel designated, described or referred to as "crepe," without a modifying word descriptive of the fibre from which they are made, have been for a long time, and at the present time still are, associated in the public mind with a fabric made from the cocoon of the silkworm, commonly known and understood by the public generally as "silk."

PAR. 5. There are among the competitors of respondent mentioned in paragraph 1 hereof corporations, individuals, partnerships, and firms engaged in the manufacture and sale of silk dresses who do not misrepresent the kind of dresses manufactured and offered for sale by them.

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PAR. 6. The representations made by respondent in connection with the sale and distribution of said dresses in said commerce as hereinabove set out have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such dresses were made of silk, and to cause them to purchase such dresses on account of such erroneous beliefs engendered as above set forth. The representations made by respondent, as aforesaid, have the capacity and tendency to unfairly divert trade to respondent from said competitors, and 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 respondent Al Hartman, Inc. are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of the complaint to be true, and states that it waives hearing on the charges set forth in said complaint and consents that, without further evidence or other intervening procedure, the Commission may issue and serve upon it findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent Al Hartman, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its merchandise, women's wearing apparel and dress goods, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the word "silk," or any other word of similar import or meaning, to describe products which are not composed wholly of silk,

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the product of the cocoon of the silkworm, but which are composed of a material or materials other than silk.

2. Using the word "crepe" to describe, advertise, brand or label any product which is not composed wholly of silk, the product of the cocoon of the silkworm, unless there is used in immediate connection and conjunction with said word "crepe," in letters of equal size and conspicuousness, a word or words accurately describing the material or materials from which said products are actually made.

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

ADAH ALBERTY, TRADING AS ALBERTY'S FOOD
PRODUCTS, ETC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2875. Complaint, July 11, 1936—Decision, Nov. 8, 1937*

Where an individual engaged in sale, under various trade names, of numerous baby foods and health preparations purchased by her from various manufacturing druggists and chemists throughout the United States and thereafter packed, bottled, labeled and sold through medium of wholesale houses, and through doctors and health food stores, principally, located throughout the various States, and, as thus engaged in distribution of her said preparations in commerce among the various States, in substantial competition with others engaged in interstate sale of such foods and preparations recommended for use in treatment of various conditions and ailments for which her respective products were sold and recommended; in extensively advertising the same through newspapers in various cities and health magazines, and through booklets and pamphlets describing her said products and furnished to food stores and by them distributed to public, and through advertising cuts furnished to recognized dealers for use in local newspaper advertising, expense of which she assumed in whole or half, as case might be—

- (a) Falsely represented that her "Regular Alberty's Food," "Phosphate Pellets," "Calcatine Pellets," "Cheno Combination Tablets," and "Spleen and Iron Tablets" had therapeutic value, facts being such preparations, by virtue of the composition thereof, were without therapeutic value and might, in the case of two of said products, have detrimental effect in certain cases or result in strychnine poisoning if long continued in use, and especially in case of children;
- (b) Falsely represented that her "Laxative Blend" and "Hemoglobin Tonic Tablets" had therapeutic value, and that former affected the muscles of the intestines and latter would produce blood regeneration, facts being former did not thus stimulate such muscles in the physiological sense, or affect said muscles, other than as they might be affected by the cathartic Senna ingredient, and only active constituent thereof, latter preparation would not produce blood regeneration nor act as a tonic, and both were without therapeutic value;
- (c) Falsely represented that her said preparation "Cheno," by virtue of the composition thereof, would bring about weight reduction, notwithstanding preparation in question contained no ingredient which, in and of itself, caused or produced any reduction in weight of person using the same;
- (d) Falsely represented that her "Old Style" Food and other Food, sold under her personal trade name, were foods with special therapeutic values, and that latter rebuilt the intestinal tract, was only food so to do, eliminated rickets and other calcium starvation diseases in people, and so modified milk that calcium element was assimilated, and that through use thereof

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more calcium and phosphorus were stored in the body than through use of three or four times the quantity of ordinary milk, and that it was the only food discovered which offsets acidosis, and was most powerful alkaline food known, notwithstanding fact former preparation, composed in part of skimmed milk, had no special therapeutic value beyond such value as ordinary milk might have as food, and use thereof could possibly cause gastrointestinal disturbances, her said so-called "New Style" Food was made from condensed milk combined under certain process with her so-called Food, and her said Food was not necessarily such and had no special therapeutic value beyond that of ordinary milk;

- (e) Misrepresented cause and effect of excess of magnesium in the body and character and properties of said substance, and effect on the system of a lack thereof, and results and benefits accruing from the taking thereof, and falsely represented that she was the first person in the United States to recognize its value, and that it was a great rejuvenative agency and that the taking of her said Food supplied the necessary calcium to the body in proper quantities, and that stunted growth, tooth decay, acidosis, sickness, suffering, premature old age and death were due either to lack of, or inability to assimilate, calcium;
- (f) Deceptively represented that the spleen controls the sex organs, and that acid fruits or vinegar, as "foreign acids," destroy red blood corpuscles and have detrimental effect on the spleen, and that acidosis is one of the contributing causes of waning sex life, and that her gland treatment would produce or bring about beneficial results to user;
- (g) Deceptively represented that bismuth subnitrate had a soothing effect on the digestive tract and was a valuable harmless remedy, and that gall bladder should never be removed;
- (h) Represented that her various products had a value and efficacy which they did not possess, through citing case histories of supposedly disinterested parties relating to such matters as asserted value of calcium and her said Food and treatment and reducing preparation, without disclosing fact that subjects thereof were parties in interest, and through citing such cases, histories of which were not true, and through use of testimonials which were untrue in fact or not given by persons alleged to have given testimonials in question; and
- (4) Represented, through use of word "laboratory" and references to discoveries by her said "laboratories" and through other references thereto, and their alleged part in discovery, etc., of preparations in question, and through her trade name and otherwise, that she conducted, operated, or maintained a laboratory for the purpose of manufacturing, testing and experimenting with the various preparations sold by her, notwithstanding fact she did not own, operate or maintain any laboratories or manufacture or test any of her said various preparations;

With capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that the various preparations sold and distributed by her had great therapeutic value, and that use thereof would result in benefit to the user, and to induce purchasing public to buy said preparations in preference to others designed and sold for the treatment of the various ailments for which her respective products were recommended and offered, by manufacturers, retailers, and distributors, and with result of unfairly diverting trade to her from such manufacturers, retailers, or

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distributors of such other preparations, and who do not misrepresent the character and quality of their own respective products or the results to be 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. Charles P. Vicini*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Mr. W. I. Gilbert, Jr., of Los Angeles, Calif., 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 Adah Alberty, trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Adah Alberty, is an individual trading and doing business under the names and styles of Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, with her office and place of business located at 729 Seward Avenue in the city of Hollywood, within the State of California. Said respondent is now and for more than three years last past has been engaged in the sale of a number of baby foods and health preparations under various trade names, and in the distribution thereof between and among the various States of the United States. Respondent causes said baby foods and health preparations, when sold by her, to be transported in interstate commerce to the purchasers thereof located in the various States of the United States. There is now, and for more than three years last past has been, a constant current of trade and commerce by respondent in said baby foods and health preparations between and among the various States of the United States. In the course and conduct of her business

¹ The complaint as published omits, in the interest of brevity, numerous quoted, alleged, false, deceptive and misleading statements set forth at length in Par. 4 thereof, allegedly made by respondent concerning the therapeutic value and benefits to be achieved by using the same, said various quoted matter, thus omitted, being set forth verbatim in correspondingly numbered paragraph of the findings, *infra*, at page 1372.

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the said respondent is now and for more than three years last past has been in substantial competition in commerce between and among the various States of the United States with various other individuals, firms, partnerships, and corporations, engaged in the interstate sale of baby foods and health preparations.

PAR. 2. Among the various baby foods and health preparations sold by said respondent are preparations known and designated as follows:

- Regular Alberty's Food
- Instant Alberty's Food—(old form)
- Instant Alberty's Food—(new form)
- Alberty's Phosphate Pellets—(formerly called Nerve Food Pellets)
- Alberty's CA-MO—(formerly called Calcatine products)
- Alberty's Laxative Blend—(formerly called German Herb Lax-Tonic)
- Cheno Combination Tablets—(formerly called Restorex Cheno Tablets)
- Chena Phytolacca Berry Juice
- Cheno Herb Tea
- Alberty's No. 3 Tablets—(formerly called Alberty's Spleen and Iron Tablets)
- Alberty's Special Formula Tablets—(formerly called Hemoglobin Tonic Tablets)
- Alberty's Labara Tablets—(formerly called Labara cell salts)
- Alberty's Herb Laxative
- Alberty's Vegetable Compound Capsules
- Alberty's Phenix Pluri-Gland Tablets for Women
- Alberty's Phenix Pluri-Gland Tablets for Men
- Malto-De
- Alberty's Dextrose
- Concentrated Meloripe Banana Powders
- Alberty's Cero-Fig Coffee

All of said preparations are manufactured for said respondent by various manufacturing druggists located throughout the United States and are purchased from said manufacturers by said respondent. Said preparations are packed and bottled by said respondent and are then labelled and sold by said respondent throughout the United States through wholesale houses and doctors and principally through health food stores located throughout the various States of the United States.

PAR. 3. In the regular course and conduct of her business, as hereinbefore set out in paragraph 1, said respondent has been and now is engaged in extensive advertising as a means of furthering and aiding in the interstate sale and distribution of the various baby foods and health preparations sold and distributed by her. As media of advertising said respondent has used and is now using newspapers located in various cities throughout the United States, health magazines, booklets, and pamphlets.

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In advertising the various preparations sold by her, said respondent furnishes booklets and pamphlets describing said products to the various food stores and these booklets and pamphlets are in turn distributed by the said food stores to the public. Respondent also furnishes advertising cuts to certain recognized dealers who insert the advertisements in local newspapers in the cities in which they are located. In some instances said respondent pays the entire expense of the newspaper advertisements, and in other instances said respondent pays one-half of the expense of the advertising.

PAR. 4. Said respondent, in her said advertisements of baby foods and health preparations sold by her, has made and is now making various false, deceptive, and misleading statements concerning the therapeutic value and benefits to be achieved by using said baby foods and health preparations sold and distributed by said respondent, among which said false, misleading, and deceptive statements are the following:²

PAR. 5. Said respondent, Adah Alberty, in the regular course and conduct of her said business trades under various names, among which are Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, and Cheno Laboratories, whereas in truth and in fact said respondent does not maintain or operate any laboratory, does not manufacture the products sold and distributed by her, and does not test any of the said products, but confines her activities to packing, bottling, and labelling the said preparations which are bought by her in bulk from various manufacturers.

PAR. 6. The use by the said respondent, Adah Alberty, trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, of the foregoing false, deceptive, and misleading representations alleged to be used by the said respondent in paragraph 4 hereof, and the use by the said respondent of said vari-

²The quoted matter which follows here at length, dealing with the asserted therapeutic value and benefits to be obtained by using said preparations, is, with the five exceptions below set forth, reproduced verbatim in the correspondingly numbered paragraph of the findings, *infra*, at page 1372, and is accordingly omitted here in the interest of brevity, the five exceptions referred to being as follows, namely:

Laboratory tests show that magnesium and not calcium is the mineral which deposits itself wherever convenient, it being a sedative, sluggish, lazy mineral.

Calcium is the most difficult, being a "peppy," quick-acting mineral.

Mrs. Alberty, of the Alberty Laboratories, who has spent her life in the study of dietetics, discovered the "missing link."

Today our streets are filled with men and women of small stature—many of them less than five feet tall. They are weak, prematurely old, toothless, and bald-headed, and yet many are not old in years.

Sickness, suffering, premature old age, and death, is due to either a lack of calcium in the daily diet, or else the inability to assimilate it.

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ous trade names containing the words "laboratory" and "laboratories" as alleged in paragraph 5 hereof, have had and do now have the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that the various baby foods and health preparations sold by said respondent have great therapeutic value and that the use of the same will result in material benefit to the user, and that the said respondent maintains and operates laboratories where said products are manufactured and tested by her, and has thereby induced, and does now induce, the consuming public and especially that portion of the public which purchases baby foods and health preparations, acting in said erroneous belief, to purchase the baby foods and health preparations sold and distributed by said respondent in preference to baby foods and health preparations offered for sale by manufacturers and other distributors of baby foods and health preparations who do not falsely, deceptively and misleadingly advertise their said products. As a result of such false, deceptive, and misleading representations on the part of said respondent, and contained in various books and pamphlets, instrumentalities are placed in the hands of food stores and dealers throughout the country who, by distributing the same to the public, thereby are enabled to dispose of respondent's products in preference to products which are truthfully advertised. As a result of such false, deceptive and misleading representations on the part of said respondent, trade has been diverted to respondent from such manufacturers and distributors of baby foods and health preparations who do not falsely, deceptively, and misleadingly advertise their products, and thereby injury has been done, and is being done, by said respondent.

PAR. 7. Said false, deceptive, and misleading representations of said respondent contained in her advertising have resulted in injury to respondent's competitors and to retail dealers and distributors, and in prejudice to the buying 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, and entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on the 11th day of July 1936, issued and served its complaint in this proceeding upon the respondent,

Adah Alberty, an individual trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission, before Charles P. Vicini, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by W. I. Gilbert, 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, and briefs in support of the complaint and in opposition thereto, counsel for the respondent having not requested 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, Adah Alberty, is an individual trading and doing business since September 1935, under the name and style of Alberty's Food Products. Prior to September 1935, said respondent conducted her said business under the names of Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey. Respondent maintains her office and place of business at 729 Seward Avenue in the city of Hollywood within the State of California. The respondent is now, and for more than three years last past has been, engaged in the sale of a number of baby foods and health preparations under various trade names, and in the distribution thereof in commerce between and among the various States of the United States. Respondent causes said baby foods and health preparations, when sold by her, to be transported from her aforesaid place of business in the State of California to the purchasers thereof located in the various States of the United States other than California. There is now, and for more than three years last past has been a constant current of trade and commerce by respondent in said baby foods and health preparations between and among the various States of the United States.

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In the course and conduct of her business, the respondent is now, and for more than three years last past has been, in substantial competition in commerce between and among the various States of the United States with various other individuals, firms, partnerships, and corporations engaged in the interstate sale of baby foods and health preparations recommended for use in the treatment of the various conditions or ailments for which respondent's respective products are sold and recommended.

PAR. 2. Among the various baby foods and health preparations sold by said respondent are preparations known and designated as follows: Regular Alberty's Food; Instant Alberty's Food (Old Form); Instant Alberty's Food (New Form); Alberty's Phosphate Pellets (formerly called Nerve Food Pellets); Alberty's Ca-Mo (formerly called Calcatine Products); Alberty's Laxative Blend (formerly called German Herb Lax-Tonic); Cheno Combination Tablets (formerly called Restorex Cheno Tablets); Cheno Phytolacca Berry Juice; Cheno Herb Tea; Alberty's No. 3 Tablets (formerly called Alberty's Spleen and Iron Tablets); Alberty's Special Formula Tablets (formerly called Hemoglobin Tonic Tablets); Alberty's Labara Tablets (formerly called Labara Cell Salts); Alberty's Herb Laxative; Alberty's Vegetable Compound Capsules; Alberty's Phenix Pluri-Gland Tablets for Women; Alberty's Phenix Pluri-Gland Tablets for Men; Malto-De; Alberty's Dextrose; Concentrated Meloripe Banana Powder; Alberty's Cero Fig Coffee.

All of said preparations are manufactured for said respondent by various manufacturing druggists and chemists located through the United States, and are purchased by the respondent from said manufacturers. Respondent packs, bottles, and labels said preparations, and sells them throughout the United States through the medium of wholesale houses and doctors, and principally through health food stores located throughout the various States of the United States.

PAR. 3. In the regular course and conduct of her business, respondent has been, and now is, engaged in extensive advertising as a means of furthering and aiding in the interstate sale and distribution of the various baby foods and health preparations sold and distributed by her. As media of advertising, said respondent has used, and is now using, newspapers located in various cities throughout the United States, health magazines, booklets, and pamphlets. In advertising the various preparations sold by her, said respondent furnishes booklets and pamphlets describing said products to the various food stores, and these booklets and pamphlets are in turn

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distributed by the said food stores to the public. Respondent also furnishes advertising cuts to certain recognized dealers who insert the advertisements in local newspapers in the cities in which they are located. In some instances, said respondent pays the entire expense of the newspaper advertisements, and in other instances said respondent pays one-half of the expense of the advertising.

PAR. 4. The respondent, in her said advertisements of baby foods and health preparations sold by her, has made, and is now making, various statements concerning the therapeutic value and benefits to be achieved by using said baby foods and health preparations sold and distributed by respondent, among which said statements are the following:

It (Alberty's Food) rebuilds the intestinal tract and is the only food yet discovered that does.

It was proved that magnesium excess is caused either by certain home remedies, or dietary errors, foods rich in magnesium and low in protein and calcium.

Magnesium gradually accumulates in every portion of the body as calcium lessens—causing acid excess and a dormant condition of cells, tissues and nerve shafts.

The gall bladder should never be removed.

The Alberty Laboratories were the first concern in the United States to recognize the real value of this wonderful life-giving substance—calcium.

Over 800,000 people will die this year from preventable diseases caused by faulty diet!

The spleen seems to take first place in connection with the sex organism. For instance, when women in advanced cases of anemia cease to menstruate, the spleen is the first organ in the body involved. The spleen must first be aroused into activity before normal sex life can fully be restored.

Acidosis is one of the contributing causes of waning sex life.

Acid fruits or vinegar being "foreign acids", have a detrimental effect on the spleen, destroying red blood corpuscles.

Alberty's foods is the combination that unlocks this wonder-working calcium, exposing the "Guarded Treasure" to the digestive juices.

Never before has anyone thought of, or attempted to combine a nerve restorer with a gland rejuvenator.

It has been said that Mrs. Alberty's discovery will revolutionize gland treatment.

Sperum (from the interstitial cells of Leydig). It increases dynamos—muscular, nervous and sexual, and it hemostimulates the gonads. Its effect on the sex organism is very marked and never fails to give satisfactory results.

The cause of stunted growth, tooth decay, acidosis, sickness, suffering, premature old age and death, is due to either a lack of calcium in the daily diet, or else the inability to assimilate it.

That Alberty's Food eliminates rickets and other calcium-starvation diseases in both children, adults and animals, is now being recognized by many physicians throughout the United States.

That Alberty's Food does modify milk so that the calcium element is assimilated is a proven fact beyond dispute.

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Tests have proved conclusively that more calcium and phosphorus are stored up in the body in normal amounts, by using *Alberty's Food* even when the intake of ordinary milk is three or four times greater than the quantity of *Alberty's Food* used.

Long ago, the Alberty Laboratories discovered that calcium was a great rejuvenating agency. People taking the Alberty Treatment looked years younger and felt that way.

Alberty's Food is the only food ever discovered that does offset acidosis. Acidosis can only be neutralized by a powerful alkaline—the Alberty Combination makes the most powerful alkaline food known.

Bismuth subnitrate has a soothing effect on the digestive tract and is a valuable harmless remedy.

The above and foregoing representations made by said respondent concerning her said baby food and health preparations and contained in her advertisements thereof are extravagant and misleading and, therefore, necessarily deceptive.

PAR. 5. Respondent does not own, operate or maintain any laboratories, and she does not manufacture or test any of the various baby foods and health preparations which are sold and distributed by her in interstate commerce.

PAR. 6. Respondent's preparation, Labara Pellets are homeopathic pellets known as "Natrum Sulphate."

Respondent's preparation, Alberty's Phosphate Pellets are homeopathic pellets composed of $\frac{1}{1000}$ grain each of potassium phosphate, sodium phosphate, iron phosphate, and calcium phosphate. Medical testimony is that these pellets are a polypharmaceutical mixture of insoluble phosphates of calcium, iron, soda and potassium and that the doses contained therein are too small to do any good and the preparation is without therapeutic value.

Respondent's preparation, Calcatine Pellets, are homeopathic pellets known as Calca-Phosphate. Medical testimony shows that said pellets contain a trace of calcium phosphate which is the least soluble form of calcium and that they do no good and have no therapeutic value.

Respondent's preparation, Alberty's Laxative Blend (formerly called German Herb Lax-Tonic) consists of Elder flowers, Ononis root, Buchu Leaves, Gnaiaic wood, Shave grass, Yarrow, Althea leaves, Buck thorn, Uva-Ursi leaves, Dog grass, Nettle leaves, Licorice root, Peppermint, Sassafras bark, Anise seed, Fennel seed, and Senna leaves. Medical testimony is that this preparation is a mixture of ten crude drugs and that the only active constituent is Senna which is a cathartic. The remainder of the constituents of the preparation are obsolete and are without additional value. The cathartic action of the preparation is due to Senna but the Senna contained therein does

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not stimulate the muscles of the intestines in the physiological sense of stimulation and the preparation is without therapeutic value.

Respondent's preparation, Cheno Combination Tablets, (formerly called Restorex Cheno Tablets) are composed of dehydrated vegetables containing Dulse, Okra, Irish moss, Rhubarb root, Celery, Spinach, Homeopathic calca phos, and combined phosphates. Medical testimony is that this preparation is without any therapeutic value.

Respondent's preparation, Alberty's Spleen and Iron Tablets, now known as Alberty's No. 3 Tablets, are composed of Spleen substance, 1 grain, Reducing Iron, $\frac{1}{4}$ grain, Gadual, $\frac{3}{5}$ grain, Zinc Phosphate, $\frac{1}{20}$ grain, Berberine Sulphur Neutral, $\frac{1}{32}$ grain, Ginger, $\frac{1}{4}$ grain, Strychnine, $\frac{1}{960}$ grain. Medical testimony is that said preparation is a polypharmaceutical mixture of a number of obsolete drugs. The only ingredient claimed to be present in the preparation which would in any way have some value is iron but the quantity claimed to be present is too small to be of any significance and the preparation is without therapeutic merit or value. While the strychnine contained therein is claimed to be only $\frac{1}{960}$ of a grain, strychnine is a powerfully acting drug when used in sufficient doses and if the preparation were used over a long period continually and especially by children, it could result in strychnine poisoning.

Respondent's preparation, Alberty's Special Formula Tablets (formerly called Hemoglobin Tonic Tablets) according to medical testimony have no therapeutic value. Its use will not produce blood regeneration and the use of it would not act as a tonic.

Respondent's preparation, Regular Alberty's Food, is composed of cereals, mainly wheat, which is combined with organized calcium phosphate which is prepared from finely ground beef bone. Medical testimony is that the composition of the preparation is such as to indicate that the mixture is not necessarily a food and that it has no therapeutic value. The use of the preparation might have a detrimental effect on some persons, especially if the wheat claimed to be therein is whole wheat.

Respondent's preparation, Old Style Instant Alberty's Food is partially skimmed milk prepared with Alberty's Food dried on steam rollers. Medical testimony is that said preparation would not have any special therapeutic value any more than ordinary milk might have as a food and that its use could possibly cause gastro-intestinal disturbances.

Respondent's preparation, New Style Alberty's Food, is made from condensed ordinary milk combined with Alberty's Food run through

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a homogenizer and visculized spray dried. Medical testimony is that Alberty's Food is not necessarily a food and that it has no special therapeutic value beyond that of ordinary milk.

Respondent's preparation, Cheno Herb Tea, is composed of Kelp bean shells, Licorice, Peppermint, Black elder bark, Anise Seed, Coriander seed, Fennel seed, Chickwood, Sassafras bark, Rest-harrow, Senna, and Ivy. Medical testimony is that said preparation does not contain any ingredient which in and of itself causes or produces any reduction in weight in the person using said preparation.

PAR. 7. Respondent, in a booklet entitled "Calcium—The Staff of Life", which said booklet was written by the respondent and is distributed by her in aid of the sale of her said preparations, in connection with various photographs contained therein, gives the case history of various users of her said preparations and states what are purported to be the results obtained by the respective users of her said preparations. The photographs exhibit persons either in apparent health or for the purpose of contrasting the apparent comparative health of the person, exhibits the persons before and after using the preparations.

In one case respondent misrepresents the condition of the patient after taking her preparation in that she represents the patient to have been suffering with ulcers in the duodenum and pylorus, as being forced to live on a liquid diet and being unable to work, and that after taking Alberty's Food he was able in three weeks' time to go to work, in two months' time he had gained eight pounds, and can now eat solid food and works every day. As a matter of fact, the patient, after using her treatment, is still suffering with ulcers in the duodenum and pylorus, he was unable to go to work within three weeks after starting Alberty's Food, and although he gained some weight he was, at the same time during which he took respondent's treatment, living on a diet and following practices that would naturally tend to increase his weight, and he was unable in two months to work every day and eat solid food.

In said pamphlet, respondent also represented that a certain Albert Smith, suffering from an advanced case of tuberculosis which had produced a large cavity in his lung, was treated by the use of Alberty's Food, and that after one week's use of said Food there was such an improvement in the patient that the attending physician was amazed, that the improvement continued, and that the patient was now "back home established in business." She also represented that prior to the beginning of the treatment, a noted lung specialist had stated that the patient Smith's case was hopeless. As a matter of

fact, the patient was not visited by a lung specialist, and the person referred to in respondent's statement as a lung specialist was, in fact, a doctor of osteopathy and a doctor of divinity. There was not such improvement as to "amaze" the attending physician, and said product, Alberty's Food, did not and could not have produced the therapeutic effects and benefits represented in respondent's booklet.

In said pamphlet, respondent gives the case history of a child using the Alberty treatment who, at the age of thirteen years, was 4 feet 9 inches in height and weighed 77 pounds, and at the age of fourteen years was 5 feet in height and weighed 93 pounds, which case history purports to be the history of a disinterested person whereas, in truth and in fact, the history reported is that of the grandchild of said respondent. Further, the said Alberty's treatment did not and could not have produced the therapeutic benefit and effect claimed for it in this case.

In the booklet "Cheno—Keep or Regain that Youthful Figure," written by said respondent and distributed by her in aid of the sale of her said products, respondent gives the case history of a patient who took Cheno Tablets for the purpose of reducing her weight. Said booklet contains a testimonial purported to have been written by the user of said preparation. In truth and in fact, the said testimonial was not written by the user of said preparation, nor were the results claimed to have been obtained by the said testimonial in truth and in fact so obtained. The use of the preparation Cheno did not and could not have produced the beneficial and therapeutic results and effects attributed to it by said testimonial and, in truth and in fact, the loss in weight brought about was produced by a strict diet, extending over a period of months, and strenuous exercise.

PAR. 8. The advertisements and representations made to the purchasing public by the respondent, as hereinbefore set out in paragraph 4, are false and misleading. They have had, and do now have, the capacity and tendency to mislead and deceive the public into the erroneous and untrue belief that the various preparations sold and distributed by the respondent have great therapeutic value and that the use of said products will result in benefit to the user, and to induce such purchasing public to purchase said preparations in preference to other preparations designed and sold for the treatment of the various ailments for which respondent's respective products are recommended and offered for sale by manufacturers, retail dealers and distributors. The result of such false, deceptive and misleading representations on the part of said respondent is to unfairly divert trade to said respondent from such manufacturers, retailers, or dis-

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tributors of other preparations for use in treating the various ailments for which respondent's respective products are recommended, who do not misrepresent the character and quality of their respective products or the results to be obtained from the use thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, Adah Alberty trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, are to the prejudice of the public and 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 approved September 26, 1914, 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 P. Vicini, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto and the briefs filed herein, the respondent not having requested oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondent, Adah Alberty, 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, Adah Alberty, an individual, individually, and trading as Alberty's Food Products, Alberty's Food Lab., Alberty's Food Laboratories, The Alberty Food Laboratories, Cheno Laboratories, Cheno Products, and U. S. Okey, or trading under any other name, her representatives, agents and employees, in connection with the offering for sale, sale and distribution of various baby foods and health preparations now sold by her under various and sundry names, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that the preparations now designated as Regular Alberty's Food, Alberty's Phosphate Pellets, Calcatine Pellets, Cheno Combination Tablets and Alberty's Spleen and Iron Tablets, or any other preparations composed of the same or similar ingredients and

possessing similar properties under whatever name sold, have any therapeutic value;

2. Representing that the preparations now designated as Old Style Instant Alberty's Food and Alberty's Food, or any other preparations composed of the same or similar ingredients and possessing similar properties under whatever name sold, are foods and have any special therapeutic value over and beyond the ordinary value of milk;

3. Representing that the preparation now designated as Alberty's Laxative Blend, or any other preparation composed of the same or similar ingredients and possessing similar properties under whatever name sold, has any therapeutic value or affects the muscles of the intestines, other than that the Senna contained in the compound is a cathartic;

4. Representing that the preparation now designated as Hemoglobin Tonic Tablets, or any other preparation composed of the same or similar ingredients and possessing similar properties under whatever name sold, is a tonic, will produce blood regeneration or has any therapeutic value;

5. Representing that the preparation now designated as Cheno, or any other preparation composed of the same or similar ingredients and possessing similar properties under whatever name sold, contains any ingredient which will cause or produce a weight reduction or that by the use thereof the user will bring about a reduction in weight;

6. Representing that the preparation now designated as Alberty's Food, or any other preparation composed of the same or similar ingredients and possessing similar properties under whatever name sold, rebuilds the intestinal tract and is the only food which accomplishes this result; that it eliminates rickets and other calcium-starvation diseases in children, adults and animals; that it modifies milk so that the calcium element is assimilated; that by taking it more calcium and phosphorus are stored up in the body than would be by the use of three or four times the quantity of ordinary milk; that it is the only food discovered that offsets acidosis and is the most powerful alkaline food known;

7. Misrepresenting the cause of and the effect of an excess of magnesium in the human body;

8. Misrepresenting the character and properties of calcium, the effect on the system of a lack of calcium content, and the results and benefits accruing from the taking of calcium;

9. Representing that respondent was the first person in the United

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States to recognize the value of calcium; that calcium is a great rejuvenating agency; that the taking of Alberty's Food supplies the necessary calcium to the body in the proper quantities; and that stunted growth, tooth decay, acidosis, sickness suffering, premature old age, and death are due either to a lack of calcium or the inability to assimilate it;

10. Representing that the spleen controls the sex organism and that acid fruits or vinegar, being "foreign acids", have a detrimental effect on the spleen, destroying red blood corpuscles;

11. Representing that acidosis is one of the contributing causes of waning sex life;

12. Representing that respondent's gland treatment will produce or bring about any beneficial results to the user;

13. Representing that bismuth subnitrate has a soothing effect on the digestive tract and is a valuable, harmless remedy;

14. Representing that the gall bladder should never be removed;

15. Representing by citing case histories of supposedly disinterested parties without disclosing the fact that the subjects of the case histories are parties in interest, by citing purported case histories of users thereof which said case histories are not true, and by the use of testimonials which are untrue in fact or which were not given by the person alleged to have given the testimonial that the various products sold by her have a value and efficacy which they do not possess;

16. Representing through the use of the word "laboratory," or any other term of similar meaning or like import, as a part of her trade name, or in any other manner or through any other means or device, that she conducts, operates or maintains a laboratory for the purpose of manufacturing, testing or experimenting with the various preparations sold by her, until and unless she actually owns and operates, or directly and absolutely controls, a laboratory maintained for said purposes;

17. And from making any other similar representations of like import or effect as to the therapeutic or medicinal value of said preparations or the benefits accruing from the use thereof.

It is further ordered, That the respondent, Adah Alberty, an individual, 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 the order hereinbefore set forth.

Syllabus

IN THE MATTER OF
LAVOPTIK 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 3188. Complaint, July 24, 1937—Decision, Nov. 8, 1937*

Where a corporation engaged in sale and distribution of its "Lavoptik," alleged remedy for diseases and ailments of the eye, to consumers in other states and in the District of Columbia, through medium of direct sales to druggists, optometrists, oculists, and ophthalmologists, for resale to retail trade and thus to ultimate consumer and general public, in competition with those similarly engaged, including among such competitors those engaged in sale of preparations recommended for use in treatment of such diseases, ailments or conditions as those mentioned in its advertising, but who truthfully represent their products and the therapeutic value which may be attributed thereto, and honestly vend the same; in advertising its said "Lavoptik" through the radio, magazines, newspapers and mails—

- (a) Represented that the same had been endorsed by "6,000 eyesight specialists," notwithstanding fact it had not been and was not recommended by 6,000 graduate medical doctors especially trained in the treatment of the eyes; and
- (b) Represented, directly or by inference, that said preparation would restore strength to the eyesight, and that use thereof would be a constant protection for the eyes, and that it constituted a cure or remedy for, and would heal, diseases of the eye, facts being preparation was composed of a boric base combined in distilled water with certain substances, and constituted an astringent lotion or eyewash for use in local, non-systemic, non-functional, non-constitutional, non-refractive ailments, and diseases of the eye, and would not heal or cure infections and diseases thereof due to constitutional, functional, systemic, or refractive ailments, diseases, and causes, nor restore sight to, nor strengthen, the eyes, nor heal, cure, or rejuvenate strained or impaired eyesight, nor protect the eyes from strain;

With tendency and capacity to cause members of purchasing public to form erroneous beliefs and impressions as above indicated, and with result that many thereof, acting under such erroneous beliefs, bought its said preparation, and with capacity and tendency further to unfairly divert to it trade of competitors engaged in selling, in interstate commerce, preparations or remedies truthfully advertised, represented and recommended for use in connection with treatment of various diseases and ailments enumerated by it; to the substantial injury of competitors in commerce:

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.

Sanborn, Graves, Appel, Andre & Morton, of St. Paul, Minn., 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 Lavoptik 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 of Congress, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Lavoptik Company, Inc., is a corporation organized and existing under the laws of the State of Minnesota. Respondent's plant, office and principal place of business is located at Michigan Avenue and 7th Street, St. Paul, Minn. Said respondent is now, and for more than one year last past has been, engaged in the business of manufacturing or compounding, advertising, selling and distributing a lotion, or eye wash, commonly known and designated as "Lavoptik Eye Wash." It now causes, and for more than one year last past has caused, said preparation, when sold, to be shipped from its place of business in St. Paul, Minnesota, to purchasers thereof, some located in the State of Minnesota, others located in various other 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 eye lotions and eye washes, and other preparations similar to that sold by respondent 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 said business as described in paragraph 1 hereof, in soliciting the sale of and selling its product, designated as "Lavoptik Eye Wash," respondent now represents, and for more than one year last past has represented, in newspapers, magazines, pamphlets, circulars, letters, wrappers, radio broadcasts, and other forms of advertising media having an interstate circulation, and in a booklet entitled "How to Safeguard Your Eyes," which it issues, ships, and distributes in large number to the public generally throughout the various States of the United

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States and in the District of Columbia, through its distributors, sales branches, and sales people, as follows:

INFLAMED EYES? Bathe them with Lavoptik. Prompt Relief. Use also for granulated eyelids, tired, sore, strained, itching, sticky, burning, irritated, watery eyes. 6,000 eyesight specialists endorse it.

IRRITATED EYELIDS? Bathe them with Lavoptik, prompt relief.

EYES SORE? TIRED? Here's Relief Instantly! Bathe eyes with Lavoptik. Burning, inflammation, watery, tired, strained feeling, or itching vanishes at once. Wonderful, too, for granulated eyelids. Soothes, cools, heals. No harmful drugs. Advised by 6,000 eyesight specialists.

* * * Lavoptik will bring eye strength and eye comfort.

A daily eye bath with Lavoptik will be a constant protection to your eyes from the incessant strain that modern living places upon them. Keep a bottle of soothing, healing Lavoptik in your bathroom medicine cabinet, and go through the restful "Eyecup Drill" (as explained by the picture on this page) every evening and morning. Your eyes will not only feel better, but will be healthier and more efficient.

Four Important Suggestions:

1. Give the eyes of babies and small children careful attention. In treating them, moisten a little cotton in Lavoptik and bathe the edges of the lids and drop a liberal amount into the eyes after the lower lid is pulled down.

2. After driving exposure to dust heat or wind or after you leave a smoke-laden room, a Lavoptik eye bath will instantly refresh those dry, tired eyes.

3. If you use LAVOPTIK before going out, you will enjoy that happy, refreshed feeling of knowing your eyes look their best.

4. In the morning, if your eyes are stiff and heavy, you will be astonished how much Lavoptik eye bath will help them.

PAR. 3. In truth and in fact, the preparation "Lavoptik Eye Wash" has not been endorsed and approved by 6,000 graduate medical doctor eyesight specialists, or eye specialists, and said preparation, "Lavoptik," is not a cure for diseases of the eye or impaired vision, and will not strengthen the nerves of the eye, nor relieve eye strain, conjunctivitis, and other diseases of the eye, and will not make eyes healthier and more efficient, but is merely an eye wash composed of a boric acid base in distilled water with camphor, sodium chloride, and hydrastine hydrochloride, which can in no way influence the delicate nerves of the eye, or heal diseases of the eye.

PAR. 4. The representations of respondent as aforesaid are false and grossly exaggerated and have had and do have a capacity to confuse, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that respondent's product, designated "Lavoptik," is different from other eye lotions or eye washes, and that the preparation has been endorsed by 6,000 graduate medical doctors, especially trained in the treatment of the eyes; that said preparation has the property to heal and rejuvenate strained and impaired eyesight, and is an effective treatment for all forms of

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defective eyesight, no matter from what cause. The said representations of respondent have had and do have the capacity and tendency to induce members of the public to buy and use said preparation because of erroneous beliefs engendered as above set forth, and to divert trade unfairly from competitors of respondent engaged in the sale of eye lotions and eye washes similar to the preparation sold by respondent in commerce in and among the various States of the United States, and deceives the public and injures competitors, and places in the hands of others the means whereby the public are deceived, and competitors are injured. There are among competitors of respondent many who sell and distribute in commerce similar lotions and eye washes and preparations for the treatment of the eyes, who do not misrepresent the properties, the qualities or the therapeutic virtues, functions or effects of their said competing products.

PAR. 5. The above alleged acts and practices of respondent are all to the prejudice and injury 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."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on the 24th day of July 1937, issued, and on the 26th day of July, 1937, served its complaint in this proceeding upon said respondent, Lavoptik Company, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 11, 1937, 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 by its counsel, Monte Appel, 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

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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. Lavoptik Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business located at Michigan Avenue and Seventh Street, St. Paul, Minn. Respondent is now and for several years last past has been engaged in the business of selling and distributing an alleged remedy known as "Lavoptik," designed by respondent for treatment of human beings suffering from diseases and ailments of the eye.

PAR. 2. In the course and conduct of its said business, as described in paragraph 1 hereof, respondent, Lavoptik Company, Inc.; in response to orders received, has offered its said preparation for sale and has sold and transported and caused the same to be transported in commerce among the several States of the United States direct from its aforesaid place of business in St. Paul, Minn., to consumers located at points in the several States of the United States other than the State of Minnesota, and in the District of Columbia.

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 for use in the treatment of the same or similar ailments and diseases.

PAR. 3. Respondent, in connection with the sale and distribution of its said product, "Lavoptik," has advertised the same by radio and in magazines and newspapers sent through the mail. Respondent sells direct to druggists, or pharmacists, optometrists, oculists, ophthalmologists, who in turn sell to the retail trade, thus reaching the ultimate consumer and general public. Sales are not limited to druggists, or pharmacists, however, nor to licensed graduate medical physicians and surgeons. Respondent company has used the United States mail in distributing its product in interstate commerce and has shipped large quantities by express or freight or by parcel post.

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Through the use of radio, magazines, newspapers and mail, as aforesaid, respondent has advertised and represented its preparation, "Lavoptik," is a remedy for and affords prompt relief from various ailments and affections of the eye.

Among the statements and representations made by Lavoptik Company, Inc., in the course and conduct of its business in the sale and distribution of its preparation, "Lavoptik," are statements and representations as follows:

INFLAMED EYES? Bathe them with Lavoptik. Prompt Relief. Use also for granulated eyelids, tired, sore, strained, itching, sticky, burning, irritated, watery eyes. 6,000 eyesight specialists endorse it.

IRRITATED EYELIDS? Bathe them with Lavoptik, prompt relief.

EYES SORE? TIRED? Here's Relief Instantly! Bathe eyes with Lavoptik. Burning, inflammation, watery, tired, strained feeling, or itching vanishes at once. Wonderful, too, for granulated eyelids. Soothes, cools, heals. No harmful drugs. Advised by 6,000 eyesight specialists.

* * * Lavoptik will bring eye strength and eye comfort.

A daily eye bath with Lavoptik will be a constant protection to your eyes from the incessant strain that modern living places upon them. Keep a bottle of soothing, healing Lavoptik in your bathroom medicine cabinet, and go through the restful "Eyecup Drill" (as explained by the picture on this page) every evening and morning. Your eyes will not only feel better, but will be healthier and more efficient.

Four important suggestions:

1. Give the eyes of babies and small children careful attention. In treating them, moisten a little cotton in Lavoptik and bathe the edges of the lids and drop a liberal amount into the eyes after the lower lid is pulled down.
2. After driving, exposure to dust, heat or wind, or after you leave a smoke-laden room, a Lavoptik eye bath will instantly refresh those dry, tired eyes.
3. If you use LAVOPTIK before going out, you will enjoy that happy, refreshed feeling of knowing your eyes look their best.
4. In the morning, if your eyes are stiff and heavy, you will be astonished how much a Lavoptik eye bath will help them.

The use by respondent of these representations leads the purchasing public to believe and has a tendency to create in their minds the erroneous impression that the preparation "Lavoptik" has been endorsed or approved by 6,000 medical doctors especially trained in the treatment of the eyes and that the preparation is an effective remedy for granulated eyelids, soreness and diseases of the eye, no matter from what cause and that it will heal or cure any and all infections and diseases of the eye and impairments of the vision.

PAR. 4. The preparation, "Lavoptik," is composed of a boric base, combined in distilled water with camphor sodium chloride and hydrastine hydrochloride, and is an astringent lotion or eyewash to be used in local non-systemic, non-functional, non-constitutional, non-refractive ailments, and diseases of the eye.

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PAR. 5. The various statements and representations made by respondent through the medium of radio and by mail, as set out and enumerated in paragraph 3 herein, in selling and offering for sale its preparation, "Lavoptik" in the respective states of the United States and in the District of Columbia were and are, as set out and described in paragraph 2 herein, false, deceptive, and misleading. "Lavoptik" preparation has not been and is not recommended by 6,000 graduate medical doctors, especially trained in the treatment of the eyes and will not heal or cure infections and diseases of the eye due to constitutional, functional, systemic or refractive ailments, diseases and causes. "Lavoptik" will not restore sight to, or strengthen, the eyes and will not heal, cure or rejuvenate strained or impaired eyesight, and will not protect the eyes from strain.

PAR. 6. There are among the competitors of respondent, corporations, partnerships, firms, and persons who are engaged in the sale of preparations which are recommended for use in the treatment of such diseases, ailments or conditions as those mentioned by respondent in its advertising, but who truthfully represent their products and the therapeutic value which may be attributed to them, and honestly vend the same.

PAR. 7. 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 preparation known and designated as "Lavoptik," has had and now has the tendency and capacity to cause members of the purchasing public to form the aforesaid erroneous beliefs and impressions. Acting under such erroneous beliefs induced by the various representations of the respondent, as herein detailed, many of said members of the public have purchased respondent's preparation, "Lavoptik." The aforesaid representations and practices on the part of the respondent have and have had the capacity and tendency to unfairly divert to respondent the trade of competitors engaged in selling in interstate commerce 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 competitors 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, Lavoptik Company, Inc., are to the prejudice of the public and of respondent's

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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, Lavoptik Company, 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, Lavoptik Company, Inc., its officers, representatives, and employees in connection with the sale or offering for sale by it in interstate commerce or in the District of Columbia of a preparation now designated as Lavoptik or any other preparation of substantially similar ingredients or effect, whether designated by that name or some other name, forthwith cease and desist from:

1. Representing, through any means whatsoever, that said preparation is endorsed or recommended by any designated number of eyesight specialists for any purpose unless and until said preparation is in fact endorsed or recommended by said number of graduate doctors of medicine who specialize in the treatment of the eyes.

2. Representing, directly or by inference, that said preparation restores strength to the eyesight; that the use of said preparation will be a constant protection to the eyes; that the said preparation is a cure or remedy for or will heal any named diseases of the eye.

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 shall have complied with this order.

Complaint

25 F. T. C.

IN THE MATTER OF

CROXONOL SALES CORPORATION, AND ALFRED W.
LUBLIN, INDIVIDUALLY AND AS PRESIDENT OF
CROXONOL SALES CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3192. Complaint, July 29, 1937—Decision, Nov. 8, 1937*

Where a corporation engaged in manufacture, sale and distribution of its so-called "Croxon Method" preparation for treatment of superfluous hair, in commerce among the various States and in the District of Columbia, in advertising the same through price lists, newspapers, periodicals, and other advertising media, printed, published and circulated through the mails to customers and prospective customers located in the various States and in said District—

Represented that said product would permanently remove and completely stop growth of superfluous hair, and was guaranteed permanently to remove same from face, arms and legs, and would keep user free from hair and well-groomed, and that no odor resulted from use of said product, facts being said various statements or representations as to nature, merit and effect of its said product were exaggerated, misleading, and false;

With tendency and capacity to mislead a substantial portion of consuming public into erroneous belief that all said representations were true and into purchase of its said product on account of such belief, and with result that trade was diverted from competitors similarly engaged as manufacturers and distributors of like and similar commodities, and who truthfully advertise and represent the nature and merit of their respective products and refrain from advertising or representing, through their catalogs or other advertising media, that their commodities have a nature and merit which they do not have; 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. S. Brogdyne Teu, II 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 Croxonol Sales Corporation and Alfred W. Lublin, individually and as President of Croxonol Sales Corporation, hereinafter referred to as respondents, have been and are using unfair methods of competition

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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, Croxonol Sales Corporation, is a corporation organized and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 142 West 24th Street, city of New York, State of New York.

Alfred W. Lublin, an individual, is President of the Croxonol Sales Corporation, and has his principal office and place of business at 142 West 24th Street, city of New York, State of New York, and directs and controls sales policies of the respondent Croxonol Sales Corporation.

Respondents are now, and for more than one year last past, have been engaged in the manufacture, sale, and distribution of a certain preparation for the treatment of superfluous hair known as the "Croxon Method" in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. When said product is sold, respondents transport or cause the same to be transported from their principal place of business in the city of New York, State of New York, 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 and commerce in said above described product sold by respondents between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now and have been in substantial competition with other corporations and with individuals, partnerships, and firms likewise engaged in the business of distributing and selling preparations for the treatment of superfluous hair in commerce among and between various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their said business, respondents have caused to be printed and circulated through the United States mails to their customers and prospective customers in the various states of the United States catalogs, price lists, and other printed matter. Respondents have also caused, and still cause, their advertisements to be inserted in newspapers and magazines having a general interstate circulation. Each and all of the catalogs, price lists, and advertisements contain statements which purport to be descriptive of

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the efficacy, value, and merit of the respondents' product. Among the statements made in the aforesaid catalogs, price lists, and newspaper and magazine advertisements, the following are representative:

SUPERFLUOUS HAIR TROUBLES ENDED

once and for all with the sure CROXON Method. Removes all hair on first application, keeps you well groomed and hair-free during the time needed to completely stop the growth * * * GUARANTEED SAFE FOR FACE, arms, legs * * * No odor. \$1.25 at drug and dept. stores or Croxonol Sales Corp., 142 W. 24th St., New York City.

CROXON METHOD

PAR. 5. All of said statements above set out, together with many similar statements appearing in respondents' advertising literature purport to be descriptive of respondents' product. In all of their advertising literature respondents represent through statements and representations herein set out, and other statements of similar import and effect, that:

(1) Their product will remove superfluous hair and when first applied; (2) their product will keep the user thereof well groomed and free from hair, and completely stop the growth of superfluous hair; (3) their product is guaranteed to remove superfluous hair from the face, arms, and legs; (4) and there will be no odor resulting from the use of respondents' said product.

PAR. 6. The representations made by the respondents with respect to the nature and effect of their product when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the respondents' product will not remove superfluous hair; said product will not keep the user thereof well groomed, and completely stop the growth of superfluous hair; and said product is not guaranteed to remove superfluous hair from the face, arms and legs. There is an odor resulting from the use of the said product.

PAR. 7. Each and all of the false and misleading statements and representations made by respondents in designating or describing their product and the effectiveness of said product for removing and treating conditions resulting from superfluous hair growth in offering for sale and selling their product were, and are, calculated to, and has and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and that said product will in truth accomplish results claimed.

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Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondents as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondents' product with the result that trade has been unfairly diverted to the respondents from competitors likewise engaged in the business of distributing and selling similar products or other products designed and sold for use in removing and treating conditions resulting from superfluous hair growth and other conditions named herein who truthfully represent the effectiveness of their respective products. As a consequence thereof, a substantial injury has been done to competition in commerce among the several States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, 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 2, 1937, issued and served its complaint in this proceeding upon respondents Croxonol Sales Corporation and Alfred W. Lublin, individually, and as president of Croxonol Sales 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' answer thereto, a stipulation as to the facts was entered into between W. T. Kelley, Chief Counsel for the Commission, and respondent Croxonol Sales Corporation, which said stipulation was thereafter approved by the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the stipulation as to the facts (respondent Croxonol Sales Corporation having waived the filing of briefs); and the Commission having duly considered the same and being now fully advised in the premises, finds that this pro-

ceeding 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, Croxonol Sales Corporation, is a corporation having its principal place of business and office in the city of New York, State of New York.

PAR. 2. The corporate respondent has been for more than one year last past engaged in the business of manufacturing, selling, and distributing a certain preparation for the treatment of superfluous hair known as the "Croxon Method" in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the sale of said product respondent has transported or caused the same to be transported from its principal place of business in the State of New York to purchasers thereof located in States of the United States other than the State from which the shipment originated, and in the District of Columbia.

There has been for more than one year last past, and there still is, a constant current of trade and commerce in said product so sold and distributed by the corporate respondent among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business said respondent, in soliciting the sale of, and in selling its product, and for the purpose of creating a demand upon the part of the consuming public for said product, has for more than one year last past caused its product to be advertised through the media of price lists, newspapers, magazines, and other advertising media printed, published, and circulated through the United States mails to its customers and prospective customers located in the various States of the United States and in the District of Columbia.

In the aforesaid ways and by the aforesaid means the respondent makes, and has made, to the general public false and misleading statements with reference to the commodity offered for sale by it. The price lists and other printed matter published and distributed by respondent, and hereinbefore referred to, contain false and misleading representations concerning respondent's product. The product sold and distributed by respondent is represented to the purchasing public in the following manner:

SUPERFLUOUS HAIR TROUBLES ENDED

once and for all with the sure CROXON Method. Removes all hair on first application, keeps you well groomed and hair-free during time needed to com-

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pletely stop the growth * * GUARANTEED SAFE for Face, Arms, Legs
 * * * No odor. \$1.25 at drug and dept. stores or Croxonol Sales Corp., 142
 W. 24th St., New York City.

CROXON METHOD

PAR. 5. The statements as set out above together with many similar statements appearing in respondent's advertising literature, and other statements of similar import, represent to the consuming public that:

(1) Its product will permanently remove superfluous hair; (2) its product will keep the user thereof well groomed and free from hair, and will completely stop the growth of superfluous hair; (3) its product is guaranteed to remove superfluous hair from face, arms, and legs; and (4) there will be no odor resulting from the use of respondent's product.

PAR. 6. In truth and in fact the representations made by the respondent with respect to the nature, merit and effect of its product are exaggerated and misleading. Respondent's product will not permanently remove superfluous hair. It will not keep the user thereof free from hair and well groomed, and will not completely stop the growth of superfluous hair. Said product is not guaranteed to permanently remove superfluous hair from face, arms, and legs; and there is an odor resulting from the use thereof.

PAR. 7. There are among the competitors of respondent in commerce as herein set out manufacturers and distributors of like and similar commodities who truthfully advertise and represent the nature and merit of their respective products, and who refrain from advertising or representing through their catalogs or other advertising media that the commodities offered for sale by them have a nature and merit which they do not have. All of the aforesaid statements and representations made by the respondent in designating or describing its product, and in offering for sale and selling said product, were, and are, calculated to, and had, and now have, a tendency and capacity to mislead a substantial portion of the consuming public into the erroneous belief that all the said representations are true, and into the purchase of respondent's said product on account of said belief.

As a result of the representations made by respondent trade has been diverted from those competitors of respondent engaged in similar businesses, hereinbefore referred to. As a consequence thereof substantial injury has been 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, Croxonol Sales 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 respondents, and the stipulation as to the facts entered into between W. T. Kelley, Chief Counsel of the Commission, and the respondent Croxonol Sales Corporation, 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, Croxonol Sales Corporation, its officers, representatives, agents and employees, in connection with the offering for sale, sale, and distribution of a preparation for the treatment of superfluous hair now known as the "Croxon Method" or of any other similar preparation designed for similar usage whether sold under that name or under any other name, in commerce among and between the various States of the United States and in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

(1) that said product will permanently remove superfluous hair; (2) that said product will keep the user thereof free from hair and well groomed, and will completely stop the growth of superfluous hair; (3) that said product is guaranteed to permanently remove superfluous hair from face, arms, and legs; (4) that there will be no odor resulting from the use of respondent's said product.

It is further ordered, That as to the individual respondent Alfred W. Lublin, the case be dismissed without prejudice due to the death of said individual respondent on September 12, 1937.

It is further ordered, That the respondent Croxonol Sales 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.

Order

IN THE MATTER OF
P. H. HANES KNITTING COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 1134. Order, Nov. 12, 1937

Order modifying Commission's previous modified order of April 7, 1926, in 10 F. T. C. 23, in view of provisions of so-called Miller-Tydings Act (Title VIII of an Act of Congress approved August 17, 1937, entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes"), so that said order, directing respondent to cease and desist from resale price maintenance practices as therein set forth, shall not, effective as of August 17, 1937, "prohibit contracts or agreements prescribing minimum prices for the resale of any commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the respondent or other producer or distributeor thereof, and which is in free and open competition with commodities of the same general class produced by others than respondent, when the contract or agreement is lawful as applied to intrastate transactions in the State in which such resale is to be made, or into which the commodity is to be transported for resale, under the laws or public policy of said State."

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

Mr. Robt. N. McMillen for the Commission.

Mr. H. H. Shelton, of Washington, D. C. and *Manly, Hendren & Womble* and *Mr. T. O. Moore*, of Winston Salem, N. C., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

On this day there is taken up the petition of the above respondent, entitled "Petition and motion to vacate order to cease and desist," but praying that all orders to cease and desist entered against respondent under the above docket number be either modified or set aside; and,

It appearing that on December 21, 1925, the Commission issued its order that respondent cease and desist from certain business methods and practices therein enumerated; and that on April 7, 1926, said order was superseded by a modified order to cease and desist, modifying said previous order to the extent and in the particulars in said modified order set forth; and,

It also appearing to the Commission that said modified order of April 7, 1926, should be modified in the light of the provisions of Title VIII of the Act of Congress, approved August 17, 1937, entitled "An Act to provide additional revenue for the District of Columbia, and for other purposes."

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It is ordered that the modified order to cease and desist issued in this matter on April 7, 1926, be and hereby is modified, as of the date of the approval of the above entitled Act of Congress, to wit, August 17, 1937, by the addition thereto of the following proviso:

Provided, however, That effective August 17, 1937, this order shall not prohibit contracts or agreements prescribing minimum prices for the resale of any commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the respondent or other producer or distributor thereof, and which is in free and open competition with commodities of the same general class produced by others than respondent, when the contract or agreement is lawful as applied to intrastate transactions in the State in which such resale is to be made, or into which the commodity is to be transported for resale, under the laws or public policy of said State.

Syllabus

IN THE MATTER OF
AMERICAN CHARACTER DOLL 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 2728. Complaint, Feb. 20, 1936—Decision, Nov. 13, 1937

Where a corporation engaged in manufacture, sale, and distribution of dolls, to purchasers at various points in other States, and chiefly through department stores, toy stores, and mail order houses, in substantial competition with others engaged in manufacture, sale, and distribution, or sale and distribution, of such products in commerce among the various States and in the District of Columbia—

Circularized doll trade with broadside displaying print of picture disclosing results of three weeks' immersion of one of its "paratex" hard rubber dolls, and of composition type doll, to the disadvantage of the latter, which was disclosed as in bad state of disintegration, and to the advantage of former, which showed no ill effects, together with statement that such "Dramatic Test of Paratex Dolls" was made by "buyer of a great retail store" and showed "absolutely no effect from its immersion" "for a Week" to "paratex doll," with "what happened to the other" plain enough, and an invitation to "Make this dramatic test yourself in your own doll department" and assertion that "It will sell Paratex dolls for you Right Now!";

Facts being immersion test in question had been for three weeks and not one, composition dolls can be handled and faces and hands washed or bathed without injury thereto, and said test, by reason of age and intelligence of child-buyers of composition dolls as compared with that of child users of rubber-dolls, and other relevant circumstances as to qualities desired in dolls, durability of composition dolls under ordinary and customary use, and actual conditions of ordinary usage and customary treatment, which test failed to portray, did not prove its "paratex" dolls more substantial or desirable or superior to the composition dolls for purposes intended;

With capacity and tendency to mislead and deceive substantial portion of trade and public into erroneous belief that composition dolls were inferior because they would disintegrate if left in water, and with result that public, as consequence of such mistaken and erroneous belief, induced by such false and misleading representations, purchased substantial volume of its said products in preference to those of its competitors, and trade was unfairly diverted to it from competitors likewise engaged in manufacture, sale, and distribution, or in sale and distribution, of dolls without in any way unfairly disparaging products of competitors or misrepresenting their own; to the substantial injury of competition in commerce:

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

Before *Mr. Joseph A. Simpson* and *Mr. John W. Bennett*, trial examiners.

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Mr. DeWitt T. Puckett for the Commission.

Mr. Philip Goldfarb, 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 American Character Doll Company, 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, American Character Doll Company, 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 at 200 Fifth Avenue, New York, N. Y. It is now, and for several years last past has been, engaged in advertising and selling dolls and toys between and among the various States of the United States and in the District of Columbia, and now causes, and for more than one year last past has caused, such products when sold by it to be shipped from its place of business in New York City aforesaid to the purchasers thereof, some located in the State of New York, and others located in the various other States of the United States and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade and commerce by the respondent in dolls and toys between and among the various States of the United States and in the District of Columbia.

Respondent is, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the sale of dolls and toys between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling its "Sally Jane" dolls, to purchasers and prospective purchasers thereof, located in various States of the United States, distributed circulars among the retail doll trade, which circulars were used by the said trade in offering for sale and selling said dolls to the purchasing public. Said circulars featured certain pictorial illustrations

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of two dolls, immersed in a jar of water. One of the dolls seemed to show no ill effects from such immersion, but the other doll appeared to be in a bad state of disintegration, its legs having fallen off and the body portion having cracked, broken, and peeled. The following phraseology accompanied these pictures:

THIS DRAMATIC TEST OF PARATEX DOLLS

was made by the buyer of a great retail store who insisted upon PROVING to himself that PARATEX dolls are actually PROOF against wear and water * * * Here's what actually happened when he put an ordinary composition doll and a PARATEX doll into two pickle jars of water for a WEEK * * * The PARATEX doll showed absolutely no effect from its immersion * * * What happened to the other, is plain enough

Make this dramatic test *yourself* in your own doll department. It will sell PARATEX dolls for you RIGHT NOW!

In truth and in fact, the pictures of the featured test displayed in said advertising matter were made three weeks after the tests were initiated, and not, as alleged, one week after the test was started. Dolls are not made to be left in water; nor are dolls of ordinary composition inferior products because they are nonresistant to water. The test displayed in said advertising matter has the capacity and tendency to unwarrantedly disparage dolls of ordinary composition in that it tends to cause, or convey, an erroneous belief that such dolls of ordinary composition are inferior products because they are nonresistant to water and that such dolls, being nonresistant to water, will not withstand the ordinary usage and treatment for which dolls are made and to which they are usually and customarily subjected by the average user of said dolls.

PAR. 3. The use by the 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 wholesalers, retailers, and the purchasing public into the belief that composition dolls are inferior to Paratex or rubber dolls, and to purchase such dolls from respondent in preference to competitors composition dolls because of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of dolls and toys who do not misrepresent the respective qualities of composition dolls and Paratex or rubber dolls, nor utter disparaging statements about competitors' products, who likewise advertise, sell, and distribute dolls and toys among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is diverted to

respondent from such competitors; thereby substantial injury is being done and has been done by respondent to substantial competition in commerce as herein set out.

PAR. 4. 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 February 20, 1936, issued and on February 24, 1936, served its complaint in this proceeding upon respondent, American Character Doll 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 DeWitt T. Puckett, attorney for the Commission before Joseph A. Simpson and John W. Bennett, examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Philip Goldfarb, 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 (respondent having not requested 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, American Character Doll Company, Inc., is a corporation organized in 1919 and doing business under the laws of the State of New York. Its principal office is at 200 Firth Avenue, New York, N. Y., and its factory is at 1027 Metropolitan Avenue, Brooklyn, N. Y. The respondent is now, and since

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1919 has been, engaged in the manufacture, sale, and distribution of dolls.

When orders are received for respondent's dolls, it causes them to be shipped from its factory at Brooklyn, N. Y., to the purchasers thereof located at various points in States of the United States other than the State of New York. Said dolls are marketed chiefly through department stores, toy stores, and mail-order houses. At all times mentioned herein the respondent has maintained a constant current of trade in said dolls, in commerce among and between the various States of the United States.

At all times since respondent entered into said business, it has been in substantial competition with other corporations and with partnerships, and individuals likewise engaged in the manufacture, sale and distribution or in the sale and distribution of dolls, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Dolls are classified, as to type, according to the materials used in their manufacture. Composition dolls are manufactured from wood flour, rosin, starch, and glue. The materials are molded into a form by a heating process. Rubber dolls are made from crude rubber. Practically all dolls on the market today are either composition dolls or rubber dolls. Many years ago most dolls were made of a hard breakable substance and were known as bisque dolls. Because they were heavy and easily broken, they were gradually supplanted by composition dolls and rubber dolls.

During the past two or three years respondent has been offering for sale and selling a hard rubber doll which it calls a "paratex" doll. "Paratex" dolls are manufactured by respondent according to a secret formula. Respondent has featured its "paratex" doll in its advertising, representing it to be superior to composition dolls because it is impervious to water. Said "paratex" doll is manufactured to be sold in competition with the more expensive composition dolls, such as the Shirley Temple doll.

PAR. 3. In April 1935, a representative of J. C. Penney Company took two dolls, one of which was a composition doll known as the Shirley Temple doll and the other a "paratex" doll heretofore described, and immersed each of said dolls up to the neck in a jar of water. Three weeks after said immersion, pictures were taken of the dolls. The picture of the composition doll showed it to be in a bad state of disintegration. The legs had fallen off and the body covering had cracked and had peeled off in places. The picture of the "paratex" doll disclosed no ill effects of the water upon it. The respondent herein obtained a negative of said picture from a J. C.

Penney Company employee, had prints made therefrom, and circularized said picture in the form of a broadside among the doll trade. Alongside the picture appeared the following statement.

THIS DRAMATIC TEST OF PARATEX DOLLS

was made by the buyer of a great retail store who insisted upon PROVING to himself that PARATEX dolls are actually PROOF against wear and water * * * Here's what actually happened when he put an ordinary composition doll and a PARATEX doll into two pickle jars of water for a WEEK * * * The PARATEX doll showed absolutely no effect from its immersion * * * What happened to the other, is plain enough. Make this dramatic test yourself in your own doll department. It will sell PARATEX dolls for you RIGHT NOW!

In fact, the dolls had actually been in the water for three weeks at the time the picture was taken and not one week as represented by the respondent.

PAR. 4. From the testimony of doll buyers for three leading department stores and the proprietor of a toy and doll store it is found that composition dolls are not made to withstand immersion-in-water tests and that they are not inferior products because they will disintegrate if left in water for substantial periods of time. Composition dolls, as a rule, are sold to children who are old enough to understand that dolls of that character cannot be left in water. Rubber dolls of the cheaper variety are designed to be sold to infants too young to understand how to care for expensive composition dolls. Composition dolls can be handled and their faces and hands can be washed or bathed without injury to said dolls.

The essential qualities desired in dolls by children are attractiveness, style of dress, type of wig, finish, and, especially among older children, likeness to living models. Parents desire a doll that is sufficiently durable to withstand the use to which the doll will be subjected by children. Composition dolls are sufficiently durable to withstand the ordinary and customary use to which dolls are subjected by children under ordinary and usual conditions of use. Composition dolls are not immersed in water for any substantial period of time. The comparative test made, as hereinabove set forth, does not prove that the "paratex" dolls are more substantial, desirable or superior to composition dolls for the purposes intended inasmuch as such a test does not accurately portray the actual conditions of ordinary usage and customary treatment to which dolls are subjected and such test affords no basis in fact for the representations made.

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PAR. 5. The use by respondent of the representations described herein in its advertising literature has had and now has the capacity and tendency to mislead and deceive a substantial portion of the trade and public into the erroneous belief that composition dolls are inferior products because they will disintegrate if left in water. As a consequence of the mistaken and erroneous belief induced by the false and misleading representations above referred to, the public has purchased a substantial volume of the respondent's products in preference to the products of its competitors with the result that trade has been unfairly diverted to the respondent from its competitors likewise engaged in the manufacture, sale and distribution or in the sale and distribution of dolls, who in no way unfairly disparage their competitors' products or misrepresent their own products. As a result thereof a substantial injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of 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 respondent, testimony and other evidence taken before Joseph A. Simpson and John W. Bennett, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein by DeWitt T. Puckett, counsel for the Commission, and by Philip Goldfarb, counsel for respondent (no oral argument having been requested), 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, American Character Doll Company, Inc., a corporation, its officers, representatives, agents, and

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employees in connection with the offering for sale, sale and distribution of dolls in interstate commerce or in the District of Columbia do forthwith cease and desist from :

1. Representing, through the use of comparative water immersion tests, or other similar tests which do not fairly simulate actual conditions of ordinary and customary usage, or through any other means or device, or in any manner, that, because of imperviousness to water when immersed for extended periods of time, its dolls are superior to composition dolls;

2. Representing, directly or by inference, through the use of comparative tests, or otherwise, that composition dolls are inferior products because they are not impervious to water when immersed for substantial periods of time.

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
MELLS MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3059. Complaint, Feb. 15, 1937—Decision, Nov. 13, 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 ultimate consumers thereof, and several of which, so packed and assembled that they might be resold to consuming public as single assortment, were contained in two separate boxes, composed of (1) number of small penny pieces of candy, of uniform size and shape, the flavor of a small number of which differed from that of majority, and (2) number of larger pieces or bars, to be given free of charge, or as prizes, to chance purchasers of such uniform penny pieces, flavor of which differed as aforesaid from that of majority—

Sold, to wholesale and retail dealers for display and resale to purchasing public in accordance with aforesaid sales plans, said assortments, and thereby supplied to and placed in the hands of others the means of conducting, and under which they did conduct, 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, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said products in preference to candy offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof as above described, and were thereby induced to purchase its said candy, so packed and sold by it, in preference to that offered and sold by its competitors who do not use same or equivalent method, and with tendency and capacity, because of said game of chance, to divert trade and custom from its competitors as aforesaid, exclude from candy trade all competitors who are unwilling to and do not use such or an equivalent method as unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors as do use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, 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.

Complaint

25 F. T. C.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.
Mr. Nathan Feldman, 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 Mells Manufacturing Company, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act 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, Mells Manufacturing Company, is a corporation organized and operating under the laws of the State of New Jersey, with its principal office and place of business located at 250 Park Avenue, in the city of Brooklyn, State of New York. The 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 retail and wholesale 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 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 candies 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 candies and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the ultimate consumers thereof.

Several of said assortments manufactured and distributed by respondent are contained in two separate boxes but are so packed

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and assembled that they may be resold to the consuming public as a single assortment. One of said boxes contains a number of small pieces of candy of uniform size and shape, the majority of which are of one flavor but a small number of which are of a different flavor. The other box contains a number of larger pieces or bars of candy which are to be given free of charge or as prizes to purchasers of the pieces of candy of uniform size and shape in the following manner: The small pieces of candy of uniform size and shape retail at the price of 1¢ each, but the purchaser who procures one of the small pieces of candy of uniform size and shape having a flavor different from the majority is entitled to receive, and is to be given free of charge, one of the said larger pieces or bars of candy. The flavor of the said small pieces of candy of uniform size and shape is effectively concealed from said purchasers and prospective purchasers until a selection has been made and the particular piece of candy broken open. The larger pieces or bars of candy are thus distributed to purchasers of said small pieces of candy of uniform size and shape wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments to resell said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its 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 larger piece or 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 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

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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 or 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. 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 February 15, 1937, issued and on February 17, 1937, served its complaint in this proceeding upon

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respondent, Mells Manufacturing 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 request 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; 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, Mells Manufacturing Company, is a corporation organized and operating under the laws of the State of New Jersey, with its principal office and place of business located at 250 Park Avenue, in the city of Brooklyn, State of New York. The 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 retail and wholesale 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 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 candies 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 candies and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the ultimate consumers thereof.

Several of said assortments manufactured and distributed by respondent are contained in two separate boxes but are so packed and assembled that they may be resold to the consuming public as a single assortment. One of said boxes contains a number of small pieces of candy of uniform size and shape, the majority of which are of one flavor but a small number of which are of a different flavor. The other box contains a number of larger pieces or bars of candy which are to be given free of charge or as prizes to purchasers of the pieces of candy of uniform size and shape in the following manner: The small pieces of candy of uniform size and shape retail at the price of 1¢ each, but the purchaser who procures one of the small pieces of candy of uniform size and shape having a flavor different from the majority is entitled to receive, and is to be given free of charge, one of the said larger pieces or bars of candy. The flavor of the said small pieces of candy of uniform size and shape is effectively concealed from said purchasers and prospective purchasers until a selection has been made and the particular piece of candy broken open. The larger pieces or bars of candy are thus distributed to purchasers of said small pieces of candy of uniform size and shape wholly by lot or chance.

PAR. 3. The wholesale dealers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its 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 described involves a game of chance or the sale of a chance to procure a larger piece or 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 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 equiva-

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lent 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 are unwilling to offer for sale or sell candy so packed and assembled, 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.

CONCLUSION

The aforesaid acts and practices of the respondent Mells Manufacturing 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 substitute answer of the respondent filed herein on October 4, 1937, admitting all the material allegations of the complaint to be true and waiving

the taking of further evidence and all the 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 Mell's Manufacturing Company, its officers, representatives, agents, and employees, in connection with 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 or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling for sale to the public at retail an assortment of candy consisting of two packages; one package containing a number of small pieces of candy, the majority of which have one flavor, and the remaining pieces having a different flavor, and the second package containing a number of larger pieces or bars of candy, the number of which correspond to the number of pieces of candy in the first package, having a flavor different from the majority, which larger pieces or bars of candy in the second package are or may be given as prizes to purchasers procuring a small piece of candy having a flavor different from the majority.

It is further ordered, That the respondent Mell's Manufacturing Company, a corporation, 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 the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF
WALLY FRANK, LTD.

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

Docket 3148. Complaint, June 9, 1937—Decision, Nov. 13, 1937

Where a corporation engaged in sale and distribution of pipes and smokers' supplies to purchasing and consuming public in various States and in the District of Columbia, from its place of business in New York City, in substantial competition with those engaged in similar sale and distribution, or manufacture, sale, and distribution, of such products; in advertising in newspapers and periodicals and through depictions and labels and its own monthly publication, and in various other ways—

(a) Represented that it was a British or English concern with place of business in London, and that it dealt exclusively in goods imported from foreign countries, and that some of its pipes were prepared in accordance with and in conformity to certain famous and well-known processes, and that it offered and sold well-known and established brands at prices greatly reduced from the standard prices at which such pipes were customarily sold, facts being it did not sell any standard brand pipes, free from imperfections, at less than their usual and customary selling prices; and

(b) Represented that it was a manufacturer, through display in catalog mailed by it to prospective customers of reproduction of sign on its store in aforesaid city displaying, along with its corporate name, words "Pipe Manufacturers and Tobacconists," notwithstanding fact it did not manufacture pipes offered and sold by it, nor own, operate, or directly and absolutely control, a factory wherein such pipes are made;

With tendency and capacity to mislead and deceive purchasers of its said products into belief that in buying from it they were dealing with the manufacturer of pipes involved and thereby obtaining bargain by saving middleman's profit and other advantages, as commonly believed by purchasing public through association of such and other advantages, including superior merchandise, with such direct purchase, and with the effect of misleading and deceiving substantial portion of such public into erroneous belief that such representations were true, and into purchase of substantial quantities of pipes and smokers' supplies by reason thereof, and of unfairly diverting thereby trade to it from competitor-manufacturers and distributors of such products who advertise, sell and distribute their said products in commerce as above set forth, and do not misrepresent the status or nature of their business, origin or character of their products, or price at which sold, or otherwise publish untrue claims therefor; 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. DeWitt T. Puckett 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 Wally Frank, Ltd., a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act 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, Wally Frank, Ltd., is a corporation, organized in 1933, and doing business under the laws of the State of New York. Its principal office and place of business is at 10 East 45th Street, New York, N. Y.

Respondent is now, and since the date of its incorporation has been, engaged in the sale and distribution of pipes and smokers' supplies to the purchasing and consuming public located in various States of the United States and in the District of Columbia. Respondent now causes, and since 1933 has caused, its products, when sold by it, to be shipped from its place of business in New York, N. Y., 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 at all times since respondent has been in business, a constant current of trade and commerce by the respondent in smokers' supplies, between and among the various States of the United States and in the District of Columbia.

Respondent is, and since 1933 has been, in substantial competition with other corporations and with firms and individuals engaged in the sale and distribution of smokers' supplies in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. During the time respondent has been in business, as described in paragraph 1 hereof, it has represented, and, in certain particulars, still represents, through various types of advertising media, such as newspapers, magazines, pictorial representations, labels, its publication "Pipe Lore Monthly," and in various other ways, that it is a British concern, or that it has an office and does business in London; that it deals exclusively in goods imported from foreign countries; that some of its pipes are prepared in accordance with certain famous and well-known processes; and that it offers for sale and sells well-known and established brands of pipes at a price

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which has been greatly reduced from the standard price at which said pipes are customarily sold.

In truth and in fact, the respondent is not a British concern and has no office or place of business in London. It does not deal exclusively in imported goods. Its pipes are not prepared according to any famous and well-known process. It does not sell any standard brand pipes, which are free from imperfections, at less than the usual price for which said pipes are customarily sold.

PAR. 3. Respondent has represented in its advertising matter that it is a pipe manufacturer and that its pipes are shipped direct from the manufacturer to the purchaser. A sign on its store at 10 East 45th Street, New York, reads:

WALLY FRANK LTD.

PIPE MANUFACTURERS AND TOBACCONISTS

A picture of the store showing said sign appears in the 1937 "Annual Pipe Lore," a catalog which is mailed by respondent to prospective customers.

In truth and in fact the respondent does not manufacture the pipes offered for sale and sold by it, nor does it own, operate, or control a factory wherein said pipes are made.

It is a common belief among the purchasing public that a superior grade of merchandise can be purchased direct from the manufacturer thereof at a considerable saving in price and that other advantages can be secured by so purchasing. Representations made by respondent, as alleged in paragraph 3 hereof, have the tendency and capacity to mislead and deceive the purchasers of respondent's pipes into the belief that when they purchase said pipes from respondent they are dealing with the manufacturer of said pipes and thereby are obtaining a bargain by saving the middleman's profit and by obtaining other advantages.

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, 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 smokers' supplies as a result of such erroneous belief. There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of pipes and smokers' products who do not misrepresent the status or nature of their businesses, the origin or character of their products, and the price at which their products are sold, or otherwise publish claims for their products

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which are untrue, who likewise advertise, sell and distribute their smoker's supplies 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 as a result thereof, 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 June 9, 1937, issued, and on June 10, 1937, served, its complaint in this proceeding upon respondent, Wally Frank, Ltd., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, 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

PARAGRAPHS 1. Respondent, Wally Frank, Ltd., is a corporation, organized in 1933, and doing business under the laws of the State of New York. Its principal office and place of business is at 10 East 45th Street, New York, N. Y. Respondent is now, and since the date of its incorporation has been, engaged in the sale and distribution of pipes and smokers' supplies to the purchasing and consuming

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

When orders are received for respondent's products, it causes them to be shipped from New York, N. Y., to the purchasers thereof located at various points in States of the United States other than the State of New York. Since 1933 the respondent has maintained a constant current of trade in said products, in commerce among and between the various States of the United States and in the District of Columbia.

At all times since respondent entered into said business, it has been in substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution, or in the manufacture, sale and distribution of pipes and smokers' supplies, in commerce among and between the several States of the United States and in the District of Columbia.

PAR. 2. During the time respondent has been in business, as described in paragraph 1 hereof, it has represented, and, in certain particulars, still represents, through various types of advertising media, such as newspapers, magazines, pictorial representations, labels, its publication "Pipe Lore Monthly," and in various other ways, that it is a British concern and has a place of business in London, England; that it deals exclusively in goods imported from foreign countries; that some of its pipes are prepared in accordance with and conformity to certain famous and well-known processes; and that it offers for sale and sells well-known and established brands of pipes at prices which have been greatly reduced from the standard prices at which said pipes are customarily sold.

The representations set forth above are untrue in that respondent is not a British concern nor does it have an office or place of business in London. It does not deal exclusively in imported goods. Its pipes are not prepared according to any famous and well-known process. It does not sell any standard brand pipes, which are free from imperfections, at less than the usual price for which said pipes are customarily sold.

PAR. 3. Respondent also represented in its advertising matter that it is a pipe manufacturer and that its pipes are shipped direct from the manufacturer to the purchaser. A sign on its store at 10 East 45th Street, New York, reads:

WALLY FRANK LTD.

PIPE MANUFACTURERS AND TOBACCONISTS.

A picture of the store showing said sign appears in the 1937 "Annual Pipe Lore," a catalog which is mailed by respondent to prospective customers.

The above representation is untrue in that the respondent does not manufacture the pipes offered for sale and sold by it, nor does it own, operate or directly and absolutely control a factory wherein said pipes are made.

PAR. 4. It is a common belief among the purchasing public that a superior grade of merchandise can be purchased direct from the manufacturer thereof at a considerable saving in price and that other advantages can be secured by so purchasing. Representations made by respondent, as alleged in paragraph 3 hereof, have the tendency and capacity to mislead and deceive the purchasers of respondent's pipes into the belief that when they purchase said pipes from respondent they are dealing with the manufacturer of said pipes and thereby are obtaining a bargain by saving the middleman's profit and obtaining other advantages.

PAR. 5. 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 into the purchase of substantial quantities of pipes and smokers' supplies on account of such erroneous belief.

There are among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of pipes and smokers' products who do not misrepresent the status or nature of their businesses, the origin or character of their products, or the price at which their products are sold, or otherwise publish claims for their products which are untrue, who likewise advertise, sell and distribute their pipes and smokers' supplies in commerce as herein described. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors and as a result thereof substantial injury is being, and 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 Wally Frank, Ltd., 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 and the answer filed on November 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, Wally Frank, Ltd., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of pipes and smokers' supplies in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing, directly or in any manner:

1. That it is a British or English concern;
2. That it has a place of business in London, England, or any other city where it does not actually maintain and operate a place of business;
3. That it deals exclusively in goods imported from foreign countries until and unless such is a fact;
4. That certain of its pipes are prepared in accordance with certain famous, well-known and established processes when such is not a fact;
5. That certain of its established and well-known brands of pipes are offered for sale and sold at prices which have been greatly reduced from the standard prices until and unless such is a fact;
6. That it is a manufacturer or that its pipes are shipped direct from the manufacturer until and unless it actually owns and operates, or directly and absolutely controls a factory or a mill wherein its 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.

IN THE MATTER OF
PHOEBE PHELPS CARAMEL COMPANY

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

Docket 3079. Complaint, Mar. 16, 1937—Decision, Nov. 16, 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 one of which consisted of number of individually wrapped penny caramels of uniform size and shape, with small number thereof having different colored stripe, and of number of small packages of candy, to be given as prizes to chance purchasers of such striped penny caramels—

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, and under which they did conduct, 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 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, refrain therefrom, and with many who are unwilling to adopt and use said method or any method involving game of chance for sale of a chance to win by chance, or any other method contrary to public policy;

With capacity and tendency to induce purchasers to buy its said products in preference to candy offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof as above described, and were thereby induced to purchase its said candy, so packed and sold by it, in preference to that offered and sold by its competitors who do not use same or equivalent method, and with tendency and capacity, because of said game of chance, to divert trade and custom from its competitors as aforesaid, exclude from candy trade all competitors who are unwilling to and do not use such or an equivalent method as unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors as do use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, 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.

Mr. Henry C. Lank and Mr. P. C. Kolinski for the Commission.

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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 Phoebe Phelps Caramel 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. The respondent, Phoebe Phelps Caramel Company, is a corporation organized and operating under the laws of the State of Massachusetts, with its principal office and place of business located at 74 Fulton Street, in the city of Boston, State of Massachusetts. 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 retail and wholesale dealers and jobbers located at points in the various States of the United States, and causes and has caused its said products when sold to be transported from its principal place of business in the State of Massachusetts to purchasers thereof in other States of the United States at their respective places of business; and there is now, and has been for several years last past, a course of trade in 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 retail and wholesale dealers and jobbers 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 such assortment offered for sale, sold, and distributed by respondent is composed of a number of pieces of caramel candy of uniform size and shape, together with a number of small packages of candy, which small packages of candy are to be given as prizes to purchasers of said pieces of caramel candy of uniform size and shape in the following manner:

The majority of the said caramel candies of uniform size and shape in said assortment are plain or have the same color, but a small num-

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ber of said caramel candies bear a stripe of a different color. The said caramels of uniform size and shape retail at the price of 1¢ each, but the purchaser who procures one of the said caramels bearing a colored stripe is entitled to receive, and is to be given free of charge, one of the small packages of candy heretofore referred to. The pieces of caramel candy of uniform size and shape are individually wrapped in non-transparent wrappers, and the fact as to whether the caramel is plain or has a stripe thereon is thus effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper is removed. The aforesaid purchasers of said caramels, who procure one bearing a stripe, thus procure one of the small packages 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 small package 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 so as to involve a game of chance, and such competitors refrain therefrom.

Findings

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade, and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by the respondent has the tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

PAR. 6. Many of said competitors of respondent are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy.

PAR. 7. The aforementioned method, acts and practices of respondent are all to the prejudice of the public and respondent's competitors, as hereinabove alleged. Said method, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress, 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 16, 1937 issued, and on March 17, 1937 served, its complaint in this proceeding upon respondent Phoebe Phelps Caramel 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, the respondent duly filed in the office of the Commission its 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 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, Phoebe Phelps Caramel Company, is a corporation organized and operating under the laws of the State of Massachusetts, with its principal office and place of business located at 74 Fulton Street, in the city of Boston, State of Massachusetts. 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 retail and wholesale dealers and jobbers located at points in the various States of the United States. It causes and has caused its said products, when sold, to be transported from its principal place of business in the State of Massachusetts to purchasers thereof in other States of the United States at their respective places of business. 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 various 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 retail and wholesale dealers and jobbers 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 such assortment offered for sale, sold and distributed by respondent, is composed of a number of pieces of caramel candy of uniform size and shape, together with a number of small packages of candy, which small packages of candy are to be given as prizes to purchasers of said pieces of caramel candy of uniform size and shape in the following manner:

The majority of the said caramel candies of uniform size and shape in said assortment are plain or have the same color, but a small number of said caramel candies bear a stripe of a different color. The said caramels of uniform size and shape retail at the price of 1¢

each, but the purchaser who procures one of the said caramels bearing a colored stripe is entitled to receive, and is to be given free of charge, one of the small packages of candy heretofore referred to. The pieces of caramel candy of uniform size and shape are individually wrapped in non-transparent wrappers, and the fact as to whether the caramel is plain or has a stripe thereon is thus effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper is removed. The aforesaid purchasers of said caramels who procure one bearing a stripe, thus procure one of the small packages 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 found, involves a game of chance or the sale of a chance to procure a small package 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 are unwilling to offer for sale or sell candy so packed and assembled, 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

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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.

CONCLUSION

The aforesaid acts and practices of the respondent Phoebe Phelps Caramel 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 October 1, 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."

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Order

It is ordered, That the respondent Phoebe Phelps Caramel Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy which are used, or which may be used, without alteration or rearrangement of the contents of such assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy 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, the majority of which are plain or the same color but a small number of which bear a stripe of a different color, together with a number of small packages of candy which said small packages of candy are or may be given as prizes to the purchaser procuring a piece of candy bearing a stripe.

It is further ordered, That the respondent Phoebe Phelps Caramel Company, a corporation, 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 the order to cease and desist hereinabove set forth.

Complaint

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IN THE MATTER OF

NELSON E. WOOLMAN AND LYLE G. JACKSON, TRADING
AS POWER SEAL COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3014. Complaint, Dec. 11, 1936—Decision, Nov. 19, 1937*

Where partners engaged in manufacture and sale of their "Power Seal" pellet form preparation for use in internal combustion engine—

Represented, in newspaper and other advertising, through pamphlets and cards distributed to customers and prospective customers, and in extensive radio advertising of their aforesaid product under its aforesaid trade-mark and name, that said "Power Seal" would restore compression in such engines and completely rejuvenate sluggish motors through sealing and reseating leaky and pitted valves, and would restore efficiency and increase power and effect savings in oil and gas, facts being use thereof had no effect upon performance of engines in which used, power and efficiency of engine would not be changed thereby, as represented by it, and aforesaid various representations were false, misleading, and deceptive;

With capacity and tendency to mislead purchasing public into erroneous and untrue belief that said "Power Seal" would produce in such engines results claimed as aforesaid, and into purchase thereof by reason of such belief, and to divert trade to it from competitors engaged in sale of similar products for similar purposes in interstate commerce and who do not misrepresent the same:

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. Reuben J. Martin for the Commission.

Mr. Lawrence W. Allen, of Hollywood, 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 Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name of Power Seal Company, 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:

Complaint

PARAGRAPH 1. The respondents, Nelson E. Woolman and Lyle G. Jackson, are copartners trading under the name and style of Power Seal Company, with their principal office and place of business located at 1601 South Broadway in the city of Los Angeles within the State of California. Said respondents are now and for more than one year last past have been engaged in the manufacture and sale of an engine dope in pellet form under the trade name "Power Seal." Said respondents cause said "Power Seal" 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 one year last past, a constant current of trade and commerce by said respondents in said "Power Seal" 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 one year 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 various other engine dopes.

PAR. 2. Said respondents, in the course and conduct of their said business, as hereinbefore set out in paragraph 1, have been and now are engaged in extensive advertisement of their said product "Power Seal." As a means of furthering and aiding in the interstate sale and distribution of said product, and as media of such advertising, they have been and now are using newspapers of interstate circulation, printed cards, and circulars, and broadcasts over radio stations with interstate transmittal.

Said respondents, in their said advertisements of the product "Power Seal" have made and are now making various false, deceptive, and misleading statements concerning said product, which said statements serve to deceive and mislead the public as to the character and effectiveness of said "Power Seal." Among the statements which said respondents have used and are now using in advertisements in newspapers and in printed cards and circulars, and over the radio are the following:

1. Restores Power;
2. Seals up leaky rings and valves;
3. Fills up valve pits and abrasions;
4. Makes valve seat perfectly;
5. Power Seal restores efficiency to your motor;
6. Saves money in oil and gas;
7. Power Seal Restores Compression;

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8. Bring back power and pep with POWER SEAL;
9. Which? \$20 to \$40 for Ring and Valve job or "POWER SEAL" at \$2 installed;
10. Increases POWER—SPEED—MILEAGE;
11. Eliminates Sloppy rings;
12. Reduces Oil Pumping;
13. A rare compound which expands and plates under heat, refined and blended in our laboratory, and formed into convenient PELLETS;
14. POWER SEAL expands plating the cylinder walls and sealing the valves. It is guaranteed to restore power and compression;
15. Ends all need for valve and ring jobs;
16. Your Power Seal dealer in San Francisco * * * will apply Power Seal and fully tune your motor for only two dollars. The results will be higher compression, a smoother running motor, more power, and less carbon.
17. Power Seal will loosen carbon, expand the rings, increase compression and give you new car performance.
18. My Chevrolet pumped oil * * * giving only 12 miles per gallon of gas; after powersealing my car uses only 1 quart of oil every 600 miles and I'm getting 18 miles per gallon on gas.
19. Power Seal is forced into hot cylinders under pressure—restores lost power—reduces excessive oil pumping—increases gas mileage, and is guaranteed harmless to motors.
20. The sparkplugs in my car were continually oily. Five minutes after using Power Seal they were dry and have stayed dry for nine months!
21. Eliminate carbon knocks, oil pumping, high gasoline consumption and low power in your car without tearing down the motor.
22. When high compression motors lose their high compression, then the trouble begins. Power Seal is a harmless compound which will remove the carbon from your motor and respring your piston rings, thus giving you higher compression—more power—more gasoline mileage—and lower oil consumption. You can have a quiet running motor and new car performance at a cost of only two dollars by visiting your Power Seal dealer * * *.
23. If the things you desire are higher compression, more power, more gasoline mileage, and less oil consumption, perhaps Power Seal is the answer to your problem. It costs only two dollars and one hundred thousand California motorists say that it will correct the motor faults just mentioned. * * * Spend two dollars for a Power Seal Job and Motor tune up and you will have new car performance.
24. If your car struggles over the hills—if it pounds and coughs because of carbon—if it burns oil as fast as gasoline and burns gasoline faster than it should—it needs Power Seal. * * * It will remove carbon—increase compression—cut down fuel and oil consumption—and give you quiet running motor in just a few minutes.

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 which have been used and are now being used by said respondents, have had and do now have the tendency and capacity to, and have created, and do now create, among the public

the false impression and erroneous belief that "Power Seal" is a reliable and efficient engine dope, the use of which will increase the power and efficiency of the engine, will increase the compression of the engine, and will bring about economy in operation by decreasing gasoline and oil compression.

In truth and in fact "Power Seal" is not a reliable and efficient engine dope. It will not increase the power or efficiency of the engine. It will not increase the compression of the engine. It will not bring about economy of operation by decreasing gasoline and oil consumption or by any other means.

PAR. 3. The use by the said respondents Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name and style of Power Seal 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 Power Seal is in truth and in fact a reliable and efficient engine dope, and that by using same the user will obtain greater power and efficiency from his engine, and greater engine compression, and that the use thereof will bring about economy in operation by decreasing gasoline and oil consumption. Acting in such erroneous belief, the consuming public, and especially that portion of the public operating motor cars, have been induced and are now induced to purchase "Power Seal" in preference to other engine dopes 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 engine dope who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof.

PAR. 4. 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 constitute unfair 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 Commis-

sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, on December 11, 1936, issued and served its complaint in this proceeding upon respondents, Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name of Power Seal 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 Reuben J. Martin, attorney for the Commission, before Chas. P. Vicini, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Lawrence W. Allen, 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 (counsel for the respondents not having filed any brief herein and not having requested 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 respondents, Nelson E. Woolman and Lyle G. Jackson, are partners who trade and carry on business under the firm name and style of Power Seal Company. They maintain their principal place of business at 1601 South Broadway in the city of Los Angeles within the State of California. Said respondents are engaged in the manufacture and sale of a preparation in pellet form known, designated and sold under the trade name of "Power Seal," which said preparation is recommended for the treatment of internal combustion engines. Respondents recommend the use of said preparation "Power Seal" for the purpose of releasing rings in combustion engines when such rings are gummed; for the purpose of causing the valves in combustion engines to seat properly; and for the purpose of acting as a lubricant.

Respondents, in the regular course and conduct of their said business, are engaged in interstate commerce and cause said "Power Seal," when sold by them, to be transported from their place of business in Los Angeles, Calif., through and into other States of the United

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States to the respective purchasers thereof. In the course and conduct of their said business, respondents are now, and have been, in competition with various persons and corporations and with other partnerships also engaged in the manufacture and sale or the sale of similar preparations recommended for like or similar uses and purposes.

PAR. 2. Respondents, in the course and conduct of their business, have caused advertisements to be published in various newspapers, have made and are making use of printed advertising matter in the form of pamphlets and cards which they have caused, and are causing, to be distributed among their customers and prospective customers, and have extensively advertised the product sold by them under the trade mark and name of "Power Seal" over various radio stations located in Los Angeles, Calif.

In said advertising, respondents have made, and are making, numerous claims and representations concerning said product known and designated as "Power Seal," the uses for which they recommend the same and the results that they claim will be accomplished by its use. Respondents claim that the use of "Power Seal" in internal combustion engines will restore compression, and will completely rejuvenate tired and sluggish motors by sealing leaky and pitted valves and reseating them; that the use of "Power Seal" will restore efficiency to ill-conditioned engines; that the use of "Power Seal" will effect savings in oil and gas consumption; and that the use of "Power Seal" will increase power, speed, and mileage.

PAR. 3. The use of "Power Seal" in internal combustion engines will not restore compression, will not rejuvenate tired and sluggish motors and will not seal leaky and pitted valves and reseal the valves. The use of "Power Seal" will not restore efficiency to ill-conditioned engines. The use of "Power Seal" will not effect savings in oil and gas consumption, and will not increase power, speed, and mileage. The use of "Power Seal" will have no effect upon engine performance in engines in which it is used, and the power and efficiency of an engine would be unchanged by the use of said "Power Seal" as described in the advertising matter of respondents.

PAR. 4. The advertisements and recommendations of the respondents, as set out herein in paragraph 2, are false, misleading, and deceptive, and have had, and do now have, the capacity and tendency to mislead the purchasing public into the erroneous and untrue belief that "Power Seal" will produce in internal combustion engines the results claimed to be produced in such advertisements, and into the purchase of respondents' said product on account of such errone-

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ous belief. The misstatements and misrepresentations in such advertisements have had, and do now have, the capacity and tendency to divert trade from such of respondents' competitors selling similar products for similar purposes in interstate commerce as do not misrepresent their respective products.

CONCLUSION

The aforesaid acts and practices of the respondents, Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name of Power Seal Company, are to the prejudice of the public and competitors of the respondents, 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 Chas. P. Vicini, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the brief filed herein (respondents having filed no brief and not having requested oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondents, Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name of Power Seal 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 the respondents, Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name of Power Seal Company, or trading under any other name, their representatives, agents, and employees, in connection with the offering for sale, sale and distribution of the preparation now known and designated as "Power Seal," or any other preparation under whatever name sold composed of the same or similar ingredients and possessing similar properties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from

1. Representing that the use of said preparation in internal combustion engines will restore compression, will completely rejuvenate tired and sluggish motors, will seal leaky and pitted valves and reseal

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them, will restore efficiency to ill-conditioned engines, will effect savings in oil and gas consumption, or that it will increase the power, speed or mileage of said engines;

2. Making any other similar representations of like import or effect as to the results which will accrue from the use of said preparation.

It is further ordered, That the respondents, Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name of Power Seal Company, 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 the order hereinabove set forth.

IN THE MATTER OF

JOHN J. McCLOSKEY, INDIVIDUALLY AND TRADING AS
 H. B. KIMBALL COMPANY, H. B. KIMBALL, AND
 KIMBALL LABORATORIES

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

Docket 2725. Complaint, Feb. 19, 1936—Decision, Nov. 20, 1937

Where an individual engaged in sale of proprietary "Kimball Tablets," preparation for disorders and ailments of the digestive system, compounded for him by a company which he neither owned, operated, nor controlled, and sold and shipped, directly and by parcel post, chiefly, from his place of business, to purchasers at various points in various other States, and not, generally, upon doctor's prescription, but indiscriminately, to purchasers who, in reliance upon representations in its advertising, attempted self-medication without medical consultation, and in substantial competition with others engaged in sale and distribution, or manufacture, sale, and distribution, of preparations designed and sold as cures and remedies, or as treatments, for various disorders and ailments of the digestive system, in commerce among the various States and in the District of Columbia; in advertising his said tablets by pamphlets, labels, broadsides, form letters and testimonials, and in newspapers of general interstate circulation—

- (a) Represented that said tablets constituted an effective or competent remedy of cure for stomach trouble and ulcers, constipation, indigestion, dyspepsia, gastritis, and faulty elimination, and was such a remedy or cure for gas pains, intestinal toxic conditions, acidosis, bloating after meals, and dyspepsia symptoms; and
- (b) Represented that said tablets would "rid" the user of any ailment and remove cause thereof, and produce instant or positive results, and be beneficial regardless of severity or duration of ailment or previous remedies used, and that beneficial results were guaranteed, and 100,000 chronic cases had been successfully treated;

Facts being only therapeutic value of product in question was that of an antacid which, properly administered, would temporarily neutralize gastric acidity and have soothing effect on mucous lining of stomach, no one medicine or tablet alone is competent and effective remedy or cure for ailments or disorders of digestive tract, irrespective of cause thereof, certain ingredients present in said tablets, used in some palliative treatments for temporary relief of certain digestive disorders, such as gas pains, intestinal toxic conditions and others, had no effect on causative factors of such conditions and did not serve as cures or remedies therefor, said tablets would not "rid" the user of any ailment, were not beneficial regardless of duration or severity thereof, various representations above set forth were otherwise false, no chronic cases had been successfully treated or cured thereby, but persons suffering from such chronic dis-

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orders or ailments had been known to use and rely on such preparations alone until their conditions became such that recovery was impossible; and

(c) Represented, through use of such trade names as "H. B. Kimball Laboratories" or "H. B. Kimball Company, formerly Kimball Laboratories", that he was manufacturer of product and depicted in certain advertising, said Kimball, his predecessor, in uniform, and set forth, in such connection, asserted history of origin of formula of said tablets as assertedly acquired by said Kimball, as a part of his World War experience in Germany from a certain German chemist and physician who had made use of same in treating his patients suffering from digestive disorders, notwithstanding fact he neither owned, operated nor controlled laboratory making aforesaid products compounded by him, said predecessor had no connection with business in question, but had sold same to such individual years theretofore and latter had no knowledge as to whether or not any such German chemist and physician, as above set forth, ever existed or whether formula was derived or obtained as above set forth;

With effect of misleading purchasers of his products into belief that, in buying from him, they were dealing with manufacturer of product and thereby gaining many advantages as result of such purchase, such as, as commonly believed among purchasing and consuming public, superior quality at considerable saving in price, and of misleading and deceiving substantial portion of purchasing public into erroneous belief that said representations were true, and that preparation in question had substantial therapeutic value as cure and remedy for many disorders and ailments, as represented, and with result that public, acting under such mistaken and erroneous beliefs, induced by such false and misleading statement and representations, purchased substantial volume of its said product and trade was unfairly diverted to it from competitors likewise engaged in sale and distribution, or in manufacture, sale, and distribution, of cures and remedies or treatments for ailments and disorders of digestive tract, and who truthfully represent efficacy and therapeutic value of their respective products, and status or 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. John L. Hornor* and *Mr. Robert S. Hall*, trial examiners.

Mr. DeWitt T. Puckett for the Commission.

Mr. Erwin V. Novotny, of Milwaukee, Wisc., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that John J. McCloskey, an individual, trading as H. B. Kimball Company, H. B. Kimball, and Kimball Laboratories, 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, John T. McCloskey, trading as H. B. Kimball Company, H. B. Kimball, and Kimball Laboratories, is an individual whose office and place of business is located at 727 West Wisconsin Avenue, Milwaukee, Wis. He is now, and has been since 1930, engaged in selling a stomach remedy, advertised, labeled, and sold as "Kimball Tablets", between and among the various States of the United States and in the District of Columbia, and now causes, and for more than one year last past has caused, such products when sold by him to be shipped from his place of business in Milwaukee to purchasers thereof, some being located in the State of Wisconsin and others being located in various other States of the United States and in the District of Columbia, and there is now, and has been for more than one year last past, a constant current of trade and commerce by the respondent in Kimball Tablets 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 firms, partnerships, and corporations engaged in the sale of similar products between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1, hereof, in soliciting the sale of and in selling his Kimball Tablets, respondent now represents, and for more than one year last past has represented, in and by his advertising matter, which consists of circular letters, pamphlets, purported testimonials, folders, labels applied to the products, radio broadcasts, and through small advertisements in newspapers of interstate circulation, and in other ways, that Kimball Tablets are an effective remedy for stomach trouble, ulcers, gas pains, indigestion, constipation, intestinal toxicity, bloating, dyspepsia, gastritis, acidosis, hyperacidity, and faulty elimination; that his preparation will "rid" the user of any ailment; that it is not a patent medicine; that it will remove the cause of any ailment; that it will produce instant or positive results; that it will put a protective covering over the stomach membrane; that it will promote healing while taking care of digestion; that its use will enable the stomach to rest; that it will produce lasting relief; that it will be beneficial regardless of the severity or duration of the ailment or previous treatments used; that amazing results have been experienced by persons who had little or no hope of regaining their

health; that it is sure to produce beneficial results, or that beneficial results are guaranteed; that over one hundred thousand chronic cases have been successfully treated; that regardless of how long you have been suffering, or how discouraged you are of ever being well again, "we positively guarantee results, or the treatment costs you nothing."

In truth and in fact the preparation of itself is in no way a cure for any of the conditions mentioned above, nor does the actual therapeutic value of the preparation warrant statements or representations that it will give relief to sufferers of such ailments or bring about any of the results claimed. The statements that one hundred thousand chronic cases have been successfully treated, and "results are guaranteed, or the treatment costs you nothing," are untrue.

PAR. 3. Only by a thorough diagnosis made by a competent physician can the causes of the various stomach disorders named be ascertained and successfully treated. Respondent is not a physician and there is no medical doctor connected with respondent's business in any capacity.

PAR. 4. Respondent clearly implies and represents, through the statements contained in his advertising media, that he maintains a laboratory wherein his products are compounded, manufactured, or otherwise prepared for the market. In truth and in fact, respondent does not own, operate, or control any factory wherein his Kimball Tablets are made, but respondent purchases the Kimball Tablets, which he advertises and sells, in commerce as aforesaid, from Shores-Mueller Company of Cedar Rapids, Iowa, which company manufactures and prepares the tablets upon the order of respondent.

It is the common belief among the purchasing and consuming public, that a superior grade of medicine can be purchased direct from the manufacturer thereof at a considerable saving in price. The representations made by respondent, as alleged in paragraph 4 hereof, have the tendency and capacity to mislead and deceive the purchasers of respondent's stomach medicine into the belief that when they purchase Kimball Tablets from respondent, they are dealing with the manufacturer of said tablets purchased and thereby are gaining an advantage by saving the middleman's profit.

PAR. 5. Respondent represents, in and by the advertising media described in paragraph 2 hereof, that H. B. Kimball, whose picture, military history and the history of the Kimball Tablets appear as part of said advertising, manufactures the respondent's stomach remedy, or is in some way connected with the business. On the contrary, H. B. Kimball sold the business, together with all the rights incident

thereto, to the respondent in 1930, and thereby severed all connections with the respondent's business.

PAR. 6. Respondent also represents that Kimball Tablets are prepared according to a formula of the late Dr. Sternberger of Germany, whereas in truth and in fact respondent has no knowledge whether or not the said formula was ever used by Dr. Sternberger or anyone else in the manufacture of stomach medicines.

PAR. 7. Respondent employs as part of his advertising set up, purported testimonials in which statements are made by the persons giving said testimonials that the persons making said statements were or had been suffering from one or more of the stomach disorders herein referred to and that said persons had been cured or benefited by use of respondent's product when in truth and in fact the respondent was, and is, without knowledge as to the disease or diseases, if any, from which said persons were, or had been, actually suffering.

Respondent also employs certain purported endorsements of his preparation by doctors and chemists when in truth and in fact none of said doctors or chemists are known to respondent and he is now, and has been, without knowledge as to whether any of them have endorsed his preparation or not.

PAR. 8. The use by respondent of the representations hereinabove described has had, and now has, the capacity and tendency to mislead and deceive, and does mislead and deceive a substantial portion of the purchasing public into the belief that such representations are true, and to purchase substantial quantities of said stomach medicines from respondent in such erroneous belief. There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of stomach remedies, who neither misrepresent their status as manufacturers nor the therapeutic value of their products in any way, who likewise advertise, sell, and distribute stomach medicines among the various States of the United States and in the District of Columbia. By the representations aforesaid, trade is diverted to respondent from such competitors; thereby substantial injury is being, and has been, done by respondent to substantial competition in commerce as herein set out.

PAR. 9. 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 on February 21, 1936, served, its complaint in this proceeding upon respondent, John J. McCloskey, individually, and trading as H. B. Kimball Company, H. B. Kimball, and Kimball 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 John L. Hornor and Robert S. Hall, examiners of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by E. V. Novotny, 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, no brief having been filed by respondent and no oral argument having been requested; 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, John J. McCloskey, is an individual trading as H. B. Kimball Company, H. B. Kimball, and Kimball Laboratories. His place of business is at 727 West Wisconsin Avenue, Milwaukee, Wis. He is now, and since 1929 has been, engaged in the sale and distribution of a product called Kimball Tablets, a proprietary medicine advertised and sold as a remedy and cure for various disorders and ailments of the digestive system.

When orders are received for respondent's tablets, he causes them to be shipped from his place of business at Milwaukee, Wis., to the purchasers thereof located at various points in the various States of the United States other than the State of Wisconsin. Said tablets are shipped directly to the purchasers thereof chiefly by parcel post. Since 1929, the respondent has maintained a constant current

of trade in said tablets, in commerce among and between the various States of the United States.

At all times since respondent entered into said 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 preparations designed and sold as cures and remedies or as treatments for various disorders and ailments of the digestive system, 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 Kimball Tablets by pamphlets, labels, broadsides, form letters, testimonials and through advertisements inserted in newspapers of general interstate circulation. Respondent formerly advertised his tablets by radio, but has done no radio advertising during the past three years. Said Kimball Tablets have been, and are now, advertised and represented by respondent as a competent or effective remedy or cure for stomach trouble, ulcers, gas pains, indigestion, constipation, intestinal toxicity, bloating, dyspepsia, gastritis, acidosis, hyperacidity, faulty elimination and various other ailments and disorders of the digestive tract. He also represents that said tablets will "rid" the user of any ailment; that they will remove the cause of any ailment; that they will produce instant or positive results; that they will be beneficial regardless of the severity or duration of the ailment or previous remedies used; that beneficial results are guaranteed; and that 100,000 chronic cases have been successfully treated.

PAR. 3. The qualitative formula for Kimball Tablets is:

Calcium carbonate, Sodium bicarbonate, Magnesium oxide, Peppermint Vanalin, Oleoresin Ginger, Saccharin, Bismuth.

Based upon an examination of the product and its qualitative formula by a governmental agency, and upon the testimony of duly qualified members of the medical profession, it is found that the only therapeutic value of said product is that of an antacid which, if properly administered, would temporarily neutralize gastric hyperacidity and would have a soothing effect on the mucous lining of the stomach.

The evidence establishes that the method of treating disorders and ailments of the digestive tract, which is followed generally by the medical profession, is, in all cases, to get a complete history of the patient's disorder or ailment, whereupon an exhaustive diagnosis is made which oftentimes involves a determination of the blood

pressure, urina tests, blood tests, and an X-ray examination. After the patient's disorder or ailment is discovered and the cause thereof determined, if possible, said disorder or ailment is treated in accordance with certain standard methods of treatment employed by the medical profession for that particular disorder or ailment. Such treatment includes correcting the diet, administering certain medicines in some cases and, in others, surgical operations.

Disorders and ailments of the digestive tract arise from many causes and they are not all treated in the same manner. No one medicine or tablet alone is a competent and effective remedy or cure for ailments or disorders of the digestive tract, irrespective of the cause thereof. Kimball Tablets do contain certain ingredients used in some palliative treatments which are administered for temporary relief of certain digestive disorders such as gas pains, intestinal toxic conditions, acidosis, bloating after meals, symptoms of dyspepsia, and hyperacidity, but which have no effect on the causative factors of such conditions and which do not serve as cures or remedies for such conditions. Said tablets, however, have no therapeutic or beneficial value in the treatment of stomach trouble, ulcers of the stomach, constipation, indigestion, dyspepsia, gastritis and faulty elimination. They will not remove the cause of or "rid" the user of any ailment. They are not beneficial regardless of the duration or severity of the ailment, and they will not produce instant and positive results. Beneficial results are not guaranteed and no chronic cases have been successfully treated or cured by the use of said tablets. Persons suffering from chronic disorders or ailments of the digestive tract have been known to use and rely on such preparations alone until their conditions became such that recovery was impossible.

The testimony of a doctor who used Kimball Tablets in treating about fifty-five patients suffering from digestive disorders and ailments is substantially in accord with the other medical testimony adduced. His method of procedure in treating patients suffering from digestive disorders is in accordance with established methods of treatment above described. The witness testified that Kimball Tablets will not remove the cause of any ailment.

Respondent's tablets are not generally sold upon a doctor's prescription but are sold indiscriminately to purchasers who, relying upon the representations contained in respondent's advertising, attempt self-medication without consulting a doctor.

PAR. 4. Until about two years ago respondent used the trade names "H. B. Kimball Laboratories," and "H. B. Kimball Laboratory," on his letterheads. The letterheads now read "H. B. Kimball

Company, formerly Kimball Laboratories." The trade names "H. B. Kimball Laboratories" and "Kimball Laboratories" still appear on certain of his advertising literature.

It is the common belief among the purchasing and consuming public, that a superior grade of medicine can be purchased direct from the manufacturer thereof at a considerable saving in price and that other advantages can be obtained thereby. The use by respondent of the word "laboratory" or "laboratories" as a part of his trade name has had, and now has, the capacity and tendency to mislead, and has misled, purchasers of respondent's products into the belief that when they purchase said products from respondent, they are dealing with the manufacturer of said products purchased and thereby are gaining many advantages as a result thereof. Respondent has never owned, operated or directly and absolutely controlled a laboratory or manufacturing plant in which Kimball Tablets were compounded. In fact, said tablets are compounded for the respondent by Shores-Mueller Company of Cedar Rapids, Iowa, which company compounds the tablets upon the order of respondent. Respondent has never owned, operated or exercised any control over the Shores-Mueller Company.

PAR. 5. Certain of respondent's advertising matter, which was also formerly used by H. B. Kimball, respondent's predecessor, carries a picture of H. B. Kimball in military uniform and a story about the origin and history of Kimball Tablets. According to said story, H. B. Kimball was a soldier in the late World War and had the good fortune of being billeted with a family at Heimersheim, Germany, that had in its possession the formula for Kimball Tablets, said formula having been discovered by the late Dr. Sternberger, a chemist and physician of Heimersheim, Germany, and having been used in treating Dr. Sternberger's patients suffering from digestive disorders. Further, according to the story, Kimball obtained a copy of the formula and compounded Kimball Tablets in accordance therewith. The aforesaid advertising matter and the right to use the same were obtained from Kimball at the time respondent purchased the business from him. Respondent never knew Dr. Sternberger or whether such person ever existed or whether the said formula was derived or obtained in the manner represented. The entire story is based upon hearsay. H. B. Kimball sold the business to respondent in 1929 and has not been connected with the business in any way since that time.

PAR. 6. The use by respondent of the representations set forth above in his advertising literature has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of

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the purchasing public into the erroneous beliefs that said representations are true and that said preparation has the substantial therapeutic value as a cure and remedy for many disorders and ailments as represented. Acting under the mistaken and erroneous beliefs induced by the false and misleading statements and representations above referred to, the public has purchased a substantial volume of the respondent's products with the result that trade has been unfairly diverted to the respondent from his competitors likewise engaged in the sale and distribution, or in the manufacture, sale, and distribution, of cures and remedies or treatments for ailments and disorders of the digestive tract, who truthfully represent the efficacy and therapeutic value of their respective products and the status or character of their respective businesses. As a result thereof, a substantial injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent John J. McCloskey, individually, and trading as H. B. Kimball Company, H. B. Kimball, and Kimball 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, the answer of respondent, testimony and other evidence taken before John L. Hornor 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, and brief in support of the complaint, no brief having been filed by respondent and no oral argument having been requested, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, John J. McCloskey, individually and trading as H. B. Kimball Company, H. B. Kimball,

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and Kimball Laboratories, or trading under any other name, his agents, representatives and employees in connection with the offering for sale, sale and distribution of a medicinal product now designated as "Kimball Tablets," or of any other medicinal product containing substantially the same ingredients, or possessing the same properties, sold under that name or any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

A. Representing directly or through the use of testimonials or indorsements or in any other manner,

1. That said product constitutes an effective and competent remedy or cure for, or has any therapeutic or beneficial value in the treatment of, stomach trouble, ulcers of the stomach, constipation, indigestion, dyspepsia, gastritis, and faulty elimination;

2. That said product is an effective and competent remedy or cure for, or that it will remove the causes of, gas pains, intestinal toxic conditions, acidosis, bloating after meals, and symptoms of dyspepsia; provided respondent is not hereby prevented, however, from representing said product as a palliative treatment for temporary relief of such conditions;

3. That said product will remove the cause of, or rid the user of, any disease, disorder or ailment whatever;

4. That said product is beneficial regardless of the duration or severity of the ailment and that chronic cases have been successfully treated by the use thereof;

5. That said product will produce instant and positive results and that beneficial results are guaranteed.

B. Representing, through the use of the word "laboratory" alone or in conjunction with any other word, or through the use of any other word or words of similar import and meaning, or through any device, that he is the manufacturer of said product until and unless he owns, operates, or directly and absolutely controls a laboratory wherein said products are compounded by him.

C. Representing through the use of pictorial representations or in any manner:

1. That H. B. Kimball is connected with the said business;

2. That said product is compounded in accordance with a formula discovered by a Dr. Sternberger of Germany or by any other person who did not in fact discover the said formula.

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

Complaint

IN THE MATTER OF

JULIUS GOODMAN & SON, INC.

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

Docket 3028. Complaint, Jan. 5, 1937—Decision, Nov. 22, 1937

Where a corporation engaged, in retail jewelry business, in offer and sale, to customers and prospective customers in various States and in the District of Columbia, of new silverware and of secondhand silverware purchased by it from various sources and, in some instances, reconditioned and renovated at a cost which was generally lower than cost to it of new and unused silverware of similar quality, and enabled thereby to sell same at substantially lower prices than those at which competitors engaged in sale of new silverware were able to sell similar new products, and with appearance, in most instances, of new silverware which had never been used—

Sold its said used and renovated silverware with no mark, symbol or statement thereon or in connection therewith, or in the advertisements thereof to indicate same was not new, and without disclosing fact it had been previously used, then renovated and reconditioned, and under such circumstances as to indicate that it was new silverware, and failed, in its advertisements in newspapers and magazines in general circulation throughout the United States, to disclose secondhand or reconditioned nature of silverware thus offered by it;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into erroneous belief that said used and renovated silverware was new and unused, and with result that, by reason of such mistaken and erroneous belief induced by said advertisements and representations, number of the consuming public bought considerable volume of its said silverware and trade was unfairly diverted to it from those likewise engaged in sale of new and unused or used silverware, and who truthfully advertise their products; to the substantial injury of competition in commerce:

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

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

Mr. George Foulkes for the Commission.

Mr. C. Rudolph Johnson, 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 Julius Goodman & Son, Inc., is a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in

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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, Julius Goodman & Son, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 43 South Main Street, Memphis, Tennessee. Respondent is now, and for more than two years last past has been, engaged in the retail jewelry business and in the sale and offering for sale of new and used silver tableware to customers and prospective customers located in various States of the United States.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes and has caused said tableware, when sold, to be transported from its office and principal place of business in the State of Tennessee to purchasers thereof located in various other States of the United States. There is now, and has been during the time hereinabove mentioned, a constant current of trade and commerce in said new and used silver tableware so distributed and sold by respondent between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its said business said respondent was, and is in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution of new and used silver tableware, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, respondent, for more than two years last past has bought and still buys, second-hand, old, and used silver tableware, which it has caused and now causes to be renovated and reconditioned. Respondent has caused advertisements to be inserted in newspapers and magazines having a general circulation throughout the United States in which it has represented and now represents that said old second-hand and used silver tableware is new and unused.

Certain advertising matter used by said respondent in making said representation is herein set out as illustrative of said representation, but is not all inclusive. Such advertisements are as follows:

\$350.00 Sterling Silver French Border Coffee Service
Present regular price \$700.00
Our Price \$350.00
\$350.00

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Sterling silver French Border Coffee Service. Present regular price \$700.00. Our price \$350.00. Will send on approval.

We have in stock a number of pieces of this well known silver, such as compotes, baskets, vases, and centerpieces priced on the same basis as the coffee service.

The above is only one of the many tea and coffee services we have in our stock of unusual silver which is one of the largest in the United States.

We also offer an unusual opportunity to fill in on your flat silver patterns, such as,

Cambridge	Pompadour	Orange Blossom
Louis XV	Bridal Rose	Norfolk
Lily	Versailles	Buttercup
Luxembourg	Violet	Strasbourg
Canterbury	Old English	Chantilly
Frontenac	Lancaster	Chrysanthemum

We have in stock the above and many others.

Said silver tableware so advertised and sold by respondent has the appearance of new tableware, which has never been used, and it is sold by respondent without disclosing the fact that it had been previously used, then renovated and reconditioned, and is sold under such circumstances to indicate that it is new tableware. Respondent has sold, and now sells said tableware without any marking, symbol, or statement on or about it, or in the advertisements describing the same, indicating that it is not new silver tableware.

The cost to respondent of obtaining, renovating and reconditioning said tableware is much less than the cost to tableware manufacturers of manufacturing and selling new tableware of similar quality, and respondent is thereby able to sell its said products at substantially lower prices than manufacturers of new tableware can sell their products of the same or similar quality.

PAR. 4. It is the common belief and understanding of the purchasing public that silver tableware, having the appearance of new and unused tableware, is in fact tableware which is new and unused. The purchasing public, when buying silver tableware having the appearance of being new and unused and without any marking, symbol, or statement on or about said tableware, or the advertisements describing the same, clearly indicating that said tableware is not in fact new or unused, are entitled to receive new tableware and not second-hand, old, and used tableware which has been renovated and made over.

PAR. 5. The acts and practices of respondent in offering for sale and selling said second-hand silver tableware had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the purchase of said second-hand, old and used silver tableware which has been renovated and made over by

respondent, in the erroneous belief that they are purchasing new and unused silver tableware. Said acts and practices of respondent have had, and do have the tendency and capacity to induce prospective customers to answer respondent's advertisements and to purchase respondent's silver tableware, and unfairly to divert trade to respondents from competitors engaged in the sale of new and used silver tableware, and who truthfully advertise their products. Further, as a direct consequence of the misleading and erroneous belief induced by the advertisements and misrepresentation of the respondent, as hereinabove enumerated, a number of the consuming public purchased a substantial volume of respondent's reconditioned silver tableware with the result that trade has been unfairly diverted to respondent from corporations, firms, partnerships, and individuals likewise engaged in the business of selling new and used silver tableware, 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 between and among the various States of the United States and in the District of Columbia.

PAR. 6. 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 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 January 5, 1937, issued and served its complaint in this proceeding upon respondent, Julius Goodman & Son, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint 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, examiner of the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by Rudolph Johnson, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission.

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Thereafter, the proceeding 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 allegations of the complaint, no brief having been filed by respondent and oral argument having not been requested, 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, Julius Goodman & Son, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 43 South Main Street, Memphis, Tenn.

Respondent is now, and for approximately five years last past has been, engaged, under its present corporate name, in the retail jewelry business and in offering for sale and selling new and used silverware to customers and prospective customers located in various States of the United States and in the District of Columbia.

The business is under the control of Julius Goodman and has been in existence since the year 1865. Respondent's gross dollar volume of business for the year 1936 was approximately \$250,000.

PAR. 2. Respondent's merchandise is sold throughout the United States and in many foreign countries. When orders are received for respondent's merchandise, it is shipped from respondent's place of business in Memphis, Tenn., to the purchasers thereof at their respective locations, some of which are in States of the United States other than the State of Tennessee, and some of which are in foreign countries.

There is now and has been during the time hereinabove mentioned a constant current of trade and commerce in said new and used silverware so distributed and sold by respondent between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business respondent was, and is, in substantial competition with other corporations and with partnerships and individuals likewise engaged in the sale and distribution of new and used silverware in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent's silverware consists of new and unused silver and second-hand or used silverware which respondent purchases from various sources.

In some instances respondent reconditions and renovates the used silverware and offers it for sale to the purchasing public.

In the course of the operation of its business, respondent has caused advertisements to be inserted in newspapers and magazines having a general circulation throughout the United States in which advertisements the fact that said silverware was second-hand or reconditioned was not disclosed. The following advertisement is illustrative of said representations but is not all inclusive:

(Picture of Silver Spoons)

UNUSUAL OPPORTUNITY

Is offered you to match your obsolete, inactive and older patterns of silver flatware at reasonable prices.

Baronial	Georgian	Norfolk
Bridal Rose	King Edward	Old English
Buttercup	Lancaster	Paul Revere
Canterbury	Les Cinq Fleurs	Rosalind
Chrysanthemum	Lily	Versailles
Colonial	Louis XV	Violet
Frontenac	Luxembourg	

We have accumulated a stock of the above and many others. We also carry one of the largest stocks of unusual silver shown in the United States.

Silver sent on approval

JULIUS GOODMAN & SON, INC.
43 South Main Street
Memphis Tennessee

(Picture of Silver Service Set)

\$975.00

8-piece sterling silver service Chantilly Pattern made by Gorham Co. Original cost approximately \$2025.00. In perfect condition. Will send on approval.

This is only one of the many Tea Services and values from our stock of fine and unusual silver which is one of the largest in the United States.

We also offer an unusual opportunity to fill in on your flat silver patterns, such as,

Cambridge	Pompadour	Orange Blossom
Louis XV	Bridal Rose	Norfolk
Lily	Versailles	Buttercup
Luxembourg	Violet	Strasbourg
Canterbury	Old English	Chantilly
Frontenac	Lancaster	Chrysanthemum

We have in stock the above and many others. Correspondence solicited.

JULIUS GOODMAN & SON, INC.
43 South Main Street,
Memphis, Tennessee.

Respondent's silverware so advertised and sold as aforesaid had the appearance, in most instances, of new silverware which had never been used.

Respondent has sold said used and renovated silverware without disclosing the fact that it has been previously used, then renovated and reconditioned, and under such circumstances as to indicate that it was new silverware.

In some instances prospective customers made inquiry as to whether or not respondent's silverware was new or used merchandise, and were advised by respondent that the silverware was used and reconditioned silverware, if such was the case.

Respondent has in the past sold its used and renovated silverware without any marking, symbol, or statement on or about it or in its advertisements indicating that such silverware was not new silverware.

On or about December 4, 1936, respondent changed its advertising policy and in all its advertisements subsequent to December 4, 1936, respondent represented, or otherwise indicated that its old reconditioned silverware was, in fact, silverware that had been previously used then reconditioned.

PAR. 4. The cost to respondent of obtaining, renovating and reconditioning said silverware is generally lower than the cost to respondent of new and unused silverware of similar quality, and respondent is thereby able to sell its said products at substantially lower prices than competitors engaged in the sale of new silverware can sell similar new silverware.

When buying silverware having the appearance of new and unused silverware and without any marking, symbol, or statement on or about said silverware, or in the advertisements describing the same, clearly indicating that said silverware is not, in fact, new or unused, the purchasing public believes, and is entitled to believe, that such silverware is new silverware and not second-hand, old, and used silverware which has been renovated and made over.

PAR. 5. Respondent's misrepresentation concerning its silverware as hereinabove set forth in its advertising in newspapers, pamphlets, and other advertising literature 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 used and renovated silverware was new and unused silverware.

As a direct result of this mistaken and erroneous belief induced by advertisements and misrepresentations of respondent, as hereinabove enumerated, a number of the consuming public purchased a considerable volume of respondent's silverware with the result that trade

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has been unfairly diverted to respondent from corporations and partnerships and individuals likewise engaged in the business of selling new and unused, or used, silverware and who truthfully advertise their products.

As a result thereof substantial injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondent, Julius Goodman & Son, 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 by Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief of counsel for the Commission, no brief having been filed by respondent and oral argument having not been requested, 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, Julius Goodman & Son, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of used, old, and reconditioned silverware in interstate commerce, or in the District of Columbia, do forthwith cease and desist from:

Representing directly, or through failure to disclose the true nature, character, and condition thereof, that said old, used, and reconditioned silverware is new.

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.

Complaint

IN THE MATTER OF

BLOOMINGDALE BROTHERS, INC.

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

Docket 3176. Complaint, July 17, 1937—Decision, Nov. 22, 1937

Where corporate department store operator, engaged in sale and distribution of women's wearing apparel and other allied products, to purchasers in other States, in substantial competition with those engaged in sale and distribution of such apparel and products in various States and in District of Columbia; in advertising its said merchandise in newspapers of interstate circulation—

Represented, designated, and referred to certain dresses as "Windsor Crepe" and certain blouses as "Heim Crepe," notwithstanding fact garments thus advertised and offered were not composed of silk, product of cocoon of silkworm, as long definitely understood in mind of consuming public from word "silk," and were not products thereof, long and still held in great public esteem and confidence for their preeminent qualities, nor silk as understood from word "Crepe," without descriptive qualification, as applied to wearing apparel, as meaning one of terms applied to fabrics resulting from different types of weaving of silk fiber, and as meaning fabric made from cocoon of silkworm, and, as commonly known and understood by public generally, "silk";

With capacity and tendency to mislead portion of purchasing public into erroneous belief that such articles were made of silk, and to cause them to purchase same on account of such erroneous beliefs, and to divert trade unfairly to it from 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.

Mr. Astor Hogg for the Commission.

Proskauer, Rose & Pashus, 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 Bloomingdale Brothers, Inc., hereinafter referred to as respondent, has been and now is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public

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interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Bloomingdale Brothers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Lexington Avenue and 59th Street in the city of New York in said State. It is now, and for many years last past has been, engaged in the business of operating a department store from which it sells, among other things, women's wearing apparel. It sells and has sold and distributed such wearing apparel to members of the purchasing public located in the various States of the United States and in the District of Columbia. Respondent 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, N. Y., 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 said respondent in said merchandise so sold by it 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 persons, firms, and partnerships engaged in the sale and distribution of women's wearing apparel and other allied products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling said wearing apparel, caused, and now causes, advertising matter to be inserted in newspapers having interstate circulation. In said advertising matter certain dresses were and are represented, designated and referred to as "Windsor Crepe." In other of its newspaper advertising certain blouses were and are represented, designated and referred to as "Heim Crepe."

Such statements and representations on the part of respondent serve as representations to members of the public that such items of wearing apparel so advertised and offered for sale are and were silk products. The representations hereinabove set forth are and were grossly false and misleading in that said items of wearing apparel so represented, designated and referred to 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 past has had and still has, in the mind of the consuming public, a definite and specific meaning,

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to wit: The product of the cocoon of the silk worm. Silk products 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. A variety of distinctive terms have been applied to the fabrics resulting from different types of weaving of silk fibre. Dress goods and other items of women's wearing apparel designated, described and referred to as "crepe" have been for a long time and at the present time still are associated in the public mind with a fabric made from the cocoon of the silk worm, commonly known and understood by the public as silk.

PAR. 4. The use by respondent of the representations set forth herein have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that such representations are and were true and to cause them to purchase such items of wearing apparel on account of such erroneous beliefs 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 women's wearing apparel who do not misrepresent the kind of wearing apparel offered for sale. By use of the representations aforesaid, trade has been, and is, unfairly diverted to respondent from said 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 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.

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 17th day of July 1937, issued and subsequently served its complaint in this proceeding upon respondent, Bloomingdale Brothers, 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, W. T. Kelley, Chief Counsel

for the Federal Trade Commission, and Proskauer, Rose & Paskus, counsel for the respondent, executed a stipulation as to the facts wherein it was agreed that the statement of facts therein recited 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 Commission might proceed upon such 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. Said stipulation as to the facts was subsequently approved by the Commission and was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto 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, Bloomingdale Brothers, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at Lexington Avenue and 59th Street in the city of New York in said State. It is now, and for many years last past has been, engaged in the business of operating a department store from which it sells and distributes women's wearing apparel and other allied products. 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. It causes, and during the time herein mentioned has caused, its said articles of merchandise when sold, to be shipped from its place of business in New York, N. Y., to the purchasers thereof located in the various States of the United States other than the State of New York. Respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of women's wearing apparel and other allied products, in the various States of the United States and in the District of Columbia, some of which said competitors sell and distribute their merchandise in commerce among and between the various States of the United States.

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PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent, in soliciting the sale of and selling its said merchandise, caused, and now causes, advertising matter to be inserted in newspapers having an interstate circulation. In said advertising matter, certain dresses were represented, designated and referred to as "Windsor Crepe," without a modifying word to indicate the fibre of which the fabric was made. In other of its newspaper advertising, certain blouses were represented, designated and referred to as "Heim Crepe," without a modifying word to indicate the fibre of which the fabric was made.

PAR. 3. In the manner and through the means above stated, respondent represented, and represents, to members of the purchasing public that such products so advertised and offered for sale were silk products. The said items of women's wearing apparel so represented, designated and referred to herein were not composed of silk, the product of the cocoon of the silk worm, but were composed of materials other than silk.

PAR. 4. The word "silk" for many years last past has had, and still has, in the mind of the consuming public, a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk products 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. A variety of distinctive terms have been applied to the fabrics resulting from different types of weaving of silk fibre. Women's wearing apparel designated, described or referred to as "crepe," when used alone, without a modifying word, descriptive of the fibre from which they are made, have been for a long time, and at the present time still are, 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. 5. The use by the respondent of the representations set forth herein have had and now have the capacity and tendency to mislead a portion of the purchasing public into the erroneous belief that such articles were made of silk and to cause them to purchase such articles on account of such erroneous beliefs. The representations made by respondent as aforesaid are deceptive and misleading and have the capacity and tendency unfairly to divert trade to respondent from 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 respondent, Bloomingdale Brothers, Inc., are to the prejudice of the public and of respondent's

competitors, and constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts executed by W. T. Kelley, Chief Counsel for the Federal Trade Commission, and Proskauer, Rose & Paskus, counsel for the respondent, the filing of briefs having been waived, and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Bloomingdale Brothers, Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its merchandise, women's wearing apparel and dress goods, in interstate commerce or in the District of Columbia, do forthwith cease and desist from

Using the word "crepe" or any other word of similar import and effect to describe, advertise, brand or label any product which is not composed wholly of silk, the product of the cocoon of the silkworm, unless there is used in immediate connection and in conjunction with said word "crepe," in letters of equal size and conspicuousness, a word or words accurately describing the material or materials from which said products are actually made.

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
HEALTH GUARD, INC.

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

Docket 2877. Complaint, July 15, 1936—Decision, Nov. 24, 1937

Where a corporation engaged, among other things, in manufacture, sale and distribution of its so-called "Health Guard," mechanical device for attachment to gas heaters and stoves to remove or reduce amount of carbon monoxide gas expelled therefrom and in marketing, chiefly, through department stores, jobbers and mail order houses throughout the United States, its product in substantial competition with others engaged in manufacture, sale, and distribution, or in sale and distribution, in commerce among the various States and in the District of Columbia, of stove pipes and of other devices and attachments for similar use on gas-burning appliances, air-conditioning vents and gas heaters; in advertising its said device through newspapers, folders, circulars, labels attached thereto, and in various other ways—

Represented that use thereof on gas appliances would change carbon monoxide gas passing through such device to a harmless substance, and that it was effective and sure in operation and protected against dangers of carbon monoxide poisoning, and constituted safe substitute for stove pipes, use of which it made unnecessary, facts being said device, thus attached, would not change carbon monoxide contained in products of combustion emitted thereby to a harmless gas, was not simple and sure in operation, would not protect user from dangers of carbon monoxide poisoning, and did not constitute safe substitute for stove pipes;

With capacity and tendency to mislead and deceive substantial portion of trade and public into erroneous beliefs that device in question constituted such a safe substitute and had the qualities or properties and result attributed to it as above set forth, and would protect user from dangers of aforesaid poisoning, and with result that public, as consequence of mistaken and erroneous beliefs induced by such false and misleading representations, purchased substantial volume of its said devices in preference to those of competitors, and trade was unfairly diverted to it from competitors engaged in manufacture, sale, and distribution, or in sale and distribution, of stove pipes and other devices used to remove from rooms carbon monoxide gas emitted from gas-burning appliances, and of devices used to prevent carbon monoxide poisoning, and who in no way misrepresented effectiveness, function, or purpose of 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.

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

Mr. DeWitt T. Puckett for the Commission.

Saperston, McNaughtan & Saperston, of Buffalo, N. Y., 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 Health Guard, 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 thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Health Guard, Inc., is a corporation, organized and existing under the laws of the State of New York, with its office and principal place of business located at 110 E. Utica Street, in the city of Buffalo, State of New York. Respondent is now, and for more than one year last past, has been, engaged in manufacturing, advertising, and selling a safety appliance, designated "Health Guard" and designed to remove carbon monoxide from gases produced by radiant-type stoves. In the course and conduct of its business, respondent causes said appliances, when sold, to be transported from its place of business in the State of New York into and through various States of the United States and the District of Columbia, to the purchasers thereof located in other States of the United States and the District of Columbia. In the course and conduct of its business aforesaid, respondent is now, and for more than one year last past, has been, in substantial competition with other individuals, partnerships, firms, and corporations engaged in the business of manufacturing and selling devices and appliances designed to protect consumers against the danger of poisonous gases in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. The device manufactured by respondent as aforesaid, consists of a sheet metal container cylindrical in shape, and approximately $6 \times 2\frac{3}{4} \times 7\frac{1}{2}$ inches in size. The interior is loosely packed with lathe turnings or curled strands of nickel. At one side, near the bottom of the container is a hole fitted with a collar which connects with the flue of the heater. The top of the container is covered by a lid perforated to form a screen having holes $\frac{1}{4}$ inch square. The products of combustion from the heater enter the device at the bottom, pass through the filler and out through the holes in the lid. Pure nickel, when raised to a temperature of about 600° Fahrenheit, absorbs or adsorbs carbon monoxide and acts as a catalytic agent in

the transformation of this gas into carbon dioxide. This action ceases when the catalytic agent has reached the saturation point. Respondent's said appliance when used on the type of heater or stove for which it is advertised and sold has no appreciable effect upon carbon monoxide generated by gas combustion.

PAR. 3. In the course and conduct of its business, respondent has made, and is making, false and misleading statements and representations in advertisements, circulars, pamphlets, labels, letters, window displays, and otherwise, as follows:

The Health Guard is simple and sure in operation. It contains a catalyst that oxidizes the deadly, poisonous carbon monoxide, changing it to a harmless gas.

The *only* safe device for eliminating unsightly pipes on stoves and radiant heaters.

For Health and Economy use a Health Guard.

The Health Guard (patented) contains a catalyst that will oxidize (change) deadly, poisonous carbon monoxide that passes through it to a harmless gas.

The first and only completely safe substitute for stove pipes.

Positively converts stove fumes into harmless gas.

No Carbon Monoxide fumes. Own a "Health Guard." A protector from the dangers of carbon monoxide! Attach a Health Guard to your radiant heater for safety's sake. It traps dirt and saves gas.

No longer is it necessary to put up with an unsightly stove pipe on your gas range—or to endanger your health or even your life with carbon monoxide thrown off by a pipeless radiant heater due to incomplete combustion.

Now, for the first time you can replace an unsightly pipe with a device that oxidizes deadly carbon monoxide to relatively harmless carbon dioxide—thereby preventing carbon monoxide poisoning. Tests made by eminent chemists and testing laboratories prove it.

In truth and in fact said statements and representations were and are false and misleading in that the said device does not oxidize carbon monoxide and does not change carbon monoxide to a harmless gas; it is not the only device for eliminating unsightly pipes on stoves and radiant heaters; the catalyst contained in said "Health Guard" will not oxidize or change carbon monoxide into a harmless gas; it is not the only substitute for stove pipes; said appliance will not protect the user from the dangers of carbon monoxide, and will not prevent carbon monoxide poisoning.

PAR. 4. There are among the competitors of respondent engaged in the manufacture and sale of safety devices and appliances as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals who manufacture and sell safety devices and appliances and who truthfully represent their products in their advertising and upon their stationery, pamphlets, circulars, and otherwise.

PAR. 5. The representations by respondent as set forth in paragraph 3 hereof have a capacity and tendency to, and do mislead and

deceive the purchasing public into the belief that they are true and that the use of said appliance will accomplish the results set out in the advertisements, circulars, pamphlets and labels aforesaid; and they further have the capacity and tendency to, and do, cause purchasers of said appliance to remove flues or other means of removing carbon monoxide-containing products from the room, thereby endangering their health and lives because of the false sense of security induced by said statements and representations. Said representations further have the capacity and tendency to, and do, induce the purchasing public, acting in such belief, to purchase said appliance or device, thereby diverting trade to respondent from his competitors who do not misrepresent their products in any manner, 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 15, 1936, issued, and on July 17, 1936, served its complaint in this proceeding upon respondent, Health Guard, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by 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 Alfred M. Saperston, 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

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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, Health Guard, Inc., is a corporation organized in 1934 and doing business under the laws of the State of New York. Its principal office and factory are at 110 East Utica Street, Buffalo, N. Y. The respondent is now, and since 1934 has been, engaged continuously in the manufacture, sale, and distribution, among other products, of a mechanical device sold and marketed under the name "Health Guard." Said device is an appliance designed to be attached to gas heaters and stoves for the purpose of removing or reducing the amount of carbon monoxide gas expelled from said stoves and heaters when in operation.

When orders are received for said devices, respondent causes them to be shipped from its factory at Buffalo, N. Y., to the purchasers thereof located at various points in States of the United States other than the State of New York. Said products are marketed chiefly through department stores, jobbers, and mail-order houses throughout the United States. At all times mentioned herein the respondent has maintained a constant current of trade in said devices in commerce among and between the various States of the United States.

At all times since respondent entered into said business, it has been in substantial competition with other corporations and with partnerships and individuals engaged in the manufacture, sale and distribution or in the sale and distribution of stove pipes and of other devices and attachments for similar use on gas-burning appliances, air-conditioning vents, and gas heaters, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Said "Health Guard" device consists of a sheet metal container approximately $6 \times 2\frac{3}{4} \times 7\frac{1}{2}$ inches in size. The interior is loosely packed with metal turnings. A three-inch diameter hole, fitted with a collar which connects with the flue of the gas appliance or heater, is located at one side near the bottom of the container. The top of the container is covered by a lid perforated to form a screen having holes one-quarter inch in diameter. The products of combustion from the heater enter the device at the bottom, pass through the filler and out through the holes in the lid.

For the purpose of inducing the purchase of said "Health Guard," the respondent advertised said device through newspapers, folders, circulars, labels attached to the device, and in various other ways as follows:

The Health Guard is simple and sure in operation. It contains a catalyst that oxidizes the deadly, poisonous carbon monoxide, changing it to a harmless gas.

The only safe device for eliminating unsightly pipes on stoves and radiant heaters.

For health and economy use a Health Guard.

The Health Guard (patented) contains a catalyst that will oxidize (change) deadly, poisonous carbon monoxide that passes through it to a harmless gas. The first and only completely safe substitute for stove pipes.

Positively converts stove fumes into harmless gas.

No Carbon Monoxide fumes. Own a "Health Guard." A protector from the dangers of carbon monoxide! Attach a Health Guard to your radiant heater for safety's sake. It traps dirt and saves gas.

No longer is it necessary to put up with an unsightly stove pipe on your gas range—or to endanger your health or even your life with carbon monoxide thrown off by a pipeless radiant heater due to incomplete combustion.

Now for the first time you can replace an unsightly pipe with a device that oxidizes deadly carbon monoxide to relatively harmless carbon dioxide—thereby preventing carbon monoxide poisoning. Tests made by eminent chemists and testing laboratories prove it.

Such statements as those hereinabove set out serve as representations on the part of respondent to members of the purchasing public that the "Health Guard" device, when used on gas-burning appliances which emit carbon monoxide as a component part of the products of combustion, will change the carbon monoxide to a harmless gas; that it is a safe substitute for stove pipes; that the use of stove pipes is not necessary when said device is used; that said device will protect the user thereof from the dangers of carbon monoxide poisoning, and that said device is effective or sure in operation.

PAR. 3. Observing certain of respondent's advertising in the Pittsburgh Press, a representative of the Pittsburgh Experiment Station of the United States Bureau of Mines obtained two of said devices in the open market and in collaboration with other members of the staff, tested said devices for the purpose of determining whether or not they would reduce below the danger point the carbon monoxide contained in the products of combustion emitted by gas-burning appliances.

The first test of the device was conducted in a practically air-tight room of approximately 1,000 cubic foot volume, that is available at the Pittsburgh Experiment Station of the Bureau of Mines for tests with gases. A radiant-type heater was placed in this room and fitted with the Health Guard. The primary air supply to the burners was reduced by closing the air adjustment so that there would be a defi-

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nite production of carbon monoxide by the heater. The heater was then operated for 1½ hours in this closed room, using Pittsburgh natural gas as the fuel. The atmosphere of the room was thoroughly stirred by a fan during the test to insure uniform gas composition throughout the room. Samples of the room atmosphere were collected at 15-minute intervals. A carbon monoxide indicator drew a sample from the room continuously so that the concentration of carbon monoxide in the room might be observed at any time during the test. The reading of this instrument was recorded at 15-minute intervals. At the conclusion of the 1½ hour test with the Health Guard attached to the heater, the room was opened and thoroughly ventilated. A similar test was then conducted with the Health Guard removed from the heater. The results of these tests are given in Table 1.

It is shown in Table 1 that no significant or substantial decrease in the concentration of carbon monoxide in the closed room was effected at any time during the test by the attachment of the Health Guard to the heater.

TABLE 1.—Closed room tests: operating radiant type space heater with, and without, Health Guard

Time after start of test (minutes)	Gas rate of heater cu. ft. per minute		Analysis of test room atmosphere, percent by volume							
			Carbon monoxide by automatic indicator †		Carbon monoxide by Pyrotannic acid method ‡		Carbon dioxide by Haldane method §		Oxygen by Haldane method ¶	
	With Health Guard	Without Health Guard	With Health Guard	Without Health Guard	With Health Guard	Without Health Guard	With Health Guard	Without Health Guard	With Health Guard	Without Health Guard
15.....	0.200	0.194	0.016	0.018	0.02	0.02	0.36	0.40	20.35	20.38
30.....	.193	.193	.028	.028	.03	.03	.69	.73	19.78	19.93
45.....	.193	.192	.041	.038	.05	.05	1.01	1.04	19.25	19.10
60.....	.190	.193	.053	.051	.06	.06	1.30	1.36	18.56	18.59
75.....	.190	.193	.066	.063	.08	.07	1.65	1.65	18.05	18.00
90.....	.194	.193	.080	.077	.09	.09	2.00	2.02	17.42	16.95

† Accuracy of method 0.01 (0.01 percent—1 part CO in 10,000 parts air).

‡ Accuracy of method 0.01 in range 0.00 to 0.05; 0.02 in range 0.05 to 0.10.

§ Accuracy of method 0.02.

A second test was then conducted wherein the products of combustion were sampled directly from the outlet of the Health Guard, rather than from the accumulated products, as in the closed room test. The heater was operated in a well ventilated room with the Health Guard attached. To insure obtaining a representative and homogeneous mixture of the products of combustion from which to collect the samples, a metal hood was fitted over the outlet of the Health Guard. The products of combustion issuing from the Health

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Guard entered this hood and were withdrawn from it by means of a pump. The pump was carefully regulated throughout the test so that atmospheric pressure was maintained within the hood at all times. Thus, no excessive draft nor back-pressure was exerted on the effluent opening of the Health Guard. A large bottle which acted as a mixing chamber was inserted in the pipe line which led from the hood to the pump. Gas samples were collected at the outlet of this bottle after the products of combustion had been mixed by passage through the bottle. A carbon monoxide recorder operating on the principle of the apparatus designed for control of ventilation in vehicular tunnels also drew a sample from this point. When production of carbon monoxide had reached a steady state, as indicated by the carbon monoxide recorder, a sample of the products issuing from the Health Guard was collected. At the conclusion of this test, the metal filler was removed from the interior of the Health Guard and a similar test conducted. In this test a damper was inserted in the hood above the Health Guard and regulated so that the products of combustion contained approximately the same concentration of carbon dioxide as in the test with the filler in place. By this means an approximately equal rate of flow of the products of combustion through the device was maintained in both tests. To eliminate the possibility of obtaining erroneous or misleading results which might be caused by variations in the performance of the heater, two additional, and similar tests were conducted. Thus, four tests were conducted alternately with and without the filler in place, and two pairs of samples of the products issuing from the device, and representing both conditions, were collected.

As two of the Health Guard units were available for test, a similar series of tests was conducted with a second unit. The units were of the same type, and were labelled "A" and "B" for the purpose of identification. The results of these tests are given in Table 2.

TABLE 2.—Analysis of products of combustion issuing from two Health Guard units attached to a radiant type space heater, with, and without, the filler in place

Condition of test	Tests with Health Guard "A"				Tests with Health Guard "B"			
	With filler	Without filler	With filler	Without filler	With filler	Without filler	With filler	Without filler
Gas rate to stove, cu. ft. per minute	0.26	0.26	0.26	0.26	0.26	0.26	0.26	0.26
Carbon dioxide percent by volume	1.31	1.14	1.22	1.19	1.24	1.13	1.14	1.16
Oxygen, per cent by volume	18.45	18.70	18.62	18.66	18.68	18.73	18.80	18.69
Carbon monoxide by pyro-tannic method, percent by volume	.18	.18	.17	.17	.17	.18	.17	.17

It is shown in Table 2 that no significant or substantial decrease in the carbon monoxide content of the products of combustion was effected by the presence of the filler in the Health Guard.

The Health Guard device was also tested by other chemists for the purpose of determining its effectiveness in reducing the carbon monoxide gas contained in the products of combustion produced by gas-burning appliances. It is found that the results of said tests cannot be relied upon because proper and necessary equipment essential for obtaining accurate results in tests of such a character were not employed in said tests and said tests were not conducted in such a manner as to obtain reliable results.

PAR. 4. From the testimony and other evidence, it is found that the Health Guard device when attached to gas-burning appliances will not change the carbon monoxide contained in the products of combustion emitted by said device to a harmless gas; that it is not a safe substitute for stove pipes; that it is not simple and sure in operation, and will not protect the user from the dangers of carbon monoxide poisoning.

PAR. 5. The use by respondent of the representations described herein in its advertising literature has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the trade and public into the erroneous beliefs that the device known as "Health Guard" is a safe substitute for stove pipes; that it will change carbon monoxide gas contained in the products of combustion passing through said device to a harmless gas; that said device is simple and sure in operation; and that it will protect the user from the dangers of carbon monoxide poisoning.

As a consequence of the mistaken and erroneous beliefs induced by the false and misleading representations above referred to, the public has purchased a substantial volume of the respondent's devices in preference to the products of its competitors with the result that trade has been unfairly diverted to the respondent from its competitors engaged in the manufacture, sale and distribution, or in the sale and distribution of stove pipes and other devices used to remove from rooms carbon monoxide fumes emitted from gas-burning appliances, and devices used to prevent carbon monoxide poisoning, who in no way misrepresent the effectiveness, function or purpose of their respective products. As a result thereof, substantial injury has been done, and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before John 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 arguments by DeWitt T. Puckett, counsel for the Commission, and by Alfred M. Saperston, 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, Health Guard, Inc., its officers, representatives, agents, and employees in connection with the offering for sale, sale and distribution of a mechanical device for use on gas stoves now known as "Health Guard" or substantially the same device sold under that name or any other name in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or indirectly, that the use of said device on gas appliances will change carbon monoxide gas passing through said device to a harmless gas;
2. Representing that said device is a safe substitute for stove pipes and that stove pipes are not necessary when said device is used;
3. Representing that said device is effective or sure in its operation, and
4. Representing that use of said device will protect against the dangers of carbon monoxide poisoning.

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

THE ELECTRIC APPLIANCE COMPANY

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

Docket 3008. Complaint, Dec. 4, 1936—Decision, Nov. 24, 1937

Where a corporation engaged in manufacture of electrical appliances, such as electric belts and insoles, and in sale thereof to purchasers in the various States and Canada, in competition with those engaged in sale of similar products for same and similar purposes, and who truthfully represent the same—

Represented in advertising matter circulated and distributed as aforesaid that its belts and insoles had therapeutic value in the treatment of nervous diseases, rheumatism, heart trouble, dyspepsia, and other diseases and ailments, including liver, kidneys, grippe, and similar trouble, and pains in chest and back and headaches, and that electric stimulation therefrom quickened liver and kidneys, and claimed thousands of testimonials from people who had been cured of rheumatism, cramps, foot, gout and other troubles, through use of said products, facts being said belts and insoles did not generate enough electricity to have any discernible effect on any part of the body they might contact, were not an adjunct to the cure of disease, and did not possess the curing qualities claimed in its advertising;

With capacity and tendency to deceive and mislead substantial portion of purchasing public into 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 substantial volume of its products, trade was diverted unfairly to it from competitors engaged in sale of products of same kind and nature as above set out, and who truthfully advertise and represent the character and quality thereof, and means of deceiving such public was also placed in hands of agents, furnished by it, for distribution and circulation, with such advertising; to the substantial injury of consuming 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. W. W. Sheppard*, trial examiner.

Mr. T. H. Kennedy, *Mr. John Darsey* and *Mr. Clark Nichols* for the Commission.

Hannen & Hannen, of Burlington, 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,"

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the Federal Trade Commission, having reason to believe that The Electric Appliance 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, The Electric Appliance Company of Burlington, Kansas, is a corporation existing and doing business under and by virtue of the laws of the State of Kansas, with its principal place of business in the city of Burlington in said State. It is now, and for several years last past has been engaged in the manufacture and sale of electrical appliances such as electric belts and electric insoles. The respondent causes its products, when sold, to be shipped from its place of business in the State of Kansas to purchasers thereof located in a State or States other than Kansas. In the course and conduct of its business, the respondent was at all times herein referred to in competition with corporations, partnerships, firms, and other individuals engaged in the sale of other electrical devices, such as infra-red ray lamps, sun-ray lamps, massage machines, vibrator belt apparatus, and heating pads manufactured and designed for the treatment of diseases and ailments such as the respondent designates its products to be a remedy and treatment for. The respondent is also in competition with other corporations, partnerships, firms, and individuals engaged in the manufacture and sale of other products and treatments intended for the same purposes as those for which the respondent represents its products to be a specific.

In the course and conduct of its business the respondent causes statements and representations with reference to its products to appear in advertisements carried in periodicals and newspapers having interstate circulation, and in pamphlets and circulars distributed in the various States of the United States to the following effect, gist, or meaning:

These belts are an important adjunct in the treatment of nervous diseases, rheumatism, heart trouble, dyspepsia, diseases of the liver, pains in the chest, headaches, kidney trouble, poor circulation, LaGrippe, female trouble, pains in the back. Electric stimulation quickens the liver and kidneys, the two prime organs of purification, to life and activity. Why demoralize the system with poisonous drugs when the Addison Electric Belt affords you benefits to be derived no other way? Full directions, easy to follow, go with each belt. Even those who consider themselves in good health find these beneficial in preventing disease. The power is strong * * * You can easily

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test it by putting the negative electrode between your eyes and touching your tongue to the other electrode. The treatment is pleasant.

We recommend Prof. Wingren's Voltaic Electric Insoles to those having cold, tired or sweaty feet or who have rheumatism and kindred ailments.

It is always important to keep the feet warm and the circulation normal in sickness from any cause. These insoles tend to keep the feet comfortable both winter and summer. Warm the feet and legs and revitalize the blood.

During the years these insoles have been made, thousands of testimonials have been received from people who have used them and who tell how they were relieved of rheumatism, cramps, cold and sweaty feet, or gout in all its forms by wearing Prof. Wingren's Voltaic Electric Insoles. If your feet hurt you, even though you do not suffer from any of the complaints above enumerated, you may find comfort and ease by wearing these insoles.

Prof. Wingren's Voltaic Electric Insoles for Rheumatism, Cramps, and Sweaty Feet.

Salesmen make from \$50 to \$100 a week selling respondent's products.

The statements, hereinabove detailed, together with other statements of similar import and effect, purport to be descriptive of respondent's products and their effectiveness in use and serve as representations on the part of the respondent that said electric belt is effective in the treatment of nervous diseases, rheumatism, heart trouble, dyspepsia, diseases of the liver, headaches, kidney trouble, LaGrippe, poor circulation, pains in the back, pains in the chest, female trouble; and that said electric insoles are effective in the treatment of rheumatism and kindred ailments, such as cramps, cold and sweaty feet and gout. Respondent's advertising also represents that salesmen for its products make from \$50 to \$100 a week selling respondent's products.

PAR. 2. In truth and in fact, the products so described and referred to are not such devices that the use thereof will produce the results claimed so as to justify the aforesaid statements and representations. The respondent's electric belt has no value in the treatment of the various diseases, conditions and ailments of the human body as claimed, such as nervous diseases, rheumatism, heart trouble, dyspepsia, diseases of the liver, headaches, kidney trouble, LaGrippe, poor circulation, pains in the back, pains in the chest and female trouble. The respondent's electric insoles have no value in the treatment of the various diseases, conditions and ailments of the human body as claimed, such as rheumatism, cramps, cold and sweaty feet and gout. No physiological function or pathological condition of the body will be changed in the slightest degree through the use of either or both of said products. Salesmen of respondent's products do not customarily and generally earn from \$50 to \$100 a week selling said products.

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PAR. 3. There are and were at all times hereinabove mentioned, persons, partnerships and corporations engaged in the manufacture and sale of devices and remedies for the treatment and relief of diseases and ailments hereinabove mentioned who truthfully represent the therapeutic effect of the said devices and remedies; and with such other persons, firms, and corporations, respondent has been and is in active substantial competition.

PAR. 4. The foregoing false and misleading representations of the respondent, as set out in paragraph 1 hereof, all have a 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 that respondent's products are beneficial in the treatment of the diseases, ailments, afflictions, and conditions referred to herein, and cause a substantial portion of such purchasers, because of such erroneous belief, to purchase respondent's products, thereby unfairly diverting trade to the respondent from its competitors who truthfully represent their products and the effectiveness of said products in use. As a result thereof, substantial injury has been, and is now being done by respondent to competition in commerce, as hereinabove set out.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on December 4, 1936, issued and served its complaint in this proceeding upon respondent, The Electric Appliance Company, a corporation, charging it with the violation of Section 5 of the Federal Trade Commission Act, through the use of false and misleading representations in connection with the promotion of sale and sale of its electric belts and insoles.

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 W. W. Sheppard, examiner for the Commission, theretofore duly designated by it, and

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in opposition to the allegations of the complaint, by F. R. Hannen, 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, the testimony and other evidence, and the brief of the counsel for the Commission, in support of the complaint, counsel for the respondent having waived the filing of brief and oral argument; and the Commission, having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAP^H 1. The Electric Appliance Company is a corporation existing and doing business under and by virtue of the laws of the State of Kansas, with its principal place of business in the city of Burlington, Kans. S. P. Crahan is the president of respondent company, and has been its active manager for many years. Respondent has, for a number of years prior to this complaint, been engaged in the manufacture and sale of electrical appliances, such as electric belts and electric insoles, known as Galvanic Electric Belts, Addison Electric Belts, Morse IXL Electric Belts, and Prof. Wingren's Voltaic Electric Insoles, respectively. When sales of respondent's products are made, respondent causes the same to be transported from its place of business in the city of Burlington, in the State of Kansas, to the purchasers thereof located in the various States of the United States of America, and Canada.

There are other corporations, partnerships, firms, and individuals engaged in the sale of similar 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 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 and Canada, claiming that its belts and insoles have therapeutic value in the treatment of nervous diseases, rheumatism, heart trouble, dyspepsia, diseases of the liver, pains in the chest, headaches, kidney trouble, poor circulation, LaGrippe, female trouble, pains in the back, and

that the electric stimulation from the belts and insoles quickens the liver and kidneys; also claiming thousands of testimonials from people who have been cured of rheumatism, cramps, cold and sweaty feet and gout in all its forms by use of its belts and insoles.

Neither the electric belts nor the electric insoles possess the curing qualities claimed in the respondent's advertising, and neither the electric belts nor the electric insoles generate enough electricity to have any discernible effect on any part of the human body they might contact, and are not an adjunct to the cure of disease.

PAR. 3. The representations and statements made by the 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 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 agents of the respondent when it furnishes said agents with the advertising matter above described, to be distributed and circulated by them. Substantial injury is thereby done by respondent to the consuming public and to competition in commerce as hereinabove set forth.

CONCLUSION

The aforesaid acts and practices of the respondent, The Electric Appliance 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 the respondent, testimony and other evidence taken before W. W. Shepard, trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, and the brief filed herein on behalf of the Commission,

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the respondent and its attorney having waived the filing of a brief and oral argument for the respondent; and the Commission having made its findings of 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, The Electric Appliance Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its Electric Belts and Voltaic Electric Insoles, in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing:

That said Electric Belts and Electric Insoles have any therapeutic value in the treatment of any disease or ailment.

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.

IN THE MATTER OF
METAL WINDOW 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 2978. Complaint, Nov. 11, 1936—Decision, Nov. 30, 1937

Where some eighteen corporations, comprising substantially all of the manufacturers and distributors of steel window products in the United States, engaged in sale of their said products to wholesalers, dealers and consumers located at various points throughout the United States, for use, principally, in construction of industrial, commercial, and municipal buildings, and sold generally through the submission of bids on a given project to the builders thereof by the sellers of such products, and with a substantial portion of their sales during the last several years to the United States and the several States and to municipalities or political subdivisions or agencies thereof, for use in construction of public buildings, and prior to and but for below-described practices in active substantial competition with one another, in making and seeking to make sales of their products in the several States and in the District of Columbia; acting through the trade association of which they were members, the executive secretary or "commissioner" of said association and the president thereof and four other members of its executive committee, in control of its practices, policies and activities, and of the association activities of aforesaid corporate manufacturer members, and in pursuance of understandings and agreements entered into by them, the result of which was to restrict, restrain, monopolize, and eliminate competition in sale of metal window products in trade and commerce among the several States and in the District of Columbia—

- (a) Agreed to use and did use gross or basic price book theretofore compiled by certain of said corporate manufacturers, and affording means of determining price or price formula for substantially all of the products of the industry in question through application of discounts shown therein or of formula therein given, and agreed to file and did file with aforesaid association schedule of each corporate manufacturer's discounts from prices established therein and at which it would sell and did sell its products, and not to deviate from prices thus established without first notifying, at specified period in advance of effective date of change, such other manufacturers, and that their said association could convey to all other members information contained in schedule of discounts thus filed;
- (b) Agreed to maintain and adhere to schedule of uniform discounts to be applied to prices determined from use of said gross or discount price book, and thereby established fixed, uniform minimum prices of products of said industry and agreed to and did fix uniform terms and conditions that were a part of all sales made, including, among others, mandatory erection, time for delivery and allowance for freight;
- (c) Agreed not to, and did not, sell products of industry for less than uniform minimum prices established through use of said uniform discounts without giving one another prior notice of such a sale, and to submit, and did

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submit, all estimates of bids on project in given geographic area to one of clearing bureaus theretofore established by them through said association and its predecessor, and designated by such association as bureau to clear bids or prices for trade area in question, in order to secure identical gross or, in some instances, net price estimates, and agreed to, and did, use such estimates in submitting bids on projects; and

Where said association—

- (d) Conveyed to all other members information contained in schedule of discounts filed with it by the respective members; and
- (e) Advised and required its members to adhere to prices established by said agreements and was agency for and actively policed industry in question, and by threats, penalties and persuasion induced many corporate price-cutter members to adhere to prices established as aforesaid; and

Where said corporate manufacturers, their association and above specified individuals—

- (f) Agreed to declare bidding on certain projects to be "open" in order to prevent competitors not parties to aforesaid understandings and agreements from being successful bidders on projects where such "non-cooperating" bidders were bidding and to force such competitors to become members of their association and a party to said understandings and agreements; and

Where said corporate manufacturers, following such above-described action—

- (g) Concertedly underbid and undersold such "non-cooperating" bidders with result that latter, by reason of such underselling and because of threats and exhortation, became members of said association and parties to such understandings and agreements; and

Where such corporate manufacturers, their association and aforesaid individuals—

- (h) Secured withdrawal and cancellation of bids submitted on projects where such bids offered said products at less than prices established by them, with result that said agreements and understandings and acts and things done thereunder and pursuant thereto and in furtherance thereof, and in concert with one another, had effect of unduly and unlawfully restraining trade and commerce in metal window products among the several States and in the District of Columbia, of substantially enhancing prices to purchasing public and maintaining same at artificial levels, and otherwise depriving public of benefit that would flow from normal competition among and between said corporate manufacturers in the sale and distribution of metal window products and of eliminating competition in the sale thereof, and with tendency and capacity to create monopoly in the sale thereof in said commerce, in themselves:

Held, That such acts and practices of said corporate manufacturers, aforesaid individuals and association in entering into and carrying out such agreements, understandings, combinations, and conspiracies, and in doing acts and things done thereunder pursuant thereto, and in furtherance thereof, were to the prejudice of the public and competitors and constituted unfair methods of competition in commerce.

Mr. Edw. W. Thomerson for the Commission.

Mr. Abram F. Myers, of Washington, D. C., for all respondents, excepting Campbell Metal Window Corp.

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Mr. Gilbert H. Montague, of New York City, for Campbell Metal Window Corp.

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 association, the individuals, and the corporations, hereinafter described and named 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 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:

PARAGRAP^H 1. Metal Window Institute is a voluntary unincorporated trade association, with its office at 1427 Eye Street, N. W., in the city of Washington, D. C., and is composed of the firms hereinafter named, who are engaged in the manufacture, sale, distribution, and erection of all or a number of the following products, made principally from solid or formed sections of steel, iron, bronze, aluminum, or other metal or alloy: pivoted windows, projected windows, continuous windows, basement windows, utility windows, detention windows, industrial doors, double-hung windows, counter-balanced windows, casement windows, metal frames, mechanical operators, stools, and screens. The business of the members composing the Metal Window Institute is commonly referred to as the metal window business. The Metal Window Institute will be hereinafter referred to as the respondent association, and the business of the members of the Metal Window Institute will be hereinafter referred to as the metal window business.

PAR. 2. The William Bayley Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its offices and principal place of business in the city of Springfield, Ohio;

Bliss Steel Products Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business at 617 West Manlius Street, in the city of East Syracuse, N. Y.;

The Bougert and Carlough Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 28 Peach Street, in the city of Paterson, N. J.;

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Campbell Metal Window Corporation is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business at Bush and Hamburg Streets, in the city of Baltimore, Md.;

Concrete Engineering Company is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, with its office and principal place of business at 1141 North 11th Street, in the city of Omaha, Nebr.;

Crittall Manufacturing Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business at 1224 24th Street, N. W., in the city of Washington, D. C.;

Detroit Steel Products 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 at 2250 East Grand Boulevard, in the city of Detroit, Mich.;

Druwhit Metal Products Company is a corporation organized and existing under and by virtue of the laws of the State of Nevada, with its office and principal place of business in the city of Los Angeles, Calif.;

Federal Steel Sash Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business in the city of Waukesha, Wis.;

Michael Flynn Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business at Allegheny Avenue and Tulip Street, in the city of Philadelphia, Pa.;

Hope's Windows, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business at 84 Hopkins Avenue, in the city of Jamestown, N. Y.;

Kewanee Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the city of Kewanee, Ill.;

Mesker Brothers Iron Company is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business at 424 South 7th Street, in the city of St. Louis, Mo.;

Michel & Pfeffer Iron Works, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business at 1415 Harrison Street, in the city of San Francisco, Calif.;

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S. H. Pomeroy Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business at 282 East 134th Street, in the city of New York, N. Y.;

Soule Steel Company is a corporation organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business at 1750 Army Street, in the city of San Francisco, Calif.;

J. S. Thorn Company is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business at 20th Street and Allegheny Avenue, in the city of Philadelphia, Pa.;

Truscon Steel 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 Youngstown, Ohio;

Vento Steel Sash Company, Inc., 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 at Sherman Boulevard, in the city of Muskegon Heights, Mich.;

The respondents named in this paragraph will hereinafter be referred to as the corporate respondents. The corporate respondents named in this paragraph are now, or have been, members of the respondent association, and all of them were members of the respondent association during the times hereinafter mentioned.

PAR. 3. Ralph H. Sartor, 1427 Eye Street, N. W., Washington, D. C., is the commissioner of the Metal Window Institute;

Carl Raquet of Detroit Steel Products Company, 2250 East Grand Boulevard, Detroit, Mich., is president and a member of the executive committee of the Metal Window Institute;

Grover J. Meyer of the Truscon Steel Company, Youngstown, Ohio, is chairman and a member of the executive committee of the Metal Window Institute; and

James Allinson of the J. S. Thorn Company, 20th Street and Allegheny Avenue, Philadelphia, Pa.; Guy D. Bayley of the William Bayley Company, Springfield, Ohio; Frank Garratt of Hope's Windows, Inc., 84 Hopkins Avenue, Jamestown, N. Y., and C. J. McIntosh of the Federal Steel Sash Company, Inc., Waukesha, Wis., are members of the executive committee of the Metal Window Institute.

Each of the above named individuals, with the exception of Ralph H. Sartor, is an officer of, or employed by, the corporate respondent indicated and is an officer of the respondent association in the capacity indicated, and all of said individuals control and direct

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the practices, policies, and activities of said respondent association under the supervision of Ralph H. Sartor, who is an employee of said respondent association. These individuals will hereinafter be referred to as the individual respondents.

PAR. 4. All of said corporate respondents are, and at all of the times hereinafter mentioned have been, engaged in the manufacture and sale of metal window products, including all or a part of the products hereinbefore described, to wholesalers of, dealers in, and consumers of, said products, located throughout the United States, and pursuant to such sales, and as a part thereof, regularly have shipped and do ship such products to their said consumers at their respective places of business located at various points in the several States of the United States other than in the States of the origin of such shipments. Prior to the adoption of the practices hereinafter alleged, these corporate respondents were in active and substantial competition with each other, and with other members of the industry, some of whom have been members of the association respondent and others of whom have not been members of the association respondent, in making and seeking to make sales of their said products in such commerce, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time, and the said corporate respondents would now be in active and substantial competition with each other and with members of the industry not presently members of the corporate association.

The said corporate respondents now constitute, and have during all of the times mentioned herein constituted, substantially all of the manufacturers of said metal window products in the United States. The products of the industry are used principally in the construction of industrial, commercial, and monumental buildings and are sold principally to the builder through the submission of bids on a given project. For the past several years a substantial portion of the sales made have been to the United States Government, or some agency thereof, to the several States of the United States, or some agency thereof, and to municipalities located in the United States or some agency thereof.

PAR. 5. Prior to January 1934, certain of the corporate respondents organized a voluntary trade association, under the name Solid Section Steel Window Industry, for the promotion of the interests of the members of said association. On or about January 10, 1934, the name of said association was changed to, and it was succeeded by, the Metal Window Institute, the respondent association.

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Acting by and through the respondent association and its predecessor, the corporate respondents have compiled a comprehensive and detailed gross or basic price book, which gives the price, or the formula by which such price may be determined, for each and every product of the industry. This price book is revised or supplemented from time to time to meet changing conditions in the trade or to include new products, and is distributed generally throughout the industry for use in determining the gross or basic sale price of said products. The prices stated in said price book, or the prices arrived at by the application of the formulas stated, are uniform as to any given product in each price book so used for the determination of the gross or basic sale prices. The actual sale prices of products are determined by the application of discounts to the gross or basic prices determined by the use of said price book.

Acting by and through the respondent association and its predecessor, the corporate respondents have established and do maintain so-called checking bureaus at convenient and strategic points throughout the United States. These checking bureaus are established ostensibly for the purpose of assisting the members of the respondent association in checking estimates made for the products of the industry from plans and specifications under which bids are to be received and in checking the application of the industry price book prices to such estimates.

PAR. 6. Said corporate respondents, through said respondent association and said individual respondents, for the several years last past, and more particularly since the month of May 1935, have, from time to time, entered into and thereafter carried out understandings, agreements, combinations, and conspiracies for the purpose of restricting, restraining, and monopolizing, and eliminating competition in, the sale of metal window products in trade and commerce between and among the several States of the United States and in the District of Columbia. From time to time members of the industry, other than those herein named as respondents, became parties to, and carried out, said understandings, agreements, combinations, and conspiracies.

PAR. 7. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, the said respondents have done and performed, and still do and perform, the following acts and things:

1. Said corporate respondents agreed to and did use said gross or basic price book in pricing the products of the industry.
2. Each of said corporate respondents (a) agreed to and did file with the respondent association a schedule of the discounts from the

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prices established by the gross or basic price book at which it would and did sell its products; (b) agreed that it would not change, or deviate from, the prices established by such discounts without first notifying the other corporate respondents of such a change at a specified period of time prior to the effective date of the change in prices; and (c) agreed that the respondent association could and it did convey to all other members the information contained in said schedule of discounts so filed.

3. Said corporate respondents agreed to, and they did, establish, maintain, and adhere to a schedule of uniform discounts to be applied to the prices determined from the use of said gross or basic price book, the effect of which is to establish fixed uniform minimum prices for the products of the industry.

4. Said corporate respondents agreed to and did fix uniform terms and conditions that were a part of all sales made, including, but without limitation, mandatory erection, time for delivery, and allowance for freight.

5. Said corporate respondents agreed that they would not and they did not sell the products of the industry for less than the fixed uniform minimum prices established through the use of said uniform discounts without giving prior notice to each other of the fact that a sale was to be made at less than the minimum price agreed upon.

6. Said corporate respondents (a) agreed to and did submit all estimates of bids to be submitted on a project in a given geographical area to one of said clearing bureaus, theretofore designated by the respondent association as the bureau to clear bids or prices for that particular area, for the purpose of securing identical gross, or, in many instances, net price estimates, which they (b) agreed to and did use in submitting bids on said project.

7. Said respondent association advises and requires its members to adhere to the prices fixed by said agreements and is the agency for, and has been and is actively policing the industry; and by threats of penalties to those who sell below said fixed prices and by persuasion, it induces many of the corporate respondents to adhere to the prices fixed by the aforesaid agreements, when, but for said threats and persuasion, they would not adhere to the prices fixed by said agreements.

8. Said respondents, to prevent competitors who were not parties to the aforesaid understandings, agreements, combinations, and conspiracies, from being the successful bidders on projects where such "non-cooperating" competitors were bidding, and thereby to force such non-cooperative competitors to become members of said respondent association and a party to said understandings, agreements, com-

binations, and conspiracies, agreed to and did declare the bidding on certain projects to be "open," whereupon the corporate respondents agreed to and did concertedly underbid and undersell such "non-cooperating" competitors; and by such means, and through threats and exhortations, many "non-cooperating" competitors of said corporate respondents did become members of said respondent association and parties to said understandings, agreements, combinations, and conspiracies.

9. Said respondents secured the withdrawal and cancellation of bids submitted on projects where such bids offered said products at less than the prices fixed by the respondents as aforesaid.

10. Said respondents used other methods and means designed to suppress and prevent competition and restrict and restrain the sale of said products in said commerce.

11. Said respondents agreed to and did establish said checking bureaus and compile and circulate said price book as aforesaid.

PAR. 8. Each of said respondents acted in concert and cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 9. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting and restraining trade and commerce in said products between and among the several States of the United States and in the District of Columbia; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between said corporate respondents; of eliminating competition, with the tendency and capacity of creating a monopoly in the sale of said products in said commerce. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, as above alleged, constitute unfair methods of competition within the intent and meaning of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and are to the prejudice of the public.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 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, 1936, issued, and subsequently

served, its complaint in this proceeding upon the respondents, Metal Window Institute, Ralph H. Sartor, Carl R. Raquet, Grover J. Meyer, James Allinson, Guy D. Bayley, Frank Garratt, The William Bayley Company, Bliss Steel Products Corporation, The Bougert and Carlough Company, Campbell Metal Window Corporation, Concrete Engineering Company, Crittall Manufacturing Company, Inc., Detroit Steel Products Company, Druwhit Metal Products Company, Federal Steel Sash Company, Inc., Michael Flynn Manufacturing Company, Hope's Windows, Inc., Kewanee Manufacturing Company, Mesker Brothers Iron Company, Michel & Pfeffer Iron Works, Inc., S. H. Pomeroy Company, Inc., Soule Steel Company, J. S. Thorn Company, Truscon Steel Company, and Vento Steel Sash Company, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, the Commission, by order entered herein, granted respondents' motion for permission to withdraw said answers and to substitute therefor answers stating that the respondents were without knowledge of the allegations contained in the complaint insofar as said allegations may refer to any violation of any law of the United States, that they desired to avoid the trouble and expense incident to further continuance of this proceeding, and to waive hearings on the charges set forth in the complaint and would not contest the proceedings, and stating further that, for the purpose of disposing of this proceeding, all the material facts alleged in the complaint (except that the respondents Campbell Metal Window Corporation and Vento Steel Products Company, formerly Vento Steel Sash Company, Inc., are presently members of respondent Metal Window Institute, said Campbell Metal Window Corporation having withdrawn its membership therein on April 3, 1936, and said Vento Steel Products Company having withdrawn its membership on June 20, 1936) may be deemed to be admitted within the intent and meaning of Section 5 of the Federal Trade Commission Act, but not within the intent and meaning of any other law of the United States, and stating that said answers did not constitute an admission of any conclusion of law or of fact or admission of fact for any other purpose, and are not to be used against them in any other proceeding, suit or action, and stating that without any other intervening procedure the Commission may make and enter its findings as to the facts and issue and serve upon the respondents an order to cease and desist from any method of competition alleged in the complaint which constitutes a violation of Section 5 of the Federal Trade Com-

mission Act; which substitute answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and substitute answers, no briefs having been filed and no requests 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. Respondent The William Bayley Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio and has its office and principal place of business in the city of Springfield, Ohio.

Respondent Bliss Steel Products Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and has its office and principal place of business at 617 West Manlius Street, in the city of East Syracuse, N. Y.

Respondent The Bougert and Carlough Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey and has its office and principal place of business at 28 Peach Street, in the city of Paterson, N. J.

Respondent Campbell Metal Window Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland and has its office and principal place of business at Bush and Hamburg Streets, in the city of Baltimore, Md.

Respondent Concrete Engineering Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nebraska and has its office and principal place of business at 1141 North 11th Street, in the city of Omaha, Nebr. Respondent Concrete Engineering Company has, since the issuance of the complaint herein, changed its name to Ceco Steel Products Corporation.

Respondent Crittall Manufacturing Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and has its office and principal place of business at 1224 24th Street, N. W., in the city of Washington, D. C.

Respondent Detroit Steel Products Company is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Michigan and has its office and principal place of business at 2250 East Grand Boulevard, in the city of Detroit, Mich.

Respondent Druwhit Metal Products Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada and has its office and principal place of business in the city of Los Angeles, Calif.

Respondent Federal Steel Sash Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin and has its office and principal place of business in the city of Waukesha, Wis.

Respondent Michael Flynn Manufacturing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania and has its office and principal place of business at Allegheny Avenue and Tulip Street, in the city of Philadelphia, Pa.

Respondent Hope's Windows, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and has its office and principal place of business at 84 Hopkins Avenue, in the city of Jamestown, N. Y.

Respondent Kewanee Manufacturing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and has its office and principal place of business in the city of Kewanee, Ill.

Respondent Mesker Brothers Iron Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri and has its office and principal place of business at 424 South 7th Street, in the city of St. Louis, Mo.

Respondent Michel & Pfeffer Iron Works, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California and has its office and principal place of business at 1415 Harrison Street, in the city of San Francisco, Calif.

Respondent S. H. Pomeroy Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and has its office and principal place of business at 282 East 134th Street, in the city of New York, N. Y.

Respondent Soule Steel Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California and has its office and principal place of business at 1750 Army Street, in the city of San Francisco, Calif.

Respondent J. S. Thorn Company is a corporation organized, existing, and doing business under and by virtue of the laws of the

State of Pennsylvania and has its office and principal place of business at 20th Street and Allegheny Avenue, in the city of Philadelphia, Pa.

Respondent Truscon Steel Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan and has its office and principal place of business in the city of Youngstown, Ohio.

Respondent Vento Steel Sash Company, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan and has its office and principal place of business at Sherman Boulevard, in the city of Muskegon Heights, Mich. Respondent Vento Steel Sash Company has, since the issuance of the complaint herein, changed its name to Vento Steel Products Company.

The respondents named in this paragraph will hereafter be referred to as corporate respondents.

PAR. 2. All of the above named corporate respondents are now, and have been since prior to the month of May 1935, engaged in the manufacture, sale and distribution of one or more of the following products, made principally from solid or formed sections of steel, iron, bronze, aluminum or other metal or alloy; pivoted windows, projected windows, continuous windows, basement windows, utility windows, detention windows, industrial doors, double-hung windows, counter-balanced windows, casement windows, metal frames, mechanical operators, stools, and screens. The business of these corporate respondents is commonly referred to, and generally known as, the metal window business. All of said corporate respondents sell their said products to wholesalers, dealers and consumers located at various points throughout the United States, and, when sales are made and as a part thereof, regularly have shipped, and do ship, said products to the purchasers thereof at their respective points of location in the several States of the United States, other than in the States of the origin of such shipments. Said corporate respondents maintain a constant current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia. These corporate respondents are substantially all of the manufacturers and distributors of steel window products in the United States.

Prior to the adoption of certain practices hereinafter described, these corporate respondents were in active and substantial competition with each other in making and seeking to make sales of their products in trade and commerce between and among the several

States and in the District of Columbia, and, but for practices hereinafter described, such active and substantial competition would have continued until the present and such corporate respondents would now be in active and substantial competition with each other.

The products manufactured and distributed by the corporate respondents are used principally in the construction of industrial, commercial and monumental buildings and are sold generally through the submission of bids on a given project to the builder thereof by sellers of such products. A substantial portion of the sales made by the corporate respondents during the last several years has been to the United States, the several States and to municipalities or to some political subdivision or agency thereof, for use in the construction of public buildings.

PAR. 3. The respondent Metal Window Institute is a voluntary unincorporated trade association, the membership of which is made up of firms engaged in the sale and distribution of one or more of the metal window-products above described. This respondent will hereinafter be referred to as the respondent association.

All of the corporate respondents were members of the respondent association from prior to the month of May 1935 until April 3, 1936, when the corporate respondent Campbell Metal Window Corporation resigned. The corporate respondent Vento Steel Sash Company, Inc., resigned its membership in the respondent association on June 20, 1936. All of the other corporate respondents were members of the respondent association at the time of the issuance of the complaint herein.

The respondent association was the means by and through which the understandings and agreements hereinafter mentioned were entered into, and through which many of the acts and things done and performed in carrying out said understandings and agreements were effected.

PAR. 4. Respondent Ralph H. Sartor is now, and has been since prior to the month of May 1935, an employee of respondent association, designated and described as "commissioner" and in such capacity is the executive secretary, and controls and directs the execution of plans and policies adopted by said respondent association.

Respondent Carl R. Raquet is an employee of respondent Detroit Steel Products Company, and is president of the respondent association.

Respondent Grover J. Meyer is an employee of respondent Truscon Steel Company and he represents said respondent on, and is a member of, the executive committee of the respondent association.

Respondent James Allinson is an employee of respondent J. S. Thorn Company, and he represents said respondent on and is a member of the executive committee of the respondent association.

Respondent Guy D. Bayley is an employee of respondent The William Bayley Company and he represents said respondent on and is a member of the executive committee of the respondent association.

Respondent Frank Garratt is an employee of respondent Hope's Windows, Inc., and he represents said respondent on and is a member of the executive committee of the respondent association.

These respondents will hereinafter be referred to as individual respondents.

Said individual respondents, as members of said executive committee of the respondent association, have controlled and directed since prior to the month of May 1935, and now control and direct, the practices, policies and activities of the respondent association and the corporate respondents insofar as their association activities are concerned in doing the acts and things hereinafter mentioned.

PAR. 5. Prior to the year 1934 certain of the corporate respondents organized a voluntary unincorporated trade association, under the name Solid Section Steel Window Industry, for the promotion of the interests of the members of said association. This association was, on or about January 10, 1934, succeeded by the respondent association.

Prior to the formation of these associations, certain of the corporate respondents compiled, and acting through these associations the corporate respondents have from time to time revised, a comprehensive and detailed gross or basic price book which gives the price, or the formula by which such price may be determined, for substantially all of the products of the metal window industry. This price book is revised or supplemented from time to time to meet changing conditions in the trade, and to include new products, and is distributed generally throughout the industry and is used in determining the gross or basic prices of said products. The prices stated in said book, or the prices arrived at by the application of the formulas stated, are uniform as to any given product in each price book so used for the determination of gross or basic prices. The actual sale price of a given product is determined by the corporate respondents, and other members of the industry, through the application of discounts to the gross or basic price shown in said price book, or determined by the application of the formula therein given.

Acting through the respondent association and its predecessors, the corporate respondents have established and maintained so-called

clearing bureaus, at given points throughout the United States. These clearing bureaus were established primarily for the purpose of assisting the members of the respondent association in checking estimates made for metal window products from plans and specifications under which bids were to be submitted, and, in some instances, to check the application of the gross or basic prices shown by the price book to such estimates.

PAR. 6. The corporate respondents, acting through the said respondent association and said individual respondents, have since the month of May 1935, from time to time, entered into and carried out understandings and agreements, which resulted in restricting, restraining, and monopolizing, and eliminating competition in, the sale of metal window products in trade and commerce between and among the several States of the United States and in the District of Columbia.

Pursuant to said understandings and agreements, and in furtherance thereof, the respondents have done and performed the following acts and things:

1. Said corporate respondents agreed to use, and they have used, said gross or basic price book in pricing the products of the industry.
2. Each of said corporate respondents (a) agreed to file, and they have filed, with the respondent association a schedule of the discounts from the prices established by the gross or basic price book at which it would sell, and has sold, its products; (b) agreed that it would not change, or deviate from, the prices established by such discounts without first notifying the other corporate respondents of such a change at a specified period of time prior to the effective date of the change in prices; and (c) agreed that the respondent association could convey, and it has conveyed, to all other members the information contained in said schedule of discounts so filed.
3. Said corporate respondents agreed to maintain and adhere to, and they have maintained and adhered to a schedule of uniform discounts to be applied to the prices determined from the use of said gross or basic price book, the effect of which has been to establish fixed uniform minimum prices for the products of the industry.
4. Said corporate respondents agreed to fix, and they have fixed uniform terms and conditions that were a part of all sales made, including, among other things, mandatory erection, time for delivery, and allowance for freight.
5. Said corporate respondents agreed that they would not sell, and they have not sold, the products of the industry for less than the uniform minimum prices established through the use of said uniform

discounts without giving prior notice to each other of the fact that a sale was to be made at less than the minimum price agreed upon.

6. Said corporate respondents (a) agreed to submit and they have submitted, all estimates of bids to be made on a project in a given geographical area to one of said clearing bureaus, theretofore designated by the respondent association as the bureau to clear bids or prices for that particular area, for the purpose of securing identical gross, or, in some instances, net price estimates, which they (b) agreed to use, and they have used, in submitting bids on projects.

7. Said respondent association advised and required its members to adhere to the prices established by said agreements and was the agency for and it has been actively policing the industry; and, by threats of penalties to those who sold below said established prices and by persuasion, it induced many of the corporate respondents to adhere to the prices established by the aforesaid agreements, when, but for said threats and persuasion, they would not have adhered to the prices established by said agreements.

8. Said respondents, to prevent competitors who were not parties to the aforesaid understanding and agreements from being successful bidders on projects where such "non-cooperating" competitors were bidding, and to force such "non-cooperating" competitors to become members of said respondent association and a party to said understandings and agreements, agreed to declare and they have declared, the bidding on certain projects to be "open", whereupon the corporate respondents concertedly underbid and undersold such "non-cooperating" competitors; and because of such underselling and because of threats and exhortations, "non-cooperating" competitors of said corporate respondents did become members of said respondent association and parties to said understandings and agreements.

9. Said respondents secured the withdrawal and cancellation of bids submitted on projects where such bids offered said products at less than the prices established by the respondents.

In carrying out said understandings and agreements, and in doing the acts and things done and performed in furtherance thereof, each of said respondents acted in concert with one or more of the other respondents.

PAR. 7. The agreements and understandings, and the acts and things done thereunder, pursuant thereto, and in furtherance thereof, as hereinabove set forth, have had, and do have, the effect of unduly and unlawfully restricting and restraining trade and commerce in metal window products, between and among the several States of the United States and in the District of Columbia; of substantially enhancing prices to the purchasing public, and maintaining

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prices at artificial levels, and otherwise depriving the public of the benefit that would flow from normal competition among and between said corporate respondents in the sale and distribution of metal window products; of eliminating competition in the sale of said products; with the tendency and capacity of creating a monopoly in the sale of said products in said commerce in the corporate respondents.

CONCLUSION

The aforesaid acts and practices of the corporate respondents, the individual respondents and the respondent association, in entering into and carrying out such agreements, understandings, combinations, and conspiracies, and in doing the acts and things done thereunder, pursuant thereto and in furtherance thereof, 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 issued herein on November 11, 1936, and the answers filed herein by the respondents Metal Window Institute, Ralph H. Sartor, Carl R. Raquet, Grover J. Meyer, James Allinson, Guy D. Bayley, Frank Garratt, The William Bayley Company, Bliss Steel Products Corporation, The Bougert and Carlough Company, Campbell Metal Window Corporation, Ceco Steel Products Corporation, formerly Concrete Engineering Company, Crittall Manufacturing Company, Inc., Detroit Steel Products Company, Druwhit Metal Products Company, Federal Steel Sash Company, Inc., Michael Flynn Manufacturing Company, Hope's Windows, Inc., Kewanee Manufacturing Company, Mesker Brothers Iron Company, Michel & Pfeffer Iron Works, Inc., S. H. Pomeroy Company, Inc., Soule Steel Company, J. S. Thorn Company, Truscon Steel Company and Vento Steel Products Company, formerly Vento Steel Sash Company, Inc., in which the respondents agree that, for the purpose of disposing of this proceeding, all the material facts alleged in the complaint (except that respondents Campbell Metal Window Corporation and Vento Steel Products Company are presently members of the respondent Metal Window Institute) may be deemed to be admitted within the intent and meaning of Section 5 of the Federal Trade Commission Act, and that the respondents waive hearings, 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 corporate respondents The William Bayley Company, Bliss Steel Products Corporation, The Bougert and Carlough Company, Campbell Metal Window Corporation, Ceco Steel Products Corporation, formerly Concrete Engineering Company, Crittall Manufacturing Company, Inc., Detroit Steel Products Company, Druwhit Metal Products Company, Federal Steel Sash Company, Inc., Michael Flynn Manufacturing Company, Hope's Windows, Inc., Kewanee Manufacturing Company, Mesker Brothers Iron Company, Michel & Pfeffer Iron Works, Inc., S. H. Pomeroy Company, Inc., Soule Steel Company, J. S. Thorn Company, Truscon Steel Company and Vento Steel Products Company, formerly Vento Steel Sash Company, Inc., their officers, agents and employees cease and desist from entering into and carrying out any understanding, agreement, combination and conspiracy between and among any two or more of said respondents for the purpose or with the effect of restricting, restraining or monopolizing, or eliminating competition in, the sale in interstate commerce of any or all of the following products, made principally from solid or formed sections of steel, iron, bronze, aluminum, or other metal or alloy: pivoted windows, projected windows, continuous windows, basement windows, utility windows, detention windows, industrial doors, double-hung windows, counter-balanced windows, casement windows, mechanical operators, stools and screens for metal windows and doors, and other window products, and as a part of such understanding, agreement, combination or conspiracy from doing any of the following acts and things:

1. (a) Filing with the respondent association Metal Window Institute, or any other agency, schedules showing the discounts which will be allowed from the gross or basic prices shown in any gross or basic price book commonly in use in the metal window industry.

- (b) Maintaining the prices established by applying stated discounts to said gross or basic price book for a specified period of time and until after notice has been given competitors of a contemplated change in discounts allowed.

- (c) Circulating schedules of discounts from the gross or basic prices established by said gross or basic price book through the respondent association, Metal Window Institute, or otherwise, among competitors.

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2. Establishing, maintaining and adhering to schedules of uniform discounts to be applied to gross or basic prices as established from the use of any gross or basic price book commonly in use in the industry.

3. Establishing and maintaining minimum prices.

4. Establishing and maintaining uniform terms and conditions of sales, such as mandatory erection by the seller, time for delivery, and allowances for freight.

5. Declining to sell to purchasers for less than the prices established by stated discounts from the gross or basic price determined through the use of any gross or basic price book commonly in use in the industry without having first given notice to competitors that a sale is to be made at prices less than the prices established through the application of said discounts.

6. Submitting estimates to be used as the basis of bids on a project in a given geographical area to a clearing bureau of the respondent, Metal Window Institute, or any other agency designated as the agency to "clear" estimates for the particular area involved, for the purpose of eliminating price competition in bidding on such project or for any other purpose than that of detecting errors in the interpretation of specifications or in the preparation of the estimates; and in no case shall estimates or bids disclosing the discounts or net prices to be quoted be submitted to any such bureau.

7. Attempting by any form of concerted action, including underbidding and underselling in a given transaction, to induce, persuade or require any competitor to adopt, abide by, observe or maintain in any transaction, or series of transactions or for any stated period of time or generally, any schedule of discounts, net prices or terms and conditions of sale identical with or substantially similar to the schedules of discounts, net prices or terms or conditions of sale adopted or favored by the respondent making such attempt.

8. Securing the withdrawal and cancellations of bids submitted on projects where prices stated in such bids are less than those established and maintained by respondents.

9. Comparing net discounts or selling prices or terms or conditions of sale quoted or to be quoted in bidding on any project, or engaging in any form of collusive bidding on any project whether in connection with the checking of estimates to detect errors or otherwise.

10. Conducting any investigation or joint discussion for the purpose of ascertaining and reporting for their joint benefit if, when, and to what extent any competitor has deviated from any schedule of discounts, net prices or terms or conditions of sale or any announced or quoted prices, or otherwise bringing pressure or per-

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suasion to bear upon competitors not to deviate from any such price list or price; provided that nothing herein contained shall prevent the gathering, compilation and distribution to the trade of statistics, including discounts, net prices, terms and conditions and other particulars of closed transactions when not done for the purpose or with the effect of policing the activities prohibited herein.

It is further ordered, That the respondent association Metal Window Institute, its officers, agents, and employees, and the individual respondents Ralph H. Sartor, Carl R. Raquet, Grover J. Meyer, James Allinson, Guy D. Bayley, and Frank Garratt forthwith cease and desist aiding, abetting and encouraging, or cooperating with, said corporate respondent in doing any of the acts or things prohibited by this order.

It having been made known to the Commission that the death of the individual respondent C. J. McIntosh occurred during the pendency of this proceeding;

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to the respondent C. J. McIntosh.

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 complied with this order.

ORDER OF DISMISSAL, OR CLOSING CASE, ETC.¹

ASSOCIATED RUBBER CORPORATION. Complaint, June 30, 1936.
Order, June 8, 1937. (Docket 2868.)

Charge: Advertising falsely or misleadingly, misbranding or mislabeling and using misleading brand name as to quality and price value of product; in connection with the sale of automobile tires.

Dismissed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same and being now fully advised in the premises, and it appearing that the Associated Rubber Corporation, the sole respondent herein, has been dissolved;

It is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice.

Mr. John Darsey for the Commission.

Mallory & Gilbert, of Springfield, Mass., for respondent.

M. J. LEVINSON, trading as J. LEWIS, FRANCINE LABORATORIES and SUPERIOR PRODUCTS Co. Complaint, May 10, 1937. Order, June 9, 1937. (Docket 3126.)

Charge: Misrepresenting agents' earnings and selling plan or "deposits", source or origin or nature of product, and business status; in connection with the sale of packaged drugs, chemical specialties, and feminine hygiene products.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that M. J. Levinson, respondent, has been convicted and sentenced for violation of the postal laws upon charges similar to the allegations of the complaint, and it further appearing that the respondent's place of business has been closed and that there is no likelihood that said business will be resumed by him, and the Commission having duly considered the same and being now fully advised in the premises;

¹In addition to the cases below enumerated, complaints were dismissed during the period covered by this volume in the cases of Kraft-Phenix Cheese Corp., Docket 2935, IIRD & Son., Inc., et al., Docket 2937, and Shefford Cheese Co., Inc., Docket 2936, respectively reported in full supra at pages 537, 548, and 1209.

It is ordered, That the case growing out of the complaint hereinbefore issued on the 10th day of May 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. Wm. T. Chantland for the Commission.

MAGNECOIL Co., INC. Complaint, June 16, 1930. Original order, September 25, 1933. (Docket 1846.) 18 F. T. C. 60. Order vacating, etc., June 16, 1937.

The cease and desist order in this misrepresentation of so-called electro-therapeutic blankets case was ordered vacated and set aside by the following order:

This matter coming on for consideration on the record herein, and it appearing to the Commission that an order to cease and desist was entered and issued herein on September 25, 1933, based upon the consent of the respondent to cease and desist from the unfair methods of competition charged in the complaint, and the Commission being fully advised in the premises,

It is ordered, That the said order to cease and desist entered and issued herein on September 25, 1933, be, and the same hereby is, vacated and set aside, and that the taking of testimony on the charges of the complaint in this proceeding be, and the same hereby is, ordered to be begun upon reasonable notice to the respondent herein.

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

Mr. Eugene W. Burr for the Commission.

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

J. V. LINEHAN and C. A. WELDT, trading as LION MANUFACTURING Co. Complaint, July 11, 1930. Order, June 16, 1937. (Docket 1856.)

Charge: Advertising falsely or misleadingly as to nature of product and using lottery scheme; in connection with the sale of blankets and various articles of merchandise.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondents discontinued the practices complained of during the year 1930, and that they are not now engaged in said practices and have not engaged in the same since about the year 1930, and it further appearing that the respondents have no intention to resume the sale of merchandise by the method complained of in the complaint herein, and the Commission having duly considered the same and being now fully advised in the premises;

It is ordered, That this proceeding 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. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondents.

DR. ROBERT G. JACKSON, doing business as JACKSON PUBLISHING Co. Complaint, April 29, 1936. Order, June 23, 1937. (Docket 2792.)

Charge: Misrepresenting properties of product and ailments, conditions, causes, etc. incident to offer of product; in connection with the sale of packaged proprietary foods.

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 heard oral argument from counsel for the Commission and the respondent, and being now fully advised in the premises;

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

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

Mr. John Darsey for the Commission.

APEX DISTILLING Co., INC. Complaint, June 18, 1935. Order, June 25, 1937. (Docket 2440.)

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 wholesaling of whiskeys, wines, liqueurs, gins, brandies and other alcoholic beverages.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon complaint and answer and testimony adduced in support of the allegations of said complaint before John J. Keenan, an Examiner of the Commission, thereunto duly designated, and it appearing to the Commission that the said record contains no evidence of any interstate commerce by this respondent, and the Commission being fully advised in the premises;

It is ordered, That the case growing out of the said complaint hereinbefore issued on June 18, 1935, be, and the same is hereby, closed without prejudice to the right of the Commission to reopen the same in the event that future facts and circumstances may warrant.

Before *Mr. John J. Keenan*, trial examiner.

Mr. P. Gad B. Morehouse for the Commission.

Mr. Jos. C. Schroeder, of St. Louis, Mo., for respondent.

CALIFORNIA VINEYARDS Co. Complaint, August 16, 1935. Order, June 25, 1937. (Docket 2520.)

Charge: Advertising falsely or misleadingly as to nature of product, using misleading corporate name and misrepresenting business status; in connection with the sale of fermented artificially carbonated apple juice.

Record closed by the following order:

This matter coming on for consideration by the Commission upon complaint herein, and it appearing to the Commission that the matters and things forming the subject matter of this complaint are covered by Regulations No. IV 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 August 16, 1935, be, and the same is hereby, closed, without prejudice.

Mr. Daniel J. Murphy, for the Commission.

REMSEN CORPORATION. Complaint, April 29, 1936. Order, June 28, 1937. (Docket 2791.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to properties and professional indorsement of product; in connection with the sale of "Aspirin + Plus."

Record closed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission on the record, and it appearing that the respondent, Remsen Corporation, a corporation, became inoperative and void April 1, 1933, under the corporation laws of the State of Delaware, and that the commodity designated "ASPIRIN+PLUS" is no longer being offered for sale to the purchasing public, 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 April 29, 1936, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Before *Mr. John J. Keenan*, trial examiner.

Mr. T. H. Kennedy for the Commission.

Mr. John A. Widman, of New York City, for respondent.

CARL SMITH, trading as FASHION SILK Co. Complaint, April 13, 1937. Order, June 29, 1937. (Docket 3105.)

Charge: Using lottery scheme in merchandising; in connection with the sale of hosiery.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent, Carl Smith, individually and trading as Fashion Silk Company, has discontinued the practices complained of, has vacated the place of business formerly occupied by him, has no inclination to again resume the practices complained of, and has not distributed any literature or sales cards since about October 1, 1936; and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on April 13, 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. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.

ARCHIE RICHARD DAHL, trading as RELIABLE SALES Co. Complaint, April 11, 1935. Order, June 30, 1937. (Docket 2362.)

Charge: Advertising falsely or misleadingly as to free products, and agents' or salesmen's advantages, and using lottery scheme in merchandising; in connection with the sale of radios, tables, wine sets, pen and pencil sets, silver sets, bedspreads, and various articles of merchandise.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that respondent, Archie Richard Dahl, individually and trading as Reliable Sales Company, has discontinued the business and practices covered by the complaint issued against him on April 11, 1935, has closed his place of business, has been adjudicated a bankrupt, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on April 11, 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. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.

RARITAN DISTILLERS CORPORATION. Complaint, June 18, 1935. Original order, July 8, 1936. (Docket 2442). 22 F. T. C. 879. Order vacating, etc., July 6, 1937.

The cease and desist order in this so-called distiller case, involving misrepresentation of business status, etc., was ordered vacated by the following order:

This matter having come on for consideration by the Commission upon the record and the Commission being fully advised in the premises;

It is ordered, That the order to cease and desist hereinbefore entered and issued on July 8, 1936, be and the same is hereby vacated and set aside.

It is further ordered, That the prosecution of the Commission's complaint in this case be resumed in accordance with the Commission's regular procedure.

Before *Mr. John J. Keenan*, trial examiner.

Mr. PGad B. Morehouse for the commission.

Mr. John W. Hilldrop, of Washington, D. C., for respondent.

CIVIL EMPLOYEES TRAINING, INC. ET AL. Complaint, January 19, 1937. Order, July 6, 1937. (Docket 3037.)

Charge: Misrepresenting government connection, business connections or personnel and opportunities in product or service and pretended refund or guarantee; in connection with the sale of civil service correspondence courses.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondents, Civil Employees Training, Inc., a corporation, and John C. Spear, Monroe W. Spear, and Russell J. Davis, individually, and as officers of said corporation, have entered into a stipulation as to the facts and an agreement to cease and desist from certain enumerated practices, which stipulation and agreement was, on the 29th day of June, 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 January 19, 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. Harry D. Michael for the Commission.

Sanders, Gravelle, Whitlock & Howry, of Washington, D. C. and *Mr. Fred S. Purnell*, of Attica, Ind., for respondents.

BILOXI OYSTER EXCHANGE, ET AL.¹ Complaint, April 7, 1937.
Order, July 10, 1937. (Docket 3099.)

Charge: Combining or conspiring to restrict, suppress and eliminate competition and create a monopoly; in connection with the sale of canned oysters.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission and it appearing that the respondent, Biloxi Oyster Exchange, through which the acts and practices of all of the respondents charged in the complaint were carried on, has been dissolved and its charter surrendered, and the Commission having duly considered the record and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on April 7, 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. J. T. Welch for the Commission.

Rushing & Guice, of Biloxi, Miss., for respondents.

WILLIAM FREIHOFER BAKING Co. Complaint, April 10, 1936.
Order, July 15, 1937. (Docket 2758.)

Charge: Advertising falsely or misleadingly as to composition, quality and properties of product and disparaging product of competitor; in connection with the manufacture and sale of bread products.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon testimony and other evidence in support of the allegations of the complaint and in opposition thereto, and briefs and oral arguments of counsel for the Commission and for the respondent; and it appearing to the Commission that the respondent has been and is engaged in the transportation and sale of its products in interstate commerce, and that the Commission had and has jurisdiction over the methods of competition as charged in the complaint; and further it appearing to the Commission that certain of the methods of competition charged in the complaint as unfair have been voluntarily discontinued by the respondent, and that there is a lack of evidence that the other methods of competition alleged to be unfair were actually deceptive or misleading; 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.

¹ Complaint joins numerous corporations and various individuals as members, officers and directors of respondent Exchange.

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

Mr. John Darsey for the Commission.

Mr. Harry J. Alker, Jr. and *Mr. Richard W. Slocum*, of Philadelphia, Pa., and *Mr. John Walsh* and *Mr. Louis A. Spiess*, of Washington, D. C., for respondent.

SHUFORD HOSIERY MILLS, INC. Complaint, November 4, 1936. Order, July 20, 1937. (Docket 2965.)

Charge: Misbranding or mislabeling as to composition of product; in connection with the manufacture and sale of hosiery.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission, and it appearing that the practices complained of have been discontinued and that respondent does not intend to resume said practices, and the Commission having duly considered the record and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint hereinbefore issued on November 4, 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. W. W. Sheppard* and *Mr. John W. Addison*, trial examiners.

Mr. John Darsey for the Commission.

AVALON CANDY CORPORATION. Complaint, January 31, 1936. Order, July 28, 1937. (Docket 2698.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candy.

Record closed, after answer, by the following order:

This matter having come on for consideration by the Commission upon the record, and it appearing that the respondent, Avalon Candy Corporation, has not engaged in the business of manufacturing and selling candies since the 24th day of March 1936; that its physical assets have been dismantled and sold; that its corporate charter under the laws of the State of California was suspended on March 5, 1937, for non-payment of State taxes; and it appearing that respondent is not likely to resume the violations of law alleged in the Commission's complaint hereinbefore issued on January 31, 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 January 31, 1936, be, and the same hereby is, closed without prejudice to the right of the Commission to reopen the same and resume prose-

cution thereof in accordance with its regular procedure at such future time as the facts and circumstances may warrant.

Mr. P. C. Kolinski and Mr. Henry C. Lank for the Commission.

MASSACHUSETTS CHOCOLATE Co. Complaint, January 27, 1936. Order, August 9, 1937. (Docket 2693.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candy.

Dismissed by the following order:

This matter coming on to be heard by the Federal Trade Commission, and the Commission being advised that the above named respondent corporation has been dissolved, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the complaint heretofore issued in the above entitled matter be, and the same hereby is, dismissed for the reason that the respondent corporation has been dissolved.

Mr. P. C. Kolinski and Mr. Henry C. Lank for the Commission.

CIVILIAN PREPARATORY SERVICE, INC. AND HOMER BRUCE CRONE, individually, and doing business as ECONOMIC RESEARCH BUREAU. Complaint, July 29, 1936. Order, August 17, 1937. (Docket 2884.)

Charge: Advertising falsely or misleadingly and misrepresenting business status as to government connection and opportunities in product or service and refunds or guarantees; in connection with the sale of Civil Service correspondence courses.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondents, Civilian Preparatory Service, Inc., a corporation, and Homer Bruce Crone, individually, and doing business under the name and style of Economic Research Bureau, have entered into a stipulation as to the facts and an agreement to cease and desist from certain enumerated practices, which stipulation and agreement was, on the 21st day of July, 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 July 29, 1936, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution of the complaint in accordance with its regular procedure.

Mr. Harry D. Michael for the Commission.

Hardwick & Quinlan, of Huntington, W. Va., for respondents.

HARFORD FROCKS, INC. Complaint, October 22, 1935. Order, August 19, 1937. (Docket 2592.)

Charge: Advertising falsely or misleadingly as to agents' opportunities and earnings; in connection with the manufacture and sale of women's dresses, lingerie and allied products.

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. John L. Hornor and *Mr. Astor Hogg* for the Commission.

Paxton & Seasongood, of Cincinnati, Ohio, for respondent.

FASHION FROCKS, INC. Complaint, October 28, 1935. Order, August 19, 1937. (Docket 2601.)

Charge: Advertising falsely or misleadingly as to agents' opportunities, earnings and advantages; in connection with the manufacture and sale of women's dresses.

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. Astor Hogg for the Commission.

Paxton & Seasongood, of Cincinnati, Ohio, for respondent.

HEIDELBERGER CONFECTIONERY Co. Complaint, March 11, 1930. Original order, April 3, 1934. Docket 1772, 18 F. T. C. 281. Order vacating, etc., August 24, 1937.

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of candies.

Cease and desist order in this case was vacated by the following order:

This matter coming on to be heard by the Federal Trade 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 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 the respondent with violation of

Section 5 of the Federal Trade Commission Act (15 U. S. C. A., Section 45).

Mr. Henry C. Lank for the Commission.

Gartner & Lemisch, of Philadelphia, Pa., for respondent.

CORRUGATED CONTAINER CORP. Complaint, August 19, 1937. Order, September 10, 1937. (Docket 3208.)

Charge: Misbranding or mislabeling product as to official construction requirements; in connection with the manufacture and sale of corrugated paper fiber boxes.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record and it appearing that the respondent, Corrugated Container Corporation, under date of August 10, 1937, executed a stipulation as to the facts and agreement to cease and desist, and the Commission having duly considered the record and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint issued herein on August 19, 1937, be, and the same is, hereby closed without prejudice to the right of the Commission to reopen the same and resume prosecution in the regular course should future facts so warrant.

Mr. Joseph C. Fehr for the Commission.

Mr. Julius H. Bregman, of New York City, for respondent.

THE TEXAS CO. Complaint, March 12, 1937. Order, September 20, 1937. (Docket 3077.)

Charge: Dealing on exclusive and tying basis in violation of Section 3 of the Clayton Act and Section 5 of the Federal Trade Commission Act; in connection with the sale of automobile parts and accessories, including tires, batteries, spark plugs, windshield wipers, oil filters, and auto light bulbs.

Record closed, after answer, by the following order:

This matter coming on to be heard for consideration by the Commission upon the record, and it appearing that the respondent, The Texas Company, had voluntarily in December, 1936, discontinued the use of the acts, practices and methods charged in the complaint issued herein as being unlawful, and it further appearing that there is no reason to apprehend a resumption of such practices by said respondent, and the Commission having duly considered the said matters 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.

Mr. Herry T. Klein and *Mr. Albert E. Van Dusen*, of New York City, for respondent.

DR. A. POSNER SHOES, INC. Complaint, April 30, 1935. Order, October 28, 1937. (Docket 2380.)

Charge: Misbranding or mislabeling, advertising falsely or misleadingly and using misleading trade or corporate name as to business status and nature of product; in connection with the sale of shoes.

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. John L. Hornor* and *Mr. John J. Keenan*, trial examiners.

Mr. Morton Nesmith for the Commission.

Cohen & Zorn, of New York City, for respondent.

LOS ANGELES SOAP CO., trading as COSRAY PRODUCTS CO. Complaint, June 4, 1937. Order, November 8, 1937. (Docket 3146.)

Charge: Misrepresenting nature or properties of product and results thereof; in connection with the manufacture and sale of "Cosray Vitamin D Soap".

Closed by following order accepting stipulation in settlement, etc.:

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 third day of November, 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 and that the case growing out of the complaint hereinbefore issued on June 4, 1937 be, and the same hereby is, closed without prejudice, however, to the right of the Commission to reopen the same and resume prosecution of the complaint in accordance with its regular procedure in the event future developments should so warrant.

Mr. William L. Pencke for the Commission.

Dockweiler & Dockweiler, of Los Angeles, Calif., for respondent.

LOUIS J. WHITMARSH, trading as RITE-WAY SALES. Complaint, July 10, 1937. Order, November 13, 1937. (Docket 3170.)

Charge: Misrepresenting nature and qualities or properties and endorsement of product and special price opportunities and guarantee and business status, and disparaging and misrepresenting competitive products; in connection with the sale of earthenware kitchen utensils.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent, Louis J. Whitmarsh, has died since the filing of the complaint, 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 July 10, 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 thereof in accordance with its regular procedure.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. William L. Pencke for the Commission.

Mr. William T. Arnos, Sr., of Cleveland, Ohio, for respondent.

STIPULATIONS¹

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST²

1994. **Misrepresenting Product—Food Products.**—Wayne County Produce Co., a corporation, engaged in the business of manufacturing bottled, canned, and packed food products, including cider, vinegar, jelly, preserves, apple sauce, and the like, 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.

Wayne County Produce Co., in connection with the offering for sale and selling its products in interstate commerce, agreed to cease and desist from the use of a so-called special or other gift offer of a skillet or other product having an alleged value of \$1.25 or other represented value, when in fact the designated value of said product is exaggerated and greatly in excess of the price at which said product is regularly sold in the usual course of business. The said corporation also agreed to cease and desist from the use of the figure "\$1.25" or of any other figure as representative of the value of a product offered as a so-called gift offer in connection with the sale of its merchandise or in any other way so as to import or imply that the represented figure is the price at which the so-called "special gift" product is customarily sold in the usual course of trade, when such is not the fact. (June 1, 1937.)

1995. **False and Misleading Brands or Labels and Advertising—Perfumes.**—Fragrant Perfumers, Inc., a corporation, engaged in the business of assembling perfumes and in the sale and distribution

¹ For false and misleading advertising stipulations effected through the Commission's special board. See p. 1573 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, June 1, 1937, to Nov. 30, 1937, inclusive. Digests of all previous stipulations of this character accepted by the Commission—that is, numbers 1 to 1993, inclusive—may be found in vols. 10 to 24 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."

thereof, as well as other toilet articles, 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.

Fragrant Perfumers, Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use on labels, or otherwise to advertise said product, of exaggerated or misleading statements or representations concerning the value of said product or the price at which said product is sold or intended to be sold in the usual course of trade. The said Fragrant Perfumers, Inc., also agreed to cease and desist from the use of the word "France", in connection with the offering for sale and selling its said perfume product in interstate commerce, so as to import or imply that said product was made or manufactured in France, when such was not the fact. (June 1, 1937.)

1996. False and Misleading Advertising—Furniture, etc.—Reliable Stores Corp. engaged in the sale and distribution of furniture, house furnishings, jewelry and related commodities, operates a number of retail stores located in different states of the United States and in the District of Columbia. One of its said outlets is that known as "National Furniture Company", retail furniture store in Washington, D. C., engaged in the sale and distribution of merchandise of the kind and character aforesaid in commerce as defined by the Act, 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.

Reliable Stores Corp., in soliciting the sale of and selling its merchandise in commerce as defined by the Act, agreed to cease and desist from the use in its advertising matter of whatever kind or character or in any other way of the words "free" or "gift" either alone or in connection or conjunction each with the other or with any other word or words as descriptive of merchandise represented to be given with the purchase of other merchandise, when in fact the price of the so-called "free" or "gift" merchandise is included in the price asked for the merchandise sold. Said corporation also agreed to cease and desist from the use of the words "free" or "gift" in any way so as to import or imply that the products to which said word or words refer are in fact a gift or are given free or as a gratuity to the purchaser of other merchandise, when such is not the fact. (June 7, 1937.)

1997. False and Misleading Brands or Labels and Advertising—Shampoo.—Tressol Laboratories, a corporation, engaged in the business of

manufacturing or compounding a product for use as a shampoo and in the sale and distribution of said product under the trade name "Tressol" 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.

Tressol Laboratories, in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use on its labels, cartons, in its advertising matter or in any other way, of statements or representations to the effect that said product contains no soap, when in fact it does contain ingredients which, in combination, are recognized to be soap; that shampoos containing alcohol are drying to the hair, scalp and hair roots, when, because such shampoos are necessarily diluted with sufficient water, they do not have such drying effect; that said product is a blend of oils or contains oil, when such is not the fact; that the use of said product as a hair shampoo will promote the growth of hair, when such is not the fact. (June 9, 1937.)

1998. **False and misleading Brands or Labels—Hosiery, Undergarments, etc.**—Van Raalte Co., Inc., a corporation, engaged in the business of manufacturing women's and misses' undergarments, hosiery and gloves 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.

Van Raalte Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on the labels or tags affixed to said products of the word "Satin" 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, the product of the cocoon of the silk worm, when such is not the fact. (June 10, 1937.)

1999. **False and Misleading Advertising—Check-Canceling Machines.**—Louis J. Orlando, an individual, trading as American Bank Equipment Co., engaged in the business of repairing check-canceling machines and in the sale 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.

Louis J. Orlando, agreed to cease and desist from selling or offering for sale in interstate commerce his products as new or without disclosing the fact that said products are secondhand, repaired or

reconditioned machines. The said Louis J. Orlando also agreed to cease and desist from the use on his printed matter of the words "makers of" or or any other word or words of similar meaning so as to import or imply that the said Louis J. Orlando makes or manufactures the products offered for sale and sold by him or that he actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured, when such is not the fact. (June 11, 1937.)

2000. False and Misleading Advertising—Baby Chicks.—Ezra Neuhauser, David Neuhauser and Menno Neuhauser, copartners trading under the firm name and style of Neuhauser Chick Hatcheries and/or Neuhauser Hatchery, engaged in the hatching of baby chicks and in the sale and distribution thereof in interstate commerce, in competition with other partnerships, firms, individuals and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Ezra Neuhauser, David Neuhauser and Menno Neuhauser, jointly and severally agreed, in soliciting the sale of and selling their chicks in interstate commerce, to cease and desist from the use in their catalogs or printed matter or in any way of statements or representations to the effect that every "Good Luck" flock is raised on open range with acres of fresh-sodded slopes sowed in alfalfa and clover; that over 5,000,000 of said chicks are shipped each year; that David Neuhauser personally supervises the blood testing of 250,000 or other number of chicks during a year or other period of time; that such bloodtesting has been carried on for nine years; or that the said co-partners see to it that the flocks of chicks which they sell get the feeding program consisting of the Purina Embryo Feeding Program as a supplement to their own feeding program, when such are not the facts. (June 11, 1937.)

2001. False and Misleading Brands or Labels and Advertising—Perfumes.—A. Joncaire, 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.

A. Joncaire, Inc., in soliciting the sale of and selling its perfumes in interstate commerce, agreed to cease and desist from the use in its advertisements or printed matter or otherwise of the statement "Blended in France" either alone or in connection or conjunction with any other word or words, statement or representation so as to import or imply that the said perfumes were produced or compounded in France and imported as finished products into the

United States of America, when such is not the fact. The said corporation also agreed to cease and desist from stating or representing in its advertising, printed matter or otherwise that it is the American representative or distributor of a perfumer in France, when such is not the fact, and from the use on its stationery or in any other way of the purported address "338 Rue St. Honore, Paris," when in fact the said corporation has no such Paris address. The said corporation further agreed to cease and desist from the use on its stationery or otherwise of the word "Importers", when in fact it is not engaged as an importer of products which it offers for sale and sells. (June 11, 1937.)

2002. False and Misleading Advertising—Radios.—Busch's Kredit Jewelers, a corporation, engaged in the sale and distribution of radio receiving sets, bearing escutcheon plates on which the word "Monarch" appears, 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.

For domestic radio transmission, the so-called "long-wave" or "broadcast" band is used, while foreign transmission is based almost entirely on the use of the so-called "short-wave" band. The object to be achieved in an "all-wave" receiving set is to make it possible for the operator to receive through a single instrument either the domestic or broadcast bands or the foreign short-wave bands, at his pleasure. In the present state of the art, the reception of foreign short-wave bands is difficult and uncertain. Operators in certain localities obtained foreign stations at certain times of the year and during certain times of the day without difficulty and in satisfactory volume, while in other localities such stations are sometimes obtained and sometimes not, for no apparent reason. The "tuning in" or "logging" of a short-wave foreign station is always slow and difficult. The loud speaker volume varies from nothing to occasional satisfactory reception, and much attempted short-wave reception is rendered more difficult by noise interference or "static". These conditions are known to experts but not to the purchasing public who are not aware that there are no receiving instruments which will give easily tuned continuous and satisfactory reception of short-waves from foreign countries under all conditions.

Busch's Kredit Jewelers, in soliciting the sale of and selling its radio receiving sets in interstate commerce, agreed to cease and desist from the use of the words "all-wave" as descriptive of said products, when said products are not capable of reception of the entire meter range of broadcasts and commercial transmission. The said corporation also agreed to cease and desist from stating or repre-

senting or implying in its advertising of whatever kind or character that users of its radio sets can receive European and other foreign stations easily or at will and with satisfactory volume and/or from stating, representing or presenting the merits and value of its products in such way as to cover up or conceal the difficulties and deficiencies of short-wave reception, inherent in the present state of the art but unknown to the purchasing public. (June 14, 1937.)

2003. **False and Misleading Brands or Labels and Advertising—Furs.**—May Department Stores, Inc., a corporation, engaged in the business of operating a number of retail department stores, including one at Baltimore, Maryland, and in the sale and distribution from such stores 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.

May Department Stores, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from describing furs in any way other than by the use of the correct name of the fur as the last word of the description and which shall be printed in type that is not less conspicuous than that in which the accompanying descriptive word or words is or are printed; 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 and printed as aforesaid, shall be immediately preceded by the word "Dyed" or "Blended", compounded with the name of the simulated fur, as thus: Seal-Dyed Muskrat, Hudson Seal-Dyed Muskrat, Mink-Dyed Marmot, Seal-Dyed Coney or Rabbit, Northern Seal-Dyed Coney or Rabbit, Beaver-Dyed Coney or Rabbit. (June 14, 1937.)

2004. **False and Misleading Brands or Labels and Advertising—Crepe Products.**—B. Altman & Co., a corporation, engaged in the business of operating department stores and from which stores the said corporation sells and distributes 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 set forth therein.

B. Altman & Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Crepe" or "Crepes" as descriptive of products not composed of silk, the product of the cocoon of the silk worm, and from the use of the word "Crepe" or "Crepes" 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. (June 14, 1937.)

2005. **False and Misleading Advertising—Monuments.**—American Memorial Co., a corporation, engaged in the business of manufacturing marble monuments and in the sale and distribution thereof, and, in the capacity of broker, of granite monuments as well, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

American Memorial Co., offering for sale and selling its marble monuments in interstate commerce, agreed to cease and desist from stating or representing in its advertising of whatever character that the said monuments are everlasting, or of the highest or finest quality, or are the world's best genuine marble, or that, because it is allegedly pure, hard and solid, it will never fade, check, crack or disintegrate no matter how many years pass away or that better marble cannot be bought, when such are not the facts. The said corporation also agreed to cease and desist from the use in its catalogs or otherwise of the pictorial representation of an elaborate and imposing or any monument finishing plant so as to import or imply that it actually owns and operates or controls the pictured plant, when such is not the fact. (June 17, 1937.)

2006. **False and Misleading Brands or Labels and Advertising—Crepe Products.**—Best & Co., Inc., a corporation, engaged in the business of operating a department store from which it sells and has sold and distributed 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.

Best & Co., 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 word "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 "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 said word or words refer are composed of silk, when such is not the fact. (June 16, 1937.)

2007. **False and Misleading Brands or Labels and Advertising—Silk Products.**—Franklin Simon & Co., a corporation, engaged in the business of operating a department store from which it sells and distributes 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.

Franklin Simon & 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 in any other way, of the word "Silk" as descriptive of products which are not composed of silk, the product of the cocoon of the silk worm, and from the use of the words "Silk" and "Crepe", or of either of said words, alone or in connection or conjunction with any other word or words or in any way so as to import or imply that the products to which the said word or words refer are composed of silk, when such is not the fact. (June 18, 1937.)

2008. False and Misleading Prices and Advertising—Automobiles.—Hudson Motor Car Co., a corporation, engaged in the business of manufacturing passenger automobiles and other motor driven vehicles and in the sale and distribution thereof under the trade names "Hudson" and "Terraplane" to dealers and distributors in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged in similar businesses, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Hudson Motor Car Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist or refrain from the use in any advertisement to facilitate the sale by dealers and distributors to the public of automobiles, of "\$595" or of any other purported price figure, either with or without the pictorial representation of a passenger car, so as to import or imply that said price is the price of the car pictured or otherwise described, unless the designated price is in fact the price of and does refer to the car so pictured or described; of "\$595" or of any other purported price figure, together with the pictorial representation of a passenger car or in any other way, so as to import or imply that the car, to which such price figure purportedly refers, can be purchased at the advertised point of delivery for the price designated, and that the purchaser can obtain lawful title to and possession of said car at said point of delivery without further payment of any amount whatsoever, except state and local taxes, assessments and sales taxes of any kind, unless such is the fact, or unless the items, but not necessarily the price of same, making up such further payment are also set forth in such advertisement in suitable words or phraseology printed in plain, prominent and easily readable type; of the pictorial or other representation of a car and more especially one equipped with accessories, and of what purports to be the price of said car, either "f. o. b.", "list at factory", or advertised point of delivery, so as to import or imply that said designated price is the price at which said car is offered for sale and sold, and that said price includes the price of all the accessories pictorially or otherwise represented or referred

to in said advertisement and all other charges of whatever kind or character, except freight or transportation charges, in case the price advertised is "f. o. b." or "list at factory", and state and local taxes, assessments, and sales taxes of any kind, incident to the sale of such car, unless such is the fact; provided, if such designated price is used to refer to the sales price of the car without such accessories, and the said price does not include the cost of the said accessories, pictorially or otherwise represented or referred to and of all other charges of whatever kind or character, except freight or transportation charges and such taxes and assessments, then in such case the said price shall be accompanied by suitable words or phraseology printed in plain, prominent and easily readable type so as to indicate clearly that said price does not include such accessories and other charges and that the price of such accessories and other charges shall be added to the price represented to be the sales price of the car advertised. (June 18, 1937.)

2009. False and Misleading Prices and Advertising—Automobiles.—Graham-Paige Motors Corporation, engaged in the business of manufacturing passenger automobiles and other motor-driven vehicles and in the sale and distribution thereof to dealers and distributors in interstate commerce, in Canada, and other foreign countries, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Graham-Paige Motors Corporation, in soliciting the sale of and selling its products in commerce, agreed to cease and desist or refrain from the use in any advertisement to facilitate the sale by dealers and distributors to the public of automobiles—of "\$595" or of any other purported price figure, either with or without the pictorial representation of a passenger car, so as to import or imply that said price is the price of the car pictured or otherwise described, unless the designated price is in fact the price of and does refer to the car so pictured and described; of "\$595" or of any other purported price figure, together with the pictorial representation of a passenger car or in any other way, so as to import or imply that the car, to which such price figure purportedly refers, can be purchased at the advertised point of delivery for the price designated, and that the purchaser can obtain lawful title to and possession of said car at said point of delivery without further payment of any amount whatsoever, except state and local taxes, assessments and sales taxes of any kind, unless such is the fact, or unless the items, but not necessarily the price of same, making up such further payment are also set forth in such advertisement in suitable words or phraseology printed in plain, prominent, and easily readable type; of the picto-

rial or other representation of a car and more especially one equipped with accessories, and of what purports to be the price of said car, either "f. o. b.", "list at factory", or advertised point of delivery, so as to import or imply that said price includes the price of all the accessories pictorially or otherwise represented or referred to in said advertisement and all other charges of whatever kind or character, except freight or transportation charges, in case the price advertised is "f. o. b." or "list at factory", and state and local taxes, assessments, and sales taxes of any kind, incident to the sale of such car, unless such is the fact; provided, if such designated price is used to refer to the sales price of the car without such accessories, and the said price does not include the cost of the said accessories pictorially or otherwise represented or referred to and of all other charges of whatever kind or character, except freight or transportation charges and such taxes and assessments, then in such case the said price shall be accompanied by suitable words or phraseology printed in plain, prominent, and easily readable type so as to indicate clearly that said price does not include such accessories and other charges and that the price of such accessories and other charges shall be added to the price represented to be the sales price of the car advertised. (June 18, 1937.)

2010. **False and Misleading Prices and Advertising—Automobiles.**—The Studebaker Corporation, engaged in the business of manufacturing motor vehicles and in the sale and distribution thereof to dealers and distributors in interstate commerce, in Canada and other foreign countries, effecting such sales and distribution through the instrumentality of its owned and controlled subsidiary, The Studebaker Sales Corporation of America, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Studebaker Corporation and The Studebaker Sales Corporation of America, in soliciting the sale of and selling their product in commerce, agreed to cease and desist or refrain from the use in any advertisement to facilitate the sale by dealers and distributors to the public of automobiles: of "\$665*" or of any other purported price figure, either with or without the pictorial representation of a passenger car, so as to import or imply that said price is the price of the car pictured or otherwise described unless the designated price is in fact the price of and does refer to the car so pictured or described; of "\$665*" or of any other purported price figure, together with the pictorial representation of a passenger car, or in any other way, so as to import or imply that the car, to which such price figure purportedly refers, can be purchased at the advertised point of delivery for the price designated and that the purchaser, can obtain lawful

title to and possession of said car at said point of delivery without further payment of any amount whatsoever except state and local taxes, assessments, and sales taxes of any kind, unless such is the fact, or unless the items, but not necessarily the price of same, making up such further payment are also set forth in such advertisement in suitable words or phraseology printed in plain, prominent and easily readable type; of the pictorial or other representation of a car, and more especially one equipped with accessories, and of what purports to be the price of said car, either "f. o. b.," "list at factory," or advertised point of delivery, so as to import or imply that said designated price is the price at which said car is offered for sale and sold, and that said price includes the price of all the accessories pictorially or otherwise represented or referred to in said advertisement and all other charges of whatever kind or character except freight or transportation charges, in case the price advertised is "f. o. b." or "list at factory," and state and local taxes, assessments and sales taxes of any kind, incident to the sale of such car, unless such is the fact; provided, if such designated price is used to refer to the sales price of the car without such accessories, and the said price does not include the cost of the said accessories pictorially or otherwise represented or referred to and of all other charges of whatever kind or character, except such freight or transportation charges, and such taxes and assessments, then in such case the said price shall be accompanied by suitable words or phraseology printed in plain, prominent and easily readable type, so as to indicate clearly that said price does not include such accessories and other charges and that the price of such accessories and other charges shall be added to the price represented to be the sales price of the car advertised. (June 18, 1937.)

2011. **False and Misleading Prices and Advertising—Automobiles.**—Chrysler Corporation, and its subsidiary corporations, Chrysler Sales Corporation, De Soto Motor Corporation, Dodge Brothers Corporation and Plymouth Motor Corporation, engaged in the business of manufacturing motor vehicles and in the sale and distribution thereof to dealers and distributors in interstate commerce, in Canada, and in other foreign countries, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Chrysler Corporation, Chrysler Sales Corporation, De Soto Motor Corporation, Dodge Brothers Corporation and Plymouth Motor Corporation, in soliciting the sale of and selling its product in commerce, agreed, and each of the said corporations agreed, to cease and desist or refrain from the use in any advertisement to facilitate the sale by dealers and distributors to the public of automobiles:

of "\$510" or of any other purported price figure, either with or without the pictorial representation of a passenger car, so as to import or imply that said price is the price of the car pictured or otherwise described unless the designated price is in fact the price of and does refer to the car so pictured or described: of "\$510" or of any other purported price figure, together with the pictorial representation of a passenger car, or in any other way, so as to import or imply that the car, to which such price figure purportedly refers, can be purchased at the advertised point of delivery for the price designated and that the purchaser can obtain lawful title to and possession of said car at said point of delivery without further payment of any amount whatsoever except state and local taxes, assessments, and sales taxes of any kind, unless such is the fact, or unless the items, but not necessarily the price of same, making up such further payment are also set forth in such advertisement in suitable words or phraseology printed in plain, prominent and easily readable type; of the pictorial or other representation of a car, and more specially one equipped with accessories, and of what purports to be the price of said car, either "f. o. b.," or "list at factory," or advertised point of delivery, so as to import or imply that said designated price is the price at which said car is offered for sale and sold, and that said price includes the price of all the accessories pictorially or otherwise represented or referred to in said advertisement and all other charges of whatever kind or character except freight or transportation charges, in case the price advertised is "f. o. b." or "list at factory," and State and local taxes, assessments and sales taxes of any kind, incident to the sale of such car, unless such is the fact; provided, if such designated price is used to refer to the sales price of the car without such accessories, and the said price does not include the cost of the said accessories pictorially or otherwise represented or referred to and of all other charges of whatever kind or character, except such freight or transportation charges, and such taxes and assessments, then in such case the said price shall be accompanied by suitable words or phraseology printed in plain, prominent and easily readable type, so as to indicate clearly that said price does not include such accessories and other charges and that the price of such accessories and other charges shall be added to the price represented to be the sales price of the car advertised. (June 18, 1937.)

2012. False and Misleading Prices and Advertising—Automobiles.—Nash-Kelvinator Corporation, engaged in the business of manufacturing passenger automobiles and other motor driven vehicles and in the sale and distribution thereof to dealers and distributors 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.

Nash-Kelvinator Corporation, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist or refrain from the use in any advertisement to facilitate the sale by dealers and distributors to the public of automobiles: of "\$835" or of any other purported price figure, either with or without the pictorial representation of a passenger car, so as to import or imply that said price is the price of the car pictured or otherwise described, unless the designated price is in fact the price of and does refer to the car so pictured or described; of "\$835" or of any other purported price figure, together with the pictorial representation of a passenger car or in any other way, so as to import or imply that the car, to which such price figure purportedly refers, can be purchased at the advertised point of delivery for the price designated, and that the purchaser can obtain lawful title to and possession of said car at said point of delivery without further payment of any amount whatsoever, except state and local taxes, assessments and sales taxes of any kind, unless such is the fact or unless the items, but not necessarily the price of same, making up such further payment are also set forth in such advertisement in suitable words or phraseology printed in plain, prominent and easily readable type; of the pictorial or other representation of a car and more especially one equipped with accessories, and of what purports to be the price of said car, either "f. o. b.", "list at factory," or advertised point of delivery, so as to import or imply that said designated price is the price at which said car is offered for sale and sold, and that said price includes the price of all the accessories pictorially or otherwise represented or referred to in said advertisement and all other charges of whatever kind or character, except freight or transportation charges, in case the price advertised is "f. o. b." or "list at factory", and state and local taxes, assessments, and sales taxes of any kind, incident to the sale of such car, unless such is the fact; provided, if such designated price is used to refer to the sales price of the car without such accessories, and the said price does not include the cost of the said accessories pictorially or otherwise represented or referred to and of all other charges of whatever kind or character, except freight or transportation charges and such taxes and assessments, then in such case the said price shall be accompanied by suitable words or phraseology printed in plain, prominent and easily readable type so as to indicate clearly that said price does not include such accessories and other charges and that the price of such accessories and

other charges shall be added to the price represented to be the sales price of the car advertised. (June 18, 1937.)

2013. False and Misleading Prices and Advertising—Automobiles.—Packard Motor Car Co., a corporation, engaged in the business of manufacturing passenger automobiles and other motor driven vehicles and in the sale and distribution thereof to dealers and distributors, 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.

Packard Motor Car Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist or refrain from the use in any advertisement to facilitate the sale by dealers and distributors to the public of automobiles manufactured by Packard Motor Car Company: of "\$945" or of any other purported price figure, either with or without the pictorial representation of a passenger car, so as to import or imply that said price is the price of the car pictured or otherwise described, unless the designated price is in fact the price of and does refer to the car so pictured or described; of "\$945" or of any other purported price figure, together with the pictorial representation of a passenger car or in any other way, so as to import or imply that the car, to which such price figure purportedly refers, can be purchased at the advertised point of delivery for the price designated, and that the purchaser can obtain lawful title to and possession of said car at said point of delivery without further payment of any amount whatsoever, except state and local taxes, assessments and sales taxes of any kind, unless such is the fact, or unless the items, but not necessarily the price of same, making up such further payment are also set forth in such advertisement in suitable words or phraseology printed in plain, prominent and easily readable type; of the pictorial or other representation of a car and more especially one equipped with accessories, and of what purports to be the price of said car, either "f. o. b.," "list at factory," or advertised point of delivery, so as to import or imply that said designated price is the price at which said car is offered for sale and sold, and that said price includes the price of all the accessories pictorially or otherwise represented or referred to in said advertisement and all other charges of whatever kind or character, except freight or transportation charges, in case the price advertised is "f. o. b." or "list at factory," and state and local taxes, assessments, and sales taxes of any kind, incident to the sale of such car, unless such is the fact; provided, if such designated price is used to refer to the sales price of the car without such accessories, and the said price does not include the cost of the said accessories pic-

torially or otherwise represented or referred to and of all other charges of whatever kind or character, except freight or transportation charges and such taxes and assessments, then in such case the said price shall be accompanied by suitable words or phraseology printed in plain, prominent and easily readable type so as to indicate clearly that said price does not include such accessories and other charges and that the price of such accessories and other charges shall be added to the price represented to be the sales price of the car advertised. (June 18, 1937.)

2014. False and Misleading Prices and Advertising—Automobiles.—Auburn Automobile Co., a corporation, engaged in the business of manufacturing passenger automobiles and in the sale and distribution thereof, under the trade name "Cord" to dealers and distributors in commerce between and among various states of the United States, 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.

Auburn Automobile Co. agreed to cease and desist or refrain from the use in any advertisement to facilitate the sale by dealers and distributors to the public of automobiles: of "\$1995" or of any other purported price figure, either with or without the pictorial representation of a passenger car, so as to import or imply that said price is the price of the car pictured or otherwise described, unless the designated price is in fact the price of and does refer to the car so pictured or described; of "\$1995" or of any other purported price figure, together with the pictorial representation of a passenger car or in any other way, so as to import or imply that the car, to which such price figure purportedly refers, can be purchased at the advertised point of delivery for the price designated, and that the purchaser can obtain lawful title to and possession of said car at said point of delivery without further payment of any amount whatsoever, except state and local taxes, assessments and sales taxes of any kind, unless such is the fact, or unless the items, but not necessarily the price of same, making up such further payment are also set forth in such advertisement in suitable words or phraseology printed in plain, prominent and easily readable type; of the pictorial or other representation of a car and more especially one equipped with accessories, and of what purports to be the price of said car, either "f. o. b." "list at factory," or advertised point of delivery, so as to import or imply that said designated price is the price at which said car is offered for sale and sold, and that said price includes the price of all the accessories pictorially or otherwise represented or referred to in said advertisement and all other charges of whatever kind

or character, except freight or transportation charges, in case the price advertised is "f. o. b." or "list at factory," and state and local taxes, assessments, and sales taxes of any kind, incident to the sale of such car, unless such is the fact; provided, if such designated price is used to refer to the sales price of the car without such accessories, and the said price does not include the cost of the said accessories pictorially or otherwise represented or referred to and of all other charges of whatever kind or character, except freight or transportation charges and such taxes and assessments, then in such case the said price shall be accompanied by suitable words or phraseology printed in plain, prominent and easily readable type so as to indicate clearly that said price does not include such accessories and other charges shall be added to the price represented to be the sales price of the car advertised. (June 18, 1937.)

2015. False and Misleading Prices and Advertising—Silver Plated Ware.—Oneida, Ltd., a corporation, engaged in the manufacture of silver plated ware and in the sale and distribution thereof under the names of two of its subsidiary corporations, Wm. A. Rogers, Ltd., and Simeon L. and George H. Rogers Co., 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.

Oneida, Ltd., acting in its own behalf or through its subsidiaries, or any of them, agreed in soliciting the sale of and selling its products in interstate commerce to cease and desist from the use of or from suggesting or recommending to its retailer customers or otherwise promoting any scheme, plan or method of sale designated or represented to be a "Half Price" or a "Save \$20.00" sale wherein an alleged regular retail sales price of its products does not reflect or represent the normal and usual price at which the said products are sold in the regular course of trade; cooperating with its retailer customers in advertising, promoting or carrying out any scheme, plan or method of sale designated or represented to be a "Half Price" or a "Save \$20.00" sale wherein an alleged regular retail or other sales price of its products, as compared with the normal and usual price at which the same is sold in the regular course of trade, is fictitious or exaggerated; from the use of the words "Special Sale" as descriptive of the price for which its products are offered for sale and sold, when in fact the so-called special sale price is not "Special" but is the price for which said products are or can be generally purchased in the regular course of trade. (June 22, 1937.)

2016. False and Misleading Trade Name, Brands or Labels and Advertising—Cough Preparation.—Roy J. Troutman, an individual trading

as "G. E. Laboratories" and/or "Great Eastern Laboratories," engaged in the business of manufacturing or compounding a preparation designed for the alleviation of coughs and in the sale and distribution of said product in interstate commerce under the trade designation "Dr. Bayer's Horehound Cough Balsam" in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Bayer Co., Inc., a New York corporation, has been for more than twenty years last past and is now engaged in the manufacture or compounding of an aspirin product which it has extensively advertised and sold as "Bayer Genuine Aspirin," with the result that the said product has become known and referred to as "Bayer's Aspirin" and the said corporation has acquired a wide and favorable good will in the word "Bayer" or "Bayer's" as identifying the product of its manufacture. The name "Bayer" has become associated in the public mind with a demand for aspirin made by the said corporation.

Roy J. Troutman, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the words "Dr. Bayer's" as a part of or in connection or conjunction with the trade name under which he carries on his business, and from the use of the abbreviation "Dr." or the word "Bayer's," alone or in connection or conjunction each with the other, or with any other word or words, or in any way, in advertising or labeling his product offered for sale and sold in interstate commerce, so as to import or imply that the said product is made or compounded by the Bayer Co., Inc., the corporation referred to in paragraph 2 hereof. The said Roy J. Troutman also agreed to cease and desist from the use of the abbreviation "Dr." or the word "doctor," either alone or in connection or conjunction with a name, or with any other word or words, or in any way, so as to import or imply that the product to which said word or words refer and which is offered for sale and sold by the said individual in interstate commerce has been prepared in accordance with the formula or under the supervision of a doctor, when such is not the fact. (July 2, 1937.)

2017. Failure to Disclose—Files.—New Method File Grinders, Inc., a corporation engaged in the business of selling and distributing files in interstate commerce between and among various states of the United States 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 Method File Grinders, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist

from offering for sale or selling in interstate commerce old, worn, used, or second-hand files which have been resharpened and reconditioned without clearly disclosing and indicating the fact that said products are resharpened and reconditioned and/or are not new. (July 9, 1937.)

2018. **False and Misleading Trade Name and Advertising and Using Lottery Scheme—Shoe Laces.**—Benjamin Gittleman, an individual trading as Lincoln Lace & Braid Mfg. Co., engaged in the business of pairing and packaging shoe laces 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.

Benjamin Gittleman, in offering for sale and selling his products in interstate commerce, agreed to cease and desist from the use of the letters "Mfg" as part of his trade name, and from the use of the letters "Mfg" or the word "Manufacturers", alone or in connection or conjunction with any other word or words, or in any way, on his stationery, printed matter, or otherwise, so as to import or imply that he makes or manufactures the products sold by him or that he actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured, when such is not the fact. The said Benjamin Gittleman also agreed, in soliciting the sale of and selling his products in interstate commerce, to cease and desist from the use of any scheme, plan or method of sale, or of promoting the sale of his products, which involves or includes the use of any gift enterprise, lottery, or scheme of chance whereby the individual who is to receive any specified article of merchandise or so-called gift is determined by lot or chance. (July 12, 1937.)

2021.¹ **False and Misleading Advertising—Books.**—Garden City Publishing Co., Inc., a corporation engaged in the business of reprinting

¹ Number 2019 was assigned to June 29 stipulation as to the facts and agreement to cease and desist in the matter of Civil Employees Training, Inc., et al., Docket 3037, in which complaint—issued January 19, 1937, and charging respondents, broadly, with misrepresenting government connection, business connections or personnel and opportunities in product or service and pretended refund or guarantee, in the making of a large number of false and misleading representations in connection with the sale of civil service correspondence courses—was dismissed without prejudice on July 6, 1937, by reason of respondents' admission in such stipulation, as therein set forth, of the making of such various false and misleading representations and agreement to cease and desist from use thereof and that, failing so to do, such stipulation might be used in evidence against them in trial of any proceeding which Commission might direct (see, for dismissal, *supra*, at page 1504).

Number 2020 was assigned to July 21 stipulation as to the facts and agreement to cease and desist in the matter of Civilian Preparatory Service, Inc., et al., Docket 2884, in which complaint—issued July 29, 1936, and charging respondents, broadly, with advertising falsely or misleadingly and misrepresenting business status as to government connection and opportunities in product or service and refunds or guarantees in connec-

books and in the sale and distribution of the same in commerce between and among various states of the United States, 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.

Garden City Publishing Co., Inc., agreed in soliciting the sale of and selling its products in interstate commerce to cease and desist from advertising, selling, or distributing in interstate commerce, any book or publication under a different name or title from that under which said book shall have been previously published and sold; unless, if that be done, a proper notice of the previously used name or title shall appear printed in type as equally conspicuous as that in which the new name is printed, on the title page of said book and on the jacket, if such book is provided with a jacket. Said corporation also agreed that in all advertisements and other printed matter used by it in the sale of and selling said book in interstate commerce there shall be clearly set forth, in connection with the new name or title, the name or title under which said book had been heretofore published and sold. Said corporation further agreed to cease and desist from stating or representing in its advertising matter or in any other way that the book offered for sale and sold by it in interstate commerce is "modern" or "up-to-date", or that the said book formerly sold for \$4, when such are not the facts. (July 19, 1937.)

2022. False and Misleading Advertising—Lingerie.—Samuel A. Roth, an individual trading as Samuel A. Roth & Co., engaged in the sale and distribution primarily of ladies' undergarments in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Samuel A. Roth, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in his advertising matter or otherwise of the word "silk," either alone or in connection with the word "pure" without qualification to describe or designate products not composed wholly of silk but containing substantial quantities of mineral salts or substances other than silk, being what are known as "weighted silks." If said products are in fact composed of silk but are weighted to an amount exceeding

tion with the making of various false and misleading representations in connection with the sale of civil service correspondence courses—was dismissed without prejudice by reason of respondents' admission in such stipulation, as therein set forth, of the making of such various false and misleading representations and agreement to cease and desist from use thereof and that, failing so to do, such stipulation might be used in evidence against them in trial of any proceeding which Commission might direct (see, for dismissal, *supra*, at page 1507).

15% in black goods or to an amount exceeding 10% in goods other than black, and if the word "silk" is used to designate or describe such products, then in that event the word "silk" shall be immediately accompanied by the word "weighted" or 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 weighted with mineral salts or other weighting substance. The said Samuel A. Roth further agreed to cease and desist from the use in his said advertising matter or otherwise of the words "pure dye" either alone or in connection or conjunction with any other word or words so as to import or imply that the products to which said words refer are composed of silk, when such is not the fact. Said individual also agreed to cease and desist from the use of the word "satin" in any way as descriptive of products so as to import or imply that the products so designated are composed of silk, when such is not the fact, and from the use of the word "satin" in connection with the word "rayon" or with any other words to designate the type of weave of said products, when in fact said products, which are composed of material other than silk, are "plain" woven, that is to say, are not made with a satin weave. (July 21, 1937.)

2023. False and Misleading Brands or Labels—Wrist Watch Straps and Buckles.—Samuel Friedman, an individual trading as Brite Specialty Co., engaged in the business of manufacturing straps and buckles for wrist watches and in the sale and distribution thereof in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Samuel Friedman, in offering for sale and selling his products in interstate commerce, agreed to cease and desist from stamping or branding said products "gold filled," when in fact said products do not contain a layer or coating of gold of such substantial thickness so as to be properly and accurately represented, designated or referred to as "gold filled"; and from the use of said words "gold filled"; in any way so as to import or imply that the gold with which said products are coated or filled is of such substantial thickness as to be properly represented "gold filled," when such is not the fact. (July 23, 1937.)

2024. False and Misleading Brands or Labels—Cleaning Compound.—Roselux Chemical Co., Inc., a corporation, engaged in the business of manufacturing a cleaning compound and in the sale and distribution thereof, under the trade name "Rose-X," in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agree-

ment to cease and desist from the alleged unfair methods of competition as set forth therein.

Roselux Chemical Co., Inc., in soliciting the sale of and selling its product designated "Rose-X" in interstate commerce, agreed to cease and desist from the use of the words "removes stains" on labels affixed to said product, or in any other way, so as to import or imply that said product will remove stains of all types and kinds, when such is not the fact. The said corporation also agreed to cease and desist from the use of the statement "Excellent for the hands", as descriptive of its said product, so as to import or imply that said product possesses properties or value of especial merit or benefit to the hands upon which it is used, when such is not the fact. (July 23, 1937.)

2025. False and Misleading Advertising—Concrete Vaults.—Peter J. Bough, engaged in the business of manufacturing concrete vaults for use in encasing coffins and caskets in the burial of the dead, and in the sale and distribution of said vaults in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Peter J. Bough, in soliciting the sale of and selling his concrete burial vaults in interstate commerce, agreed to cease and desist from the use in his advertising matter or in any other way of the words "Water Proof Cement Burial Vault That Endures Forever" or of any other words of similar meaning so as to import or imply that the products to which said words refer are and will remain waterproof for all time or for any stated or fixed period of time and/or that they will endure forever regardless of the varying climatic conditions and the chemical and other conditions of the soil in which said products are buried. The said individual also agreed to cease and desist from the use of the words "Water Proof" or "Endures Forever" or any other words of like import as descriptive of his products so as to import or imply that said products, when buried in the soil, are in all instances waterproof and will so remain forever, when such is not the fact. (July 23, 1937.)

2026. False and Misleading Advertising—First Aid Kits, etc.—A. E. Halperin Co., Inc., a corporation, engaged in the business of selling and distributing first aid kits, supplies and equipment 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. E. Halperin Co., Inc., in offering for sale or selling its bandages in interstate commerce, agreed to cease and desist from representing or advertising in any way its said products as "sterilized" or "sanitary", unless or until said products are sterilized and free from bacteria after they have been packaged and while contained in their original package. (July 23, 1937.)

2027. **False and Misleading Brands or Labels and Advertising—Plywood.**—National Plywood Co., Inc., a corporation, engaged in the sale and distribution of plywood 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 "White Pine group" has long been known to botanists, lumber technologists, and the public, and includes the species *Pinus Strobus*, the *Pinus Lambertiana*, and the *Pinus monticola*. The species "*Pinus ponderosa*" is not a true white pine. The wood known as Walnut is the product of the genus "*Juglans*" of the tree family scientifically called "*Juglandaceae*", of which there are several species.

National Plywood Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "White Pine" either independently or in connection or conjunction with the word "California" or with any other word or words as descriptive of products not made of wood derived from trees of the species *Pinus strobus*, *Pinus Lambertiana*, or *Pinus monticola*; and from the use of the words "White Pine" in any way so as to import or imply that the products to which they refer are made from trees of the said "White Pine group", when such is not the fact; the use of the word "Walnut" either alone or in connection with the word "Oriental" or with any other word or words as descriptive of products not made of wood derived from trees of the walnut or "*Juglandaceae*" family, and from the use of the word "Walnut" in any way so as to import or imply that the products so represented are made of such walnut wood, when such is not the fact. (July 25, 1937.)

2028. **False and Misleading Advertising—Clothing.**—Saks & Co., a corporation, engaged in the business of operating department stores and selling and distributing merchandise in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged in similar businesses, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Saks & Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use in its ad-

vertisements and advertising matter or otherwise (a) of the words "custom-made" to describe or designate clothing not made to order or to the measure of the individual customer, and from the use in said advertising or otherwise of any statements or representations which import or imply that the products offered for sale and sold by the said corporation are made to order or to the customer's measure, when such is not the fact; (b) of statements or representations to the effect that its shirts have a regular or customary retail selling price of designated amount, when in fact such designated amount is in excess of the price for which said shirts are or have been regularly or customarily sold in the usual course of trade; (c) of the word "silk" without qualifications, to describe or designate products not composed wholly of silk but containing substantial quantities of mineral salts or substances other than silk, being what is known as "weighted silks." If said products are in fact composed of silk but are weighted to an amount exceeding 15% in black goods or to an amount exceeding 10% in goods other than black, and if the word "silk" is used to designate or describe such products then in that event the word "silk" shall be immediately accompanied by the word "weighted" or 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 weighted with mineral salts or other weighting substance; (d) of the words "silk", "satin" and "crepe", or of any of the said words, 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, the product of the cocoon of the silk worm, when such is not the fact. (July 26, 1937.)

2029. **False and Misleading Brands or Labels—Shoe Laces.**—Alfred Rugeti, an individual trading as Mission Manufacturing Co., engaged in the business of manufacturing shoe laces 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.

Alfred Rugeti, in soliciting the sale of and selling his product in interstate commerce, agreed to cease and desist from the use of the word "silk" either alone or in connection or conjunction with the letters "Art", or with any other word or words, or in any way so as to import or imply that the products so referred to, branded, or labeled, are composed of silk, the product of the cocoon of the silk worm. (July 30, 1937.)

2030. **False and Misleading Trade Name and Brands or Labels—Radios.**—Charles Mostow, an individual trading as Majestic Electric Supply

Co., engaged in the sale and distribution of electric goods, radios, radio supplies and other 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.

Charles Mostow, 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 "Majesco" or of any other simulation of the word "Majestic" either alone or in connection 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 Co. or by its successor in business, Majestic Radio and Television Corp. of Chicago, Ill., when such is not the fact. (Aug. 4, 1937.)

685.¹ False and Misleading Brands or Labels and Advertising—Aluminum and Bronze Powders.—Illinois Bronze Powder Co., Inc., a corporation, engaged in the sale and distribution of aluminum and bronze powders 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.

Illinois Bronze Powder Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Manufactured By" or of any other words of similar meaning on its labels, in its printed matter or otherwise, when in fact the said corporation does not make or manufacture the said products. The said corporation further agrees to cease and desist from the use of the said words "Manufactured By" or other similar words in any way so as to import or imply that it actually owns and operates or directly and absolutely controls the plants or factories in which said products are made or manufactured, when such is not the fact. (Aug. 6, 1937.)

2031. False and Misleading Brands or Labels and Advertising—Men's Clothing.—The Stetson Pants Co., a corporation, also trading as the Manhattan Neckwear Co., Gibson Sweater Co., and The Burton Pants & Garment Co., engaged in the sale and distribution of men's clothing in interstate commerce, in competition with other corporations, firms, individuals, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Stetson Pants Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from

¹ Supplemental.

(a) the use of the word "free" as descriptive of products, when in fact said products are not given free but are given as a consideration to a person or persons for services performed, as by obtaining or bringing in new customers;

(b) the use of the words "Tailored-to-Fit" or of any other words of similar meaning so as to import or imply that the products to which said words refer are made to the individual measurement or order of the customers, when such is not the fact. (Aug. 9, 1937.)

2032. False and Misleading Trade or Corporate Name and Advertising—Talcum and Face Powders and Perfumes.—City of Paris, Ltd., a corporation, engaged in the business of preparing talcum and face powders and, to some extent, blending perfumes, 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.

City of Paris, Ltd., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use, as part of or in connection or conjunction with its corporate or trade name, of the word "City" printed in script or in any way so as to simulate the word "Coty," forming part of the name of its competitor, Les Parfums Coty, and thus confuse or tend to confuse customers and/or cause them to believe that the products of the said City of Paris, Ltd. are products of the said competitor, Les Parfums Coty. The said City of Paris, Ltd. further agreed to cease and desist from the use in its circulars or advertising matter or in any other way of the words "London," "Sydney" and "Paris," or of any of said words, so as to import or imply that the said City of Paris, Ltd., maintains or has offices or business connections at London, England; Sydney, Australia; or Paris, France; when such is not the fact. The said corporation also agreed to cease and desist from the use of the word "Paris" as part of its corporate or trade name or in its advertising matter or in any other way so as to import or imply that the products offered for sale and sold by the said City of Paris, Ltd., are of French or foreign origin, when such is not the fact. (Aug. 6, 1937.)

2033. False and Misleading Brands or Labels and Advertising—Fur Coats.—Silverman and Grean, Inc., is a corporation engaged in the business of manufacturing fur coats 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.

Silverman and Grean, 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 as a mark, stamp, brand or label for its products of the word "Seal" or of the word "Bioseal" either alone or in connection with the explanatory statement "The Aristocrat of Dyed Coney" or in any other way so as to import or imply that said products are made from seal or the use of which words tend or may tend to confuse purchasers as to the kind of fur from which said products are made. (Aug. 9, 1937.)

2034. **False and Misleading Advertising—Washing Machines.**—Samuel T. Schwartz and Dora Schwartz, copartners trading as Chas. Schwartz & Son, engaged in the business of conducting a retail store from which they sell and have distributed washing machines, among other things, in commerce, in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Chas. Schwartz & Son, in soliciting the sale of and selling their product in commerce, agreed to cease and desist from the use in advertising matter of whatever kind or character of the word "free" either alone or in connection or conjunction with any other word or words as descriptive of merchandise represented to be given with the purchase of other merchandise, when in fact the price of the so-called "free" merchandise is included in the price asked for the merchandise sold. Said co-partners also agree to cease and desist from the use of the word "free" in any way so as to import or imply that the product to which said word refers is in fact a gift or is given free or as a gratuity to the purchaser of other merchandise, when such is not the fact. (Aug. 9, 1937.)

2035. **False and Misleading Brands or Labels and Advertising—Perfumes.**—Les Parfums Marly, Inc., a corporation, engaged in the business of compounding perfumes in the United States of America from imported essential oil and essences to which is added denatured alcohol as a diluting agent, 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.

Les Parfums Marly, Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "Paris" or "France" or the words "Made in France" either alone or in connection each with the other or in any other way on its packaged products which directly assert or so as to import or imply that said products are of French origin or make

and imported as finished perfumes from said country. The said Les Parfums Marly, Inc., also agreed to cease and desist from the use of the word "Paris" or of the words "Paris 24 Rue Caumartin" on its packaged products or on its printed matter or in any other way so as to import or imply that the said corporation has an office or offices or place of business at such place, when such is not the fact. (Aug. 9, 1937.)

2036. **False and Misleading Trade Name, Brands or Labels and Advertising—Radios.**—Busch Jewelry Co., Inc., engaged in the sale and distribution, among other things, of radios and kindred articles 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.

General Electric Co. is a New York corporation having its principal place of business at Schenectady, N. Y. It is now and has been for a number of years past engaged in the manufacture and sale of numerous electrical appliances and equipment. One of the products manufactured and sold by this corporation is a radio set. All the electrical appliances and equipment manufactured by this corporation were and are now merchandised under the distinctive trade mark "General (GE) Electric." This trade mark has become through extensive newspaper, magazine and other forms of advertising, well known to the purchasing public as identifying products manufactured by the said General Electric Co., of Schenectady, N. Y.

Busch Jewelry Co., in soliciting the sale of and selling its radio receiving sets in interstate commerce, agreed to cease and desist from the use in its advertising matter referring to its said sets of the word "General" in connection or conjunction with the statement "Headquarters for * * * General Electric * * * Radios" and from the use of the word "General" as a trade name or brand for its said sets or in any way so as to import or imply that said sets are sets made or manufactured by General Electric Co., of Schenectady, N. Y., when such is not the fact. (Aug. 11, 1937.)

2037. **False and Misleading Advertising—Rum.**—M. Milstone, an individual, trading under the name and style of Acme Liquor Store, engaged in the business of conducting a retail store at Washington, D. C., from which he sells and has sold and distributed domestic and imported beers, mineral waters, ginger ales, wines, whiskies, champagnes, and rum in commerce as defined by the Act, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

M. Milstone, in soliciting the sale of and selling his "Three Saints"

rum in commerce as defined by the Act, agreed to cease and desist from stating or representing that said rum is either distilled, aged or bottled under the supervision of the United States Government, or of any other statements or representations of similar meaning, when such is not the fact. (Aug. 11, 1937.)

2038. False and Misleading Advertising—Fountain Pens.—Harold Tanner, an individual trading as Packard Pen Co., engaged in the business of selling and distributing fountain pens and pencil sets, by mail order, 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.

Harold Tanner, in soliciting the sale of and selling his pens in interstate commerce, agreed to cease and desist from stating or representing by means of advertising matter or otherwise that said pens are of a \$3.00 value or that said pens are sold or are intended to be sold for the said amount in the usual course of trade, when such is not the fact; the certificate referred to in said advertising matter is worth \$2.51 or any other specified amount, when such is not the fact; said pens are "indestructible" or that they have an "unbreakable" barrel or that they are "sackless", when the facts do not warrant such statements or representations; said pens are of "Master Banker's Size" and "Hold 200% More Ink," or of any other similar statements or representations which do not understandingly represent the size or capacity of the pen as the case may be; one can write a month on a single filling of the pen, or of any other similar exaggerated statement or representation; said pen would require no repair bills, when such statement or representation is not warranted by the facts. The said Harold Tanner also agreed to cease and desist from the use of the word "Duragold" as descriptive of his pen points, when in fact said pen points are not composed of gold, and from the use of the word "Gold" either alone or in connection with the letters "Dura" or in any other way so as to import or imply that the pen point to which the said word refers is composed of gold, when such is not the fact. The said Harold Tanner further agreed to cease and desist from stating or representing in its advertising matter or in any other way that his pens are offered for sale and sold by him under a "Lifetime Guaranty," when such is not the fact. (Aug. 23, 1937.)

2039. False and Misleading Brands or Labels—Lingerie.—Charm Silk Undergarments, Inc., a corporation, engaged in the business of manufacturing ladies' undergarments 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.

Charm Silk Undergarments, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on its labels or in any other way of the words "Super Quality Silk" or the word "silk", without qualification, to designate or describe said products not composed wholly of silk but which contain substantial quantities of salts or substances other than silk, being what are known as "weighted silks". If said products are in fact composed of silk, the product of the cocoon of the silk worm, but are weighted to an amount exceeding 15% in black goods or to an amount exceeding 10% in goods other than black, and the word "silk" is used to designate or describe said products, then in that event, the word "silk" shall be immediately accompanied by the word "weighted" or 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 weighted with mineral salts or other weighting substance. (Aug. 24, 1937.)

2040. False and Misleading Trade Name, Brands or Labels and Advertising—Maple Syrup Compound.—Miracle Jel, Inc., a corporation, subsidiary of Curtiss Candy Co., engaged in the business of manufacturing a compound which is sold and distributed by its parent company, Curtiss Candy Co., 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.

Miracle Jel, Inc. and Curtiss Candy Co., agreed, in soliciting the sale of and selling the product designated "Maple Maid" in interstate commerce, to cease and desist from the use in advertising matter or as a trade name or designation for said product of the word "Maple" either alone or in connection or conjunction with the word "Maid" or with any other word or words or in any way so as to import or imply that said product is composed of a form of dehydrated maple sap syrup; provided that if said product is composed in substantial part or a form of dehydrated maple sap syrup, and the word "Maple" is used to designate such maple sap syrup content, then in that case the word "Maple" shall be prominently accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Maple" is printed so as to indicate clearly that said product is not composed wholly of a form of dehydrated maple sap syrup but is composed in part of a product or products other than such maple sap syrup. (Aug. 25, 1937.)

2041. False and Misleading Brands or Labels—Paints.—Berg & Mackell, Inc., a corporation, engaged in the business of manufacturing

paints, enamels and oil colors 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.

Berg & Markell, Inc., in soliciting the sale of and selling its paints in interstate commerce, agreed to cease and desist from the use on labels affixed to said products or in any other way of the words "The Original Titanium Paint" so as to import or imply that the said Berg & Markell, Inc., was the first or original manufacturer of paints containing titanium as a pigment; of the word "Titanium" as descriptive of paints so as to import or imply that said products contain titanium in substantial quantity, when such is not the fact; of the word "linseed" either alone or in connection with the word "pure" or with any other word or words as descriptive of the oil content of its paints so as to import or imply that the oil content of said products is composed of linseed oil; provided if the oil content of said product is composed in substantial part of linseed oil, and the word "Linseed" is used as descriptive of said linseed oil content, then in that case the word "Linseed" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Linseed" is printed so as to indicate clearly that the oil content of said product is not composed wholly of linseed oil but is composed in part of an oil or oils other than linseed oil. (Aug. 27, 1937.)

2042. False and Misleading Advertising—Men's Hats and Caps.—Herman Ackerman, an individual, engaged as a jobber in the sale and distribution of men's hats and caps 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.

Herman Ackerman, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the word "Panama" either alone or in connection with any other word or words in his advertising matter or in any other way as descriptive of a hat not made from the leaves of the Jipijapa and in accordance with the process used in the manufacture of panama hats; and from the use of the word "Panama" in any way so as to import or imply that products so represented are panama hats when such is not the fact. The said Herman Ackerman also agreed to cease and desist from the use in his advertising or printed matter or in any other way the words "Manufacturers of" or of any other words of similar meaning so as to import or imply that the said

Herman Ackerman makes or manufactures the products offered for sale or sold by him or that he actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured, when such is not the fact. (Aug. 27, 1937.)

2043. **False and Misleading Trade or Corporate Name and Advertising—Concrete Burial Vaults.**—Permanent Concrete Burial Vault Co., a corporation, engaged in the business of manufacturing concrete burial vaults 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.

Permanent Concrete Burial Vault Co., in soliciting the sale of and selling its concrete vaults in interstate commerce, agreed to cease and desist from the use of the word "Permanent" as part of its corporate or trade name and from the use of the word "Permanent" or the words "everlasting protection" or of any other word or words of similar meaning as descriptive of its said vaults so as to import or imply that said vaults will give permanent or everlasting protection to bodies encased therein, when such is not the fact. The said corporation also agreed to cease and desist from stating or representing that its vaults are non-porous or impervious to water and will remain so everlastingly or forever, when such is not the fact. The said corporation further agreed to cease and desist from the use of any other or similar statements respecting the durability or other qualities of its vaults not warranted by the facts. (Aug. 27, 1937.)

2045.¹ **False and Misleading Advertising—Clothing.**—V. Portnoy & Sons, Inc., a corporation, engaged in the business of buying old, worn and second-hand clothing and also new wearing apparel, and in the sale and distribution of such garments, principally by mail order, 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.

¹ Number 2044 was assigned to August 10 stipulation as to the facts and agreement to cease and desist in the matter of Corrugated Container Corp., Docket 3208, in which complaint—issued August 19, 1937, and charging respondent with misbranding or mislabeling product as to official construction requirements in marking its boxes with stamps which so closely simulated the official certification required by the railroads' Official Classification Committee as to deceive both the railroads and purchasers—was dismissed without prejudice on September 19, 1937, by reason of respondent's admission of such practice and agreement to cease and desist from such deceptive marking of its corrugated fiber boxes and that, falling so to do, such stipulation might be used in evidence against it in trial of any proceeding which Commission might direct (see, for dismissal, *supra*, at page 1509).

V. Portnoy & Sons, Inc., in soliciting the sale of and selling in interstate commerce its products consisting of both new and old, worn or second-hand garments or merchandise, agreed to cease and desist from the use of advertisements and advertising matter which refers to said garments or merchandise in such way as not to clearly indicate and set forth in conspicuous type, with reference to each particular garment or article of merchandise that is not new, that the same is old, worn or second-hand. The said corporation also agreed to cease and desist from the use in its advertising matter of the word "silk" either alone or in connection with any other word or words 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" in any way so as to import or imply that the product to which said word refers is composed of silk, when such is not the fact. (Aug. 27, 1937.)

2046. **False and Misleading Brands or Labels and Advertising—Veneers and Plywoods.**—New York Plywood Co., Inc., a corporation, engaged in the sale and distribution of various kinds of veneers and plywoods 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 Plywood Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the term "Wh Pine" or the words "White Pine" either alone or in connection or conjunction with any other word or words as descriptive of products not made of wood derived from trees of the species "Pinus strobus" or "White Pine group," and from the use of the term "Wh Pine" in any way so as to import or imply that the products to which said term refers are made from trees of the "White Pine group" when such is not the fact; the use of the word "Walnut" either alone or in connection with the word "Oriental" or with any other word or words as descriptive of products not made of wood derived from trees of the Walnut or Juglandaceae family, and from the use of the word "Walnut" in any way so as to import or imply that the products so referred to are made of such walnut wood, when such is not the fact. (Sept. 1, 1937.)

2047. **False and Misleading Brands or Labels and Advertising—Fur Garments.**—Silas K. Himmelreich, Arthur S. Himmelreich and Irwin B. Schmidt, co-partners trading under the firm name and style of John Davis Co., engaged in the sale of fur garments 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.

Silas K. Himmelreich, Arthur S. Himmelreich and Irwin B. Schmidt, in soliciting the sale of and selling fur garments in interstate commerce, agreed to cease and desist from representing, designating or describing said furs in any way other than by the use of the correct name of the fur of which said garments are composed as the last word of the description and which shall be printed in type that is not less conspicuous than that in which any accompanying word or words is or are printed; 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 and printed as aforesaid, shall be immediately preceded by the word "dyed" or "blended," compounded with the name of the simulated fur, as thus: Hudson Seal—Dyed Muskrat, French Seal—Dyed Coney, Nutria Lapin—Dyed Coney. (Sept. 1, 1937.)

2048. False and Misleading Advertising—"Silk" Merchandise.—Martin's, a corporation, engaged in the business of operating a department store from which it sells and has sold general merchandise at retail 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.

Martin's, in soliciting the sale of and selling its merchandise in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter or otherwise of the words "Silk Crepe" as descriptive of such of said merchandise as is not composed of silk, the product of the cocoon of the silk worm, and from the use of either the word "silk" or the word "crepe" alone or in connection or conjunction with any other word or words or in any way so as to import or imply that the merchandise to which the said word or words refer is composed of silk, when such is not the fact. (Sept. 3, 1937.)

2049. False and Misleading Trade Name and Advertising—Men's Underwear, etc.—Max Beck, an individual trading as Valley Brook Knitting Mills, engaged in the business of selling men's underwear and other items of wearing apparel, 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.

Max Beck, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use of the words "Knitting Mills" as part of the trade name under which he offers for sale or sells his products in interstate commerce; and from the

use in any way of the words "Knitting Mills," or of either of the said words, alone or in connection or conjunction with any other word or words so as to import or imply that the said Max Beck makes or manufactures the products sold by him or that he actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured, when such is not the fact. (Sept. 3, 1937.)

2050. **Misleading Nondisclosure—Hats and Caps.**—Garbo Hat Co., a corporation, engaged in the sale and distribution, under the trade name "Radio Hat Company," among others, of headgear or novelty 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.

Garbo Hat Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from selling or offering for sale hats or caps made or manufactured from second-hand, old, worn, used or discarded products; unless and until there is stamped upon, affixed or attached to said products in a conspicuous place so as to be readily and easily seen, a word or words clearly indicating that said hats and caps are not made from or manufactured from new and unused products, but are made or manufactured from second-hand, old, worn, used, and discarded products. (Sept. 15, 1937.)

2051. **False and Misleading Advertising—Burial Vaults.**—Wilbert W. Haase Co., 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 at Forest Park, in the State of Illinois. It is the owner of patents relating to the construction of a certain kind or kinds of burial vaults and licenses others to construct vaults made or manufactured under said patents.

American Vault Works, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, having its principal place of business at the same local address at Forest Park, Ill., as aforesaid Wilbert W. Haase Co., Inc., Wilbert W. Haase is the president of and a large stockholder in each of the said corporations. American Vault Works, Inc., is now and for more than one year last past has been engaged in the business of manufacturing burial vaults and of all of the forms and materials, excepting sand, gravel and cement, used in the making of burial vaults under the aforesaid patents and which products have been sold and distributed by it or by the said Wilbert W. Haase Co., Inc., to and among the various vault manufacturers located in different states of the United States who have been licensed by the said Wilbert W. Haase Co., Inc., to operate under its patents.

In the course and conduct of business, Wilbert W. Haase Co., Inc., and American Vault Works, Inc., at all times herein referred to in competition with other corporations, individuals, firms and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Wilbert W. Haase Co., Inc., and American Vault Works, Inc., in soliciting the sale of and selling their burial vaults in commerce as defined by the Act, agreed to cease and desist from using and from licensing others to use the word "Asphalt" as a trade name, in advertising matter, or otherwise, to describe said vaults which are not composed of asphalt in their entirety, and from the use of the word "Asphalt" in any way so as to import or imply that said vaults are composed wholly of asphalt, when such is not the fact; provided that if said vaults are composed in substantial part of asphalt, and the word "Asphalt" is used to describe such asphalt content, then in that case, the word "Asphalt" shall be immediately accompanied by some other word or words so as to indicate clearly that said vaults are not composed wholly of asphalt but are composed in part of material other than asphalt. The said corporation also agreed, and each of them agreed, to cease and desist from stating or representing or causing others to state or represent that said vaults are everlasting or eternal, that is to say, that they will give perpetual enduring protection to bodies encased therein, when in fact such quality of lasting durability has not been and cannot be proved. (Sept. 14, 1937.)

2052. **False and Misleading Advertising—Radios.**—Western Auto Supply Co., a corporation, owning and operating a large number of retail stores throughout the United States, including several such stores within the District of Columbia, engaged in selling various automobile and electrical accessories and appliances, among them radio receiving sets, 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.

For domestic radio transmission, the so-called "long-wave" or broadcast band is used, while foreign transmission is based almost entirely on the use of the so-called short-wave bands. The object to be achieved in an "all-wave" receiving set is to make it possible for the operator to receive through a single instrument either the domestic or broadcast bands, or the foreign short-wave bands, at his pleasure. In the present state of the art, the reception of foreign short-wave bands is difficult and uncertain. Operators in certain localities obtain foreign stations at certain times of the year and during certain parts of the day, without difficulty and in satisfactory

volume; while in other localities, such stations are sometimes obtained and sometimes not, for no apparent reason. The "tuning in" or "logging" of a short-wave foreign station is usually slow and difficult. The loud-speaker volume varies from nothing to occasional satisfactory reception, and much attempted short-wave reception is rendered more difficult by noise interferences or "static." These conditions are known to experts, but not to the purchasing public, who are not aware that there are no receiving instruments which will give easily tuned, continuous and satisfactory reception of short waves from foreign countries under all conditions.

Western Auto Supply Co., in soliciting the sale and selling its radio receiving sets in commerce as defined by the Act, agreed to cease and desist from the use of the words "World-Wide" or "All-Wave" either alone or in connection or conjunction with the words "Not Just Foreign" or with any other word or words, to describe radio receiving sets which are not capable of reception over the entire meter range covering all broadcasts and commercial transactions; stating and representing in substance and effect that by the use of its radio receiving sets, the owners thereof can have world-wide, continuous reception of short-wave transmissions, with loud-speaker volume, as dependably and as easily tuned in or "logged" as with long-wave or broadcast transmissions; stating, representing or presenting the advantages of its sets in such way as to cover up or conceal the difficulties and deficiencies of the same, inherent in the present state of the art, but unknown to the purchasing public. (Sept. 21, 1937.)

2053. False and Misleading Brands or Labels and Advertising—Men's Hosiery.—Chipman-Lacrosse Hosiery Mills Co., Inc., engaged in the business of manufacturing men's hosiery and in the sale 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.

Chipman-Lacrosse Hosiery Mills Co., Inc., in soliciting the sale of and selling its hosiery in interstate commerce, agreed to cease and desist from the use of the word "silk" either alone or in connection or conjunction with the word "pure" or with any other word or words or in any way as descriptive of the surface of said hosiery so as to import or imply that the surface of said hosiery is composed of silk, when such is not the fact; provided that if the surface of said hosiery is composed in substantial part of silk, and the word "silk" is used to describe the silk content of the surface of said hosiery, 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 the surface of said hosiery is not composed wholly of silk, but is composed in part of a material or materials other than silk; provided further, that if the hosiery or the surface thereof is composed of two or more fabrics or materials, each in substantial quantity, and the name of each of the materials is used to describe it, then in that case the names of the materials shall be printed in equally conspicuous type and arranged in the following manner, to-wit: The prevailing material shall be named first and followed by the name of the other material or materials in the order of their predominance. (Sept. 22, 1937.)

2054. False and Misleading Brands or Labels and Advertising—Hosiery.—Standard Hosiery Mills, Inc., a corporation, engaged in the business of manufacturing hosiery and in the sale and distribution thereof in interstate commerce in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Standard Hosiery Mills, Inc., in soliciting the sale of and selling its hosiery in interstate commerce, agreed to cease and desist from the use of the word "silk" either alone or in connection or conjunction with the words "Pure Thread" or with any other word or words or in any way as descriptive of said hosiery so as to import or imply that said hosiery is composed of silk, the product of the cocoon of the silk worm, when such is not the fact; provided that if said hosiery is composed in substantial part of 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 hosiery is not composed wholly of silk but is composed in part of a material or materials other than silk; provided further, that if said hosiery is composed of two or more fabrics or materials, each in substantial quantity, and the name of each of the materials is used to describe it, then in that case, the names of the materials shall be printed in equally conspicuous type and arranged in the following manner, to wit: The prevailing material shall be named first and followed by the name of the other material or materials in the order of their predominance. (Sept. 22, 1937.)

2055. False and Misleading Brands or Labels and Advertising—Men's Hosiery.—Walton Hosiery Mills, Inc., a corporation, engaged in the business of manufacturing men's hosiery and in the sale and distribution thereof in interstate commerce in competition with other

corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Walton Hosiery Mills, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Silk Reinforced With Englo" either alone or in connection or conjunction with any other word or words as a mark, stamp or brand for its hosiery so as to import or imply that said hosiery is composed of a predominating quantity of silk reinforced with a smaller quantity of another material, when such is not the fact. The said corporation also agreed to cease and desist from the use of the word "Silk" either alone or in connection or conjunction with the word "Englo" or with any other word or words or in any way as descriptive of its hosiery or the surface thereof so as to import or imply that the said hosiery or the surface thereof is composed of silk, the product of the cocoon of the silk worm, when such is not the fact; provided that if said hosiery, or the surface thereof, is composed in substantial part of silk, and the word "Silk" is used as descriptive of 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 the hosiery or surface described is not composed wholly of silk but is composed of a material or materials other than silk. (Sept. 23, 1937.)

2056. **False and Misleading Advertising—Washing Machines, Radios, Etc.**—Max D. Montague and Nathan N. Wallack, co-partners, engaged as retailers in the sale and distribution of washing machines, ironing machines, and vacuum cleaners as well as radios in commerce as defined by the Act, 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.

Max D. Montague and Nathan N. Wallack, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use, in their advertising matter or otherwise, of the word "free" which refers to articles represented to be given without cost to the purchasers of other merchandise, when in fact the cost of said articles is included in the selling price of the merchandise. (Sept. 23, 1937.)

2057. **False and Misleading Brands or Labels—Hosiery.**—Garant Hosiery Mills, a corporation, engaged in the business of knitting hosiery and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease

and desist from the alleged unfair methods of competition as set forth therein.

Garant Hosiery Mills, in soliciting the sale of and selling its hosiery in interstate commerce, agreed to cease and desist from the use of the words "English Rib" either alone or in connection or conjunction with any other word or words or in any way as a mark, stamp or brand for said hosiery so as to import or imply that said hosiery is made in England and in accordance with the process or method of making, in a single operation, finished hosiery capable of being accomplished only by English style machines; provided that, if said hosiery is made elsewhere than in England, but on English style machines, and the words "English Rib" are used as descriptive thereof, then in that case said words shall be accompanied by some other word or words printed in type equally as conspicuous as that in which the words "English Rib" are printed so as to indicate clearly the country in which said hosiery is made. (Sept. 24, 1937.)

2058. False and Misleading Brands or Labels and Advertising—Fur Products.—G. Fox & Co., Inc., a corporation, engaged in the sale of furs, fur goods and fur pieces in interstate commerce. A. & J. Engel, Inc., a corporation, engaged in the business of shipping furs and fur goods from its place of business in the State of New York to the place of business of the aforesaid G. Fox & Co., Inc., at Hartford, Conn., and from which place of business at Hartford, Conn., the two said corporations have cooperated each with the other in the sale of said fur products, shipped from New York to Connecticut, in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products. G. Fox & Co. and A. & J. Engel, Inc. entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

G. Fox & Co., Inc., in soliciting the sale of and selling its fur products in interstate commerce, agreed to cease and desist from representing, designating or describing said products in any way other than by the use of the correct name of the fur of which said products are composed as the last word of the description and which shall be printed in type that is not less conspicuous than that in which accompanying descriptive words are printed; 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 and printed as aforesaid, shall be immediately preceded by the word "dyed" or "blended," compounded with the name of the simulated fur, as thus: Mink-Dyed Marmot Seal-Dyed Rabbit. G. Fox & Co., Inc. and A. & J. Engel, Inc., in soliciting the sale of and selling fur products in

interstate commerce, agreed to cease and desist from representing, designating or describing said products in any way other than by the use of the correct name of the fur of which said products are composed, as the last word of the description and which shall be printed in type that is not less conspicuous than that in which the accompanying descriptive words are printed; 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 and printed as aforesaid, shall be immediately preceded by the word "dyed" or "blended" compounded with the name of the simulated fur, as thus: Hudson Seal-Dyed Muskrat, Seal Dyed Rabbit. (Sept. 22, 1937.)

2059. **False and Misleading Brands or Labels—Mattresses.**—Reliable Mattress Co., a corporation, engaged in the business of manufacturing mattresses and upholstered couches and in the sale and distribution of said products in 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.

Reliable Mattress Co., in soliciting the sale of and selling its mattresses in interstate commerce, agreed to cease and desist from selling or supplying its customers for sale to others, mattresses to which are affixed or which bear any false, fictitious or misleading price in excess of the price at which said mattresses are intended to be sold and usually are sold at retail. (Sept. 27, 1937.)

2060. **False and Misleading Advertising—Grinding Machines, Tool Sets, Etc.**—Marvin Friedland, an individual, trading as Philadelphia Machinery Co., engaged in the sale and distribution of various types of machines, including electric grinding machines and tool sets, in 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.

Marvin Friedland, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from stating or representing by means of advertising matter or otherwise

(a) that any of his products are given free to the purchaser of other products when the price of the former is included in the price of the latter, or the said product represented as being given free is included, not as a gratuity but for and in consideration of the purchase of some other product;

(b) that any of his products have a greater value than prices at which such or similar products are usually sold or were intended to be sold. (Sept. 27, 1937.)

2061. **False and Misleading Brands or Labels and Advertising—Pants.**—Max Leavitt and the Estate of Morris Bell, copartners, trading under the firm name and style of Cape Ann Manufacturing Co., engaged in the business of manufacturing pants, and in the sale and distribution thereof 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.

Max Leavitt and the Estate of Morris Bell, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the words "Government Khaki" as descriptive of their said products, and from the use of the word "Government" in connection or conjunction with the word "Khaki", or 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 made by or for the United States Government or in accordance with governmental specifications or requirements, when such is not the fact. The said copartners also agreed to cease and desist from the use of the word "Waterproof" either alone or in connection or conjunction with the word "Guaranteed," or with any other word or words as descriptive of products which are not in fact impervious to water, and from the use of the word "Waterproof" in any way so as to import or imply that the products to which said word or words refer are proof against water or that water will not pass therethrough, when such is not the fact. (Sept. 29, 1937.)

2062. **False and Misleading Brands or Labels and Advertising—Dry Goods.**—Monness & Shapiro, a corporation, engaged as a distributor of dry goods and in the sale of its 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.

Monness & Shapiro, in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the words "Government Khaki" as descriptive of its said products, and from the use of the word "Government" in connection or conjunction with the word "Khaki", or 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 made by or for the United States Government or in accordance with governmental specifications or requirements, when such is not the fact. The said Monness & Shapiro also agreed to cease and desist from the use of the word "Waterproof" either alone or in connection or conjunction with the word "Guaranteed", or with

any other word or words as descriptive of products which are in fact impervious to water, and from the use of the word "waterproof" in any way so as to import or imply that the products to which said word or words refer are proof against water or that water will not pass therethrough, when such is not the fact. (Sept. 29, 1937.)

2063. **False and Misleading Advertising—Clothing.**—United Clothing Co., Inc., a corporation, engaged in the business of operating a retail clothing store and in the sale and distribution therefrom of merchandise 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.

United Clothing Co., Inc., in soliciting the sale of and selling its merchandise in commerce as defined by the Act, agreed to cease and desist from the use on its cards or printed matter distributed in commerce as defined by the Act, of the word "free" either alone or in connection with any other word or words as descriptive of merchandise represented to be given with the purchase of other merchandise, when in fact the product is not given as a gratuity but only for and in consideration of the purchase of some other product. The said corporation also agreed to cease and desist from the use of the word "free" or of any other word or words of similar meaning so as to import or imply that the products to which said word or words refer are given free or as a gratuity to the purchaser or other merchandise, when such is not the fact. (Sept. 29, 1937.)

2064. **False and Misleading Advertising—Piston Rings.**—Perfect Circle Co., a corporation, engaged in the business of manufacturing piston rings for automobiles 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.

Perfect Circle Co., in offering for sale and selling its "X-90" piston ring in interstate commerce, agreed to cease and desist from the use in its advertising matter or otherwise of statements or representations, the effect of which is to import or imply or which tends to convey the belief that by equipping old, worn motors with said piston rings, new-car power, speed and acceleration will in all cases be instantly restored thereto or that all improvements and developments in the piston rings since 1907 have come out of the Perfect Circle Laboratories, or that the said "X-90" piston ring will operate at maximum efficiency at all speeds, when such statements and representations are not warranted by the facts and/or are not supported by the weight of scientific evidence. (Sept. 29, 1937.)

2065. **False and Misleading Trade or Corporate Name—Wines.**—Metropolitan Vineyards Co., engaged in the business of manufacturing wines from grapes 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.

Metropolitan Vineyards Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Vineyards" as part of the corporate or trade name under which it sells its grape wines in interstate commerce, and from the use of the word "Vineyards" in any way so as to import or imply that it actually owns and operates or directly and absolutely controls the vineyard or vineyards in which are grown the grapes used in the manufacture of the wines sold by it in interstate commerce under its corporate or trade name containing the word "Vineyards," when such is not the fact. (Oct. 1, 1937.)

2066. **Using Lottery Scheme in Merchandising—Beverages.**—John E. Gramling, an individual trading as "NuGrape Bottling Company," engaged in the bottling of soft drinks, including a carbonated beverage designated "Wynola," and in the sale and distribution thereof in interstate commerce, in connection 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 E. Gramling, in soliciting the sale of and selling his 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 his said 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. (Oct. 1, 1937.)

2067. **False and Misleading Advertising—Carbon Paper.**—Kee Lox Manufacturing Co., a corporation, engaged in the business of manufacturing typewriter supplies, including carbon paper, 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.

Kee Lox Manufacturing Co., in soliciting the sale of and selling its carbon paper in interstate commerce, agreed to cease and desist from the use in its advertising matter or otherwise of the statement "The Only Non-Grease Carbon Paper" or of any other statement of

similar meaning so as to import or imply that there are no other non-grease carbon papers on the market and/or that competitive products on the market are made with the use of grease. (Oct. 1, 1937.)

2068. **False and Misleading Brands or Labels—Fountain Pens, Etc.**—Edison Pen Co., Inc., a corporation, engaged in the business of manufacturing fountain pens and pen and pencil sets and in the sale and distribution thereof under an adopted trade name, "Southern Pen 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.

Edison Pen Co., Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of or from furnishing resellers of its products for their use with labels, bands or other printed matter bearing false or fictitious prices in excess of the prices at which said products are sold or intended to be sold to consumers in the usual course of trade or which prices misleadingly exaggerate the true value of said products; with so-called guarantee certificates which represent that products offered for sale and sold by the said Edison Pen Co., Inc., will be repaired without charge, when such is not the fact. (Oct. 4, 1937.)

2069. **Using Lottery Scheme in Merchandising—Silverware, Watches, Etc.**—Louis Eugene Lensky, an individual, trading as "Lelens Silver Company," engaged for some time past in the sale and distribution of merchandise consisting of silverware, chinaware, pottery, watches and novelties 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.

Louis Eugene Lensky, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from the use in interstate commerce of any scheme, plan or method of sale or of promoting the sale of his products which involves the use of any gift enterprise, lottery or any scheme of chance whereby any article is given as a premium in consideration of the purchase of any other article, or whereby the price to be paid for any article is determined by lot or chance. (Oct. 4, 1937.)

2070. **False and Misleading Brands or Labels and Advertising—Smoking Pipes.**—B. B. B. Co., Ltd., a corporation, engaged in the business of manufacturing smoking pipes 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.

B. B. B. Co., Ltd., in soliciting the sale of and selling its pipes in interstate commerce, agreed to cease and desist from the use of the words "Best British Brand" as descriptive of pipes not made or manufactured in England; and from the use of the words "Best British Brand" or of any initials that import or imply that pipes to which said words or initials refer are made or manufactured in England, when such is not the fact. The said corporation also agreed to cease and desist from the use of the Slogan "A Quality Pipe Since 1847" in connection with the offering for sale or selling its pipes in interstate commerce so as to import or imply that the pipes so represented are the same as those which are now and have been made or manufactured in England since 1847. The said corporation further agreed to cease and desist from the use of the statement or representation "Established 1847" on its catalogs or in any other way so as to import or imply that the B. B. B. Co., Ltd., was in fact established in 1847. (Oct. 4, 1937.)

2071. False and Misleading Advertising—Linen.—James McCreery & Co., a corporation, engaged in the business of operating a department store located in the City of New York, State of New York, and in the sale and distribution 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.

James McCreery & Co., 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 word "linen" either independently or in connection or conjunction with the word "acetate," or 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 linen, the product of the hemp or flax plant, when such is not the fact. (Oct. 1, 1937.)

2072. False and Misleading Advertising—Hardware, Etc.—Weiss Trading Corp., engaged in the sale and distribution in interstate commerce of a line of hardware, including materials for the construction of showcases such as showcase cement, 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.

Weiss Trading Corp., 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 kind or character of pictorial

or other representations so as to import or imply that orders received by the said corporation for products so pictorially or otherwise represented in its advertising will actually be filled with such products, when such are not the facts. The said corporation also agreed to cease and desist from representing its products in any way in its advertising matter or otherwise which tends or may tend to convey an erroneous belief by purchasers that said corporation will and does fill orders only with the advertised products for which the orders have been received. (Oct. 11, 1937.)

2073. **False and Misleading Advertising—Pianos.**—Bruce Co., a corporation, engaged in selling and distributing musical instruments, including pianos, 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.

Bruce Co., in soliciting the sale of and selling its pianos in interstate commerce, agreed to cease and desist from the use in its advertising or printed matter or in any other way, of statements or representations to the effect or which may tend to import or imply that said pianos are instruments which, having been previously sold on a deferred payment or other plan have been repossessed by the said Bruce Co. because of the inability of the purchasers to finish or meet the payments thereon or for other reason, with the result that said instruments are being sacrificed for balances due, when such is not the fact. The said Bruce Co. also agreed in soliciting the sale of and selling its pianos, to cease and desist from the use of any and all false and misleading statements or representations with respect to the amount of the retail price for which said instruments originally sold. (Oct. 11, 1937.)

2074. **False and Misleading Advertising—Wearing Apparel.**—Jack Schwartz, Inc., a corporation, engaged in the business of operating a retail clothing store in the District of Columbia and in the sale and distribution therefrom of wearing apparel 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.

Jack Schwartz, Inc., in soliciting the sale of and selling its merchandise in commerce as defined by the Act, agreed to cease and desist from the use in its advertising matter or in any other way of the word "free" either alone or in connection with any other word or words as descriptive of merchandise represented to be given with the purchase of other merchandise, when in fact the price of the so-called

"free" merchandise is not given as a gratuity but only for and in consideration of the purchase of some other product. Said corporation also agreed to cease and desist from the use of the word "free" or of any other word or words of similar meaning so as to import or imply that the products to which said word or words refer are given free or as a gratuity to the purchaser of other merchandise, when such is not the fact. (Oct. 11, 1937.)

2075. **False and Misleading Advertising—Burial Vaults.**—American Vault Co., Inc., a corporation, engaged in the business of manufacturing concrete burial vaults 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.

American Vault Co., Inc., in offering for sale and selling its concrete burial vaults in interstate commerce, agreed to cease and desist from the use in its printed or advertising matter or in any other way of the word "lasting" or the words "Centuries of Protection" or of any other word or words of similar meaning so as to import or imply that the vaults to which said word or words refer will insure protection forever to the remains encased therein. The said corporation also agreed to cease and desist from the use in its advertising matter or otherwise of any and all statements or representations to the effect that its vaults are and will remain airtight and waterproof for all time, when such is not the fact. Said corporation also agreed to cease and desist from the use of any other similar statements or representations with respect to the durability or other qualities of its vaults which are not warranted by the facts or which have the capacity or tendency to confuse, mislead or deceive purchasers with respect thereto. (Oct. 12, 1937.)

2076. **False and Misleading Advertising—Dresses.**—II. Milgrim & Brothers, Inc., a corporation, engaged in the business of selling and distributing women's dresses 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.

II. Milgrim & Brothers, Inc., in offering for sale and selling its dresses in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter or otherwise of the word "crepe" alone as descriptive of those of said dresses which are not composed of silk, the product of the cocoon of the silk worm; and from the use of the word "crepe" either independently or in connection or conjunction with any other word or words so as to

import or imply that the dresses to which said word or words refer are composed of silk, when such is not the fact. (Oct. 12, 1937.)

2077. False and Misleading Advertising—Men's Hosiery.—Conover Knitting Co., a corporation, engaged in the business of manufacturing men's hosiery, 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 therein.

Conover Knitting Co., in soliciting the sale of and selling its hosiery in interstate commerce, agreed to cease and desist from the use in its advertisements or advertising matter of whatever kind or character of the word "silk" as descriptive of its hosiery which is 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 said hosiery is composed of silk, when such is not the fact; provided, if said hosiery is composed of silk and of one or more other materials, each in substantial quantity, and the name of each of the materials is used to describe it, then in that case, the names of the materials shall be arranged in the following manner, to wit: the prevailing material shall be named first and followed by the name or names of the other materials in the order of their predominance, and all of said names shall be printed in equally conspicuous type. (Oct. 15, 1937.)

2078. False and Misleading Trade Name, Brand or Label and Advertising—Rope Product.—Frank W. Winne & Son, Inc., a corporation, engaged in the sale and distribution of cordage, twine and yarn 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.

Frank W. Winne & Son, Inc., in soliciting the sale of and selling its dyed rope product in interstate commerce, agreed to cease and desist from the use in its advertisements and advertising matter of the words "Golden Hemp" as a trade name, brand or designation for said product which is not in fact made from Manila fibers but from the fibers of the sisal plant; and from the use of the said words "Golden Hemp" in any way to represent or describe said dyed rope product, the effect of which is to mislead or which may tend to mislead, confuse or deceive purchasers into the belief that said product is a Manila fiber rope. The said Frank W. Winne & Son, Inc., also agreed to cease and desist from the use in its advertising matter of whatever kind or character, of the word "manufacturers" or the word "mills" in any way so as to import or imply that the said Frank W.

Winne & Son, Inc., makes or manufactures the product sold by it or that it actually owns and operates or directly and absolutely controls the plant or factory in which said product is made or manufactured, when such is not the fact. (Oct. 18, 1937.)

2079. False and Misleading Advertising—Burial Vaults.—Harold E. Coburn, and individual, engaged in the business of manufacturing concrete burial vaults 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.

Harold E. Coburn, in soliciting the sale of and selling his concrete burial vaults in interstate commerce, agreed to cease and desist from the use in his advertising or printed matter or in any other way of statements or representations to the effect that said vaults will afford, under all conditions and circumstances of burial underground, constant, lasting or everlasting, enduring protection to the casket and body encased therein from all possible outside harm, or that they will withstand the ravages of underground elements for all time, when such are not the facts. (Oct. 18, 1937.)

2080. False and Misleading Brands or Labels—Candy, Novelties, Etc.—Delight Sweets, Inc., a corporation, engaged in the sale and distribution of candy and novelties, including perfume and powder combinations as well as wallet and key sets in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Delight Sweets, Inc., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use on the containers of its products or otherwise of any false, fictitious or misleading price which is in excess of the price at which said products are sold and intended to be sold in the usual course of retail trade, and from the use of any purported price marking, the effect of which is to convey to purchasers an erroneous belief with respect to the quality or value of said products; the use on the brands or labels affixed to its products of the word "Paris" or the word "Shanghai" so as to import or imply that said products are made, respectively, at Paris, France or at Shanghai, China and imported into the United States of America, or that the said Delight Sweets, Inc., has a place of business or office at said places or either of them, when such is not the fact; the use of the word "Manufacturers" or the words "Manufactured by" or of any other word or words of similar meaning so as to import or imply that the said Delight Sweets,

Inc. makes or manufactures its products or that it actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured, when such is not the fact. (Oct. 18, 1937.)

2081. **Deceptive Nondisclosure—Baseball Caps.**—Feltex Products Corp., a corporation, engaged in the business of manufacturing baseball caps and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Feltex Products Corp., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from selling or offering for sale in interstate commerce caps made or manufactured from or which contain second-hand, old, worn or used felts, unless and until there is stamped upon or securely affixed or attached thereto, in a conspicuous place so as to be easily or readily removed and which clearly indicates thereon by suitable words or phraseology that said caps are made or manufactured from or contain second-hand, old, worn or used felts or other materials and are not made or manufactured from or do not contain new, unused felts. (Oct. 18, 1937.)

2082. **False and Misleading Brands or Labels and Advertising—Soap Products.**—Joseph A. Howard, an individual, trading as J. A. Howard Distributing Co., engaged in the sale and distribution in interstate commerce of soaps, in competition with other individuals, firms, corporations, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Joseph A. Howard, in soliciting the sale of and selling his soap products in interstate commerce, agreed to cease and desist from the use on cartons containing his soap products or on the individual bars of said products or in advertising matter of whatever kind or character pertaining to said products of exaggerated or misleading statements or representations concerning the value of or the price at which said products are sold or intended to be sold in the usual course of trade. (Oct. 18, 1937.)

2083. **Disparaging Competitors' Products—Earthenware Utensils.**—Cecil J. Wilson, an individual, trading as Neu-Deel Distributors, engaged in purchasing earthenware utensils from the manufacturer thereof, 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.

Cecil J. Wilson, in soliciting the sale of and selling his products in interstate commerce, agreed to cease and desist from stating or representing through salesmen or agents or in any other manner that the use of aluminum cooking utensils will cause or further the growth of cancer, ulcers of the stomach, or other bodily ills, or that food cooked in such utensils is poisonous or deleterious to the health when in fact there is no scientific basis for such statements or representations. (Oct. 18, 1937.)

2084. **Deceptive Nondisclosure—Caps and Hats.**—Lewis Tanenbaum, an individual, trading as Sha-Po Manufacturing Co., engaged in the business of manufacturing caps and hats and in the sale and distribution thereof in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Lewis Tanenbaum agreed to cease and desist from offering for sale or selling in interstate commerce hats or caps made or manufactured from or which contain second-hand, old, worn or used felts, unless and until there is stamped upon or securely affixed or attached to said products, in a conspicuous place so as to be easily and readily seen, a brand or label which cannot be easily or readily removed and which clearly indicates thereon by suitable words or phraseology that said caps and hats are not made or manufactured from or do not contain new, unused felts, but are made or manufactured from or contain second-hand old, worn or used felts or other materials. (Oct. 18, 1937.)

2085. **False and Misleading Brands or Labels and Advertising—Ladies' Sportwear.**—Charles Herscovitz and Sidney M. Herscovitz, co-partners trading as C. Herscovitz & Son, Inc., engaged in the sale and distribution of ladies' sportwear 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.

Charles Herscovitz and Sidney M. Herscovitz, in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the phrase "Genuine 100% Camel's Hair" or of any other phrase or representation of similar import as descriptive of garments not composed of camel's hair; and from the use of the words "Camel's Hair" or the word "Camel" or of the pictorial representation of a camel either independently or in connection or conjunction with any other word or words on their labels

or in advertising of whatever kind or character so as to import or imply that said garments are composed wholly of camels hair, when such is not the fact; provided that if said garments are composed in substantial part of camels hair, and the words "Camel's Hair" are used to describe or feature such camel's hair content, then in that case, the words "Camel's Hair" shall be immediately 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 garments are not composed wholly of camels hair but are composed in part of a material or materials other than camels hair. (Oct. 20, 1937.)

2086. False and Misleading Brands or Labels and Advertising—Hosiery.—Hickory Hosiery Mills, Inc., a corporation, engaged in the business of manufacturing hosiery for men and children 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.

Hickory Hosiery Mills, Inc., is offering for sale and selling its hosiery in interstate commerce, agreed to cease and desist from the use on its transfers or in its advertising matter or otherwise of the words "Pure Thread Silk Reinforced With Art Silk" as descriptive of its hosiery 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 with the words "pure thread" or the word "Art" or with any other word or words or in any way so as to import or imply that the hosiery to which said word or words refer is composed of silk, when such is not the fact; provided that, if the hosiery is composed of silk, and of one or more other materials, each being in substantial quantity, and the name of each of the materials is used to describe it, then in that case, the names of the materials shall be arranged in the following manner, to-wit: The predominating material shall be named first and followed by the name of the other material or materials in the order of their predominance, and each of said names shall be printed in equally conspicuous type. (Oct. 20, 1937.)

2087. False and Misleading Advertising—Wall Paint.—United States Kalsomine Co., a corporation, engaged in the business of manufacturing a number of paint items, including "Fenolite" wall paint, and in the sale and distribution of said product 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 States Kalsomine Co., in soliciting the sale of and selling its "Fenolite" product in interstate commerce, agreed to cease and desist from stating or representing in its advertisements or advertising matter or in any other way that said product is a germicide or has germicidal qualities, and from the use of the word "germicidal" either alone or in connection or conjunction with any other word or words so as to import or imply that said product will kill germs, when such is not the fact. (Oct. 29, 1937.)

2088. False and Misleading Brands or Labels—Maple Product.—Frank Tea & Spice Co., a corporation, trading under the name "Cino Chemical Company", engaged under said trade name in the sale and distribution of an alleged "maple" product 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.

Frank Tea & Spice Co., in offering for sale and selling its product in interstate commerce, agreed to cease and desist from the use on its labels or otherwise of the words "Pure Maple Concentrate" or the words "An 100% maple Product" either independently or in connection or conjunction each with the other as descriptive of said product which is not composed wholly of maple syrup or sugar; and from the use of the word "Maple" either independently or in connection or conjunction with any other word or words or in any way so as to import or imply that the product to which said word or words refer is composed wholly of maple syrup or sugar, when such is not the fact; provided that, if said product is composed in substantial part of maple syrup or sugar, and the word "Maple" is used to describe such maple syrup or sugar content, then in that case the word "Maple" shall be immediately accompanied by some other word or words printed in type equally as conspicuous as that in which the word "Maple" is printed so as to indicate clearly that said product is not composed wholly of maple but is composed in part of a substance other than maple. (Oct. 29, 1937.)

2089. False and Misleading Advertising—Radios.—Sun Radio Service & Supply Corp., engaged in the retail sale of radios and supplies 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.

Sun Radio Service & Supply Corp., in soliciting the sale of and selling its radios in commerce as defined by the Act, agreed to cease and desist from the use in its advertising matter or otherwise of the phrase "5-Tube Performance" so as to import or imply that the

combined effect of the tubes contained therein is such as to perform the work of 5 single-duty tubes, when such is not the fact; provided that, if a radio has and is described as having the performance of a designated number of tubes, but which number is other than the number of tubes actually contained in the radio, then in that case, the actual number of contained tubes shall be clearly set forth and immediately precede with equal conspicuousness the designated number of tubes whose performance is properly and truthfully labeled or represented. (Oct. 29, 1937.)

2090. False and Misleading Brands or Labels and Advertising—Bath Oil Preparation.—The Lander Co., Inc., a corporation, engaged in the business of selling toilet articles, including a bath oil preparation designated "Alpine," and in the distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The Lander Co., Inc., in soliciting the sale of and selling its product in interstate commerce, agreed to cease and desist from the use of the word "Swiss" on the labels affixed to said product or in advertising matter relating thereto so as to import or imply that said product is a Swiss product or that the pine essence from which said product is manufactured or compounded is a product of Switzerland or of pine needles grown in and imported from Switzerland, when such is not the fact. (Oct. 29, 1937.)

2091. False and Misleading Advertising—Ladies' Hosiery.—Golden Belt Manufacturing Co., Inc., a corporation, engaged in the business of manufacturing ladies' hosiery and in the sale and distribution thereof in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Golden Belt Manufacturing Co., Inc., in soliciting the sale of its hosiery, in interstate commerce, agreed to cease and desist from the use in advertising matter or otherwise of the words "Rain and Spot Proof" either alone or in connection or conjunction with any other word or words as descriptive of such of said hosiery as is not in fact proof against spots or splashes resulting from the wetting of said hosiery by rain water; and from the use of said words or of any other words of similar meaning so as to import or imply that the hosiery to which said words refer has been chemically or otherwise treated so as to make the same proof against or resistant to spots or splashes caused by or resulting from rain water, when such is not the fact. (Nov. 1, 1937.)

2092. **False and Misleading Brands or Labels and Advertising—Handkerchiefs.**—Samuel McCrudden & Co., Inc., a corporation engaged in the sale and distribution of handkerchiefs 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.

Samuel McCrudden & Co., Inc., in soliciting the sale of and selling its handkerchiefs in interstate commerce, agreed to cease and desist from the use in its advertising or on its labels of the word "linen" or the words "Irish linen" as descriptive of said products which are not composed of linen and from the use of the word "linen" either independently or in connection 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 linen, a flax or hemp product, when such is not the fact; from the use of the words "Irish Linen Finish" as descriptive of handkerchiefs so as to import or imply that said handkerchiefs are made or composed of linen or are finished with linen when such is not the fact; from the word "Irish" in any way which may tend to convey the belief by purchasers that the products to which said word refers are of Irish origin or are made or manufactured in Ireland, when such is not the fact. (Nov. 2, 1937.)

2093. **False and Misleading Brands or Labels and Advertising—Remnants and Patchwork Pieces.**—Anthony Salzman, an individual trading as Monticello Mail Order House, engaged in the sale and distribution of remnants and patchwork pieces 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.

Anthony Salzman, in soliciting the sale of and selling his merchandise in interstate commerce, agreed to cease and desist from the use in his advertisements and advertising matter of the word "free" either independently or in connection or conjunction with any other word or words or in any way as descriptive of merchandise represented to be given free, when in fact the alleged "free" gift is not given free or as a gratuity but can be obtained only for and in consideration of the purchase of merchandise with which the alleged "free" gift is included; of the statement "For 10 Days Only" or of any other statement or representation of similar meaning so as to import or imply that the alleged "free" offer of a sewing outfit is available to purchasers only for such limited period of time, when in fact such offer is unlimited as to the time of acceptance thereof; of

statements or representations to the effect that the merchandise offered for sale and sold by the said Anthony Salzman is "cut by machine from our regular stock" or that the said merchandise is material composed of 80 x 80 threads to the square inch, when such is not the fact; of the word "silk" either alone or in connection or conjunction with the word "pure" or with any other word or words to allegedly describe products not composed of silk, the product of the cocoon of the silk worm, and from the use of the word "silk" in any way so as to import or imply that the products to which said word refers are composed of silk, when such is not the fact. (Nov. 4, 1937.)

2094. False and Misleading Brands or Labels and Advertising—Men's Dress Accessories.—Hickok Manufacturing Co., Inc., a corporation engaged in the business of manufacturing men's dress accessories, 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.

Hickok Manufacturing Co., 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, on its labels or otherwise of the word "crystal" either alone or in connection or conjunction with any other word or words or in any way so as to import or imply that said products are natural rock crystal products, when such is not the fact. (Nov. 4, 1937.)

2095. Using Lottery Scheme in Merchandising—Carbonated Beverages.—Robert P. Milburn, an individual trading as Nehi Bottling Co., engaged in the business of bottling carbonated beverages including one designated "RC Cola" or "Royal Crown Cola" and in the sale and distribution thereof in interstate commerce, in competition with other individuals, firms, corporations, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Robert P. Milburn, in soliciting the sale of and selling his 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 said products which involves the use of any gift enterprise, lottery, or any scheme of chance whereby cash or any article is given as a prize or premium for or in consideration of the purchase of any other article. (Nov. 4, 1937.)

2096. False and Misleading Brands or Labels and Advertising—Kitchen Knives and Utensils.—Edward Katzinger Co., a corporation, located at Chicago, Ill., owns and controls Geneva Forge, Inc., a corpora-

tion located at Geneva, N. Y., but whose principal place of business is at the same address in Chicago, Ill., as that of the said Edward Katzinger Co. The said corporations engaged in the business of manufacturing kitchen knives and other kitchen utensils 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.

Edward Katzinger Co. and Geneva Forge, Inc., in soliciting the sale of and selling their products in interstate commerce, agreed to cease and desist from the use of the word "crucible" either alone or in connection or conjunction with any other word or words as descriptive of said products which are not in fact made of crucible steel; and from the use of the word "crucible" in any way as a stamp or label for or in their advertising matter of whatever kind or character referring to said products so as to import or imply that the said products are made of crucible steel, when such is not the fact. (Nov. 4, 1937.)

2097. **Using Lottery Scheme in Merchandising—Frozen Stick Confections.**—Opelika Creamery, Inc., a corporation, engaged in the sale and distribution of dairy products, and of certain frozen stick confections, 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:

Opelika Creamery, Inc., in soliciting the sale of and selling its frozen stick confections 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 said products which involves the use of any gift enterprise, lottery or any scheme of chance whereby any article of merchandise is given as a prize or premium for or in consideration of the purchase of any other article. (Nov. 5, 1937.)

2098. **False and Misleading Brands or Labels and Advertising—Veneer Products.**—Old Dominion Veneer Co., a corporation, engaged in the business of manufacturing veneers 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.

Old Dominion Veneer Co., in soliciting the sale of and selling its products in interstate commerce, agreed to cease and desist from the use of the word "Walnut" either alone or in connection or conjunction with the word "Oriental" or with any other word or words as de-

scriptive of its veneer products not made of wood derived from trees of the walnut or "juglandaceae" family, and from the use of the word "Walnut" in any way so as to import or imply that the products to which said word or words refer are made of such walnut wood, when such is not the fact. (Nov 8, 1937.)

2099. **False and Misleading Advertising—Baking Powder.**—J. R. Watkins Co., a corporation, engaged in the production of food products, including a baking powder containing, among other things, an amount of dried white of egg, 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. R. Watkins Co., in connection with the sale or distribution in interstate commerce of Watkins Baking Powder, agreed to cease and desist from the use of advertisements or advertising matter and from furnishing advertisements or advertising matter to others for their use in soliciting the sale of or selling said products, and which advertising matter states or represents or tends to convey the belief that the carbon dioxide gas strength or the leavening efficiency of baking powder can be or is capable of being determined by the water-glass test; that the leavening efficiency of the Watkins Baking Powder, as compared with the leavening efficiency of any competing baking powder, is or can be properly or accurately demonstrated by such water-glass test; that doughs or batters or like mixtures containing baking powder will function in the baking as the foam mixtures function in the said water-glass test. (Nov. 22, 1937.)

2100. **False and Misleading Advertising—Rock Wool Insulation Material.**—Eagle-Picher Lead Co., a corporation, and Eagle-Picher Sales Co., a corporation, subsidiary of aforesaid Eagle-Picher Lead Co. Eagle-Picher Lead Co., engaged in the business of manufacturing, among other things, rock wool insulating material, and in the distribution thereof through its subsidiary, Eagle-Picher Sales Co., 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.

Eagle-Picher Lead Co. and Eagle-Picher Sales Co., agreed, in soliciting the sale and selling said product designated "Eagle Home Insulation" in interstate commerce, to cease and desist from the use in advertising matter, or in any other way

(a) of the words "lightest weight" as descriptive of its said insulation, when in fact there are other competitive products on the market which are as light and some which are even lighter in weight

than the said advertised product, and from the use of the words "lightest weight" in any way so as to import or imply that all competitive products are heavier or substantially heavier in weight than the said advertised product;

(b) of the words "lowest conductivity" as descriptive of said product, when in fact certain competitive products on the market have a lower rating than the said advertised product, and from the use of the words "lowest conductivity" in any way so as to import or imply that the thermal conductivity rating of the product to which said words refer, is the lowest or is substantially lower than that of competitive products. (Nov. 22, 1937.)

2101. False and Misleading Trade Name and Advertising—Household Cleaning Preparation.—Nathan R. Stern, an individual trading as Western Reserve Laboratories, engaged in the business of manufacturing a product to be used as a household cleaning agent and also by service station operators in cleaning windshields and the like, and in the sale and distribution of said product in interstate commerce, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

Nathan R. Stern, in offering for sale and selling his product in interstate commerce, agreed to cease and desist from the use of the word "Benzylne" or the word "Benzoline" as a trade name or designation for or in his advertising or printed matter relating to said product which is not a benzene product or crystallized benzene; and from the use of the said words, or either of them, in any way so as to import or imply or which tend or may tend to convey the belief by purchasers that the product to which said word or words refer is a benzene product or crystallized benzene, when such is not the fact. The said Nathan R. Stern also agreed to cease and desist from stating or representing that cleaning with the so-called "Benzylne Crystals" or "Benzoline" is the same or essentially the same as cleaning with naphtha or other dry cleaning preparation, or that said product is a proper substitute for dry cleaning or the use of naphtha. Said individual further agreed to cease and desist from the use of the words "New Chemical Discovery" as descriptive of said product which is not in fact a new chemical discovery. Said individual also agreed to cease and desist from the use of the statement that said product "Will kill moths and their larvae in upholstery" so as to import or imply that said product is sufficient and will kill moths and their larvae which might be deeply embedded in upholstery. (Nov. 26, 1937.)

2102. **False and Misleading Advertising—Bandages.**—J. W. Kellogg, an individual, trading as “Quick Bandages” and “Sealtex,” engaged in the business of manufacturing and packaging a product for use as a bandage, 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.

J. W. Kellogg, in offering for sale and selling his bandages in interstate commerce, agreed to cease and desist from the use of the word “Sterilized” as descriptive of said products which are not sterile, and from stating or representing that said products are “Sterilized” so as to import or imply that said products are sterilized, and that they continue to remain sterile and free from bacteria after they have been packaged and while contained in their original package. The said J. W. Kellogg also agreed to cease and desist from stating or representing that said bandage is of such porosity, except when stretched, as to permit enough air to penetrate therethrough to cause sores to heal faster, when such is not the fact. (Nov. 30, 1937.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS¹

01776. Vendor-Advertiser—Limb Straightener Device.—Mrs. J. G. Morris, an individual, trading as Morris Orthopedic Institute, Los Angeles, Calif., vendor-advertiser, was engaged in selling a device designated Morris Limb Straightener, 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 limb straightener unless limited to the limbs of children or young people;
- (b) That respondent's product is successfully used to improve bow-legs or knock-knees unless limited to use by children or young people;
- (c) That perfect results or marvelous results can be obtained by the use of respondent's product;
- (d) That respondent's product is as effective for men and women as it is for children or young people;
- (e) That respondent's product is one of the most successful inventions, or that no other similar product has any or one-half of the advantages or features of this product;
- (f) That respondent's product will give either immediate or permanent results unless limited to its use by children or young people;
- (g) That the bones of adults may be twisted into knots or may be straightened;
- (h) That bow-legs or knock-knees can be straightened unless limited to children's or young people's bow-legs or knock-knees;
- (i) That the respondent's product will meet the needs of a majority of people with bow-legs or knock-knees;
- (j) That the use of respondent's product is the one and only method for exerting pressure to straighten the bones;
- (k) That nearly three thousand persons are successfully using respondent's product for the treatment of bow-legs or knock-knees, or that it has been effectively used by thousands of persons in the correction of these deformities unless limited to its use by children or young people.

Respondent further agreed to cease and desist from the use of the word "Institute" in her trade name. (June 1, 1937.)

01777. Vendor-Advertiser—Medicinal Preparation.—F. D. Telling, an individual, trading as The K-Lindy Products Co., Cleveland, Ohio,

¹ Of the special board of investigation, with publishers, advertising agencies, broadcasters, and vendor-advertisers. Period covered is that of this volume, namely, June 1, 1937, to Nov. 30, 1937, inclusive. For digests of previous stipulations, see vols. 14 to 24 of Commission's Decisions.

For description of the creation and work of the special board, see vol. 14, p. 602, et seq.

vendor-advertiser, was engaged in selling a medicinal preparation designated Lindy Lotion, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

That Lindy Lotion

- (a) Will kill the itch, or that it is beneficial as a treatment therefor;
- (b) Will heal sore feet;
- (c) Will penetrate the skin and get down where the germs lie;
- (d) Is effective or beneficial in the treatment of athlete's foot, ringworm, foot itch caused by the fungus *Tinea Trichophyton*, eczema, rashes, pimples, insect bites and poison ivy;
- (e) Is a preventive for burning, aching feet, corns and callouses, split and cracked toes. (June 1, 1937.)

01778. Vendor-Advertiser—Medicinal Preparation.—Schering Corp., a corporation, Bloomfield, N. J., vendor-advertiser, was engaged in selling a laxative designated Saraka, 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 Saraka is a drugless product, or contains no drug element;
- (b) That use of mineral oil interferes with body metabolism;
- (c) That Saraka is not a laxative, or should not be so considered. (June 2, 1937.)

01779. Vendor-Advertiser—Medicinal Preparation.—The Hood-Lax Corp., New York, N. Y., vendor-advertiser, was engaged in selling a laxative designated Hood-Lax, 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 use of Hood-Lax will enable one to completely overcome constipation;
- (b) That the use of Hood-Lax has been the means of bringing renewed health to persons who had suffered from constipation more than half their lives;
- (c) That the use of Hood-Lax will make the intestines work normally as nature intended;
- (d) That the use of Hood-Lax will restore persons who are suffering from constipation to their former health and energy;
- (e) That the action of Hood-Lax is purely mechanical so long as it contains any recognized drug ingredient;
- (f) That Hood-Lax thoroughly cleanses the system;
- (g) That Hood-Lax is not a laxative in the ordinary sense of the word;
- (h) That a natural vegetable laxative will add years to ones life;
- (i) That Hood-Lax is recommended, approved or used by physicians in the medical field;
- (j) That Hood-Lax will produce a healthy system;
- (k) That doctors believe that one of the causes of appendicitis is the habitual use of cathartics;
- (l) That Hood-Lax is drugless so long as it contains any recognized drug ingredient;

(m) That Hood-Lax will cause a person's skin to become new and healthy, will do away with biliousness or bring back energy;

(n) That Hood-Lax will "overcome" constipation or produce permanent results or that its action is sure. (June 2, 1937.)

01780. **Vendor-Advertiser—Radio Receiving Sets.**—Chester Miller, an individual, operating under the trade name of Goldentone Radio Co., Dearborn, Mich., vendor-advertiser, was engaged in selling a certain product designated Goldentone Radio Receiving Sets, 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 respondent's radio receiving sets will afford world-wide reception, or

1. Afford entertainment from any corner of the globe,
2. Bring the world to the finger-tips,
3. Dial to "any station" instantly,
4. Tune to any station anywhere, or
5. Tune to all standard American, Canadian broadcasts, all short-wave, foreign, police, amateurs, and aviation;

(b) That—

1. World-wide reception can be guaranteed or promised, or that—
2. Foreign reception is guaranteed or promised unless limited to radios properly equipped with bands to receive distant stations in foreign countries;

(c) That the Goldentone radio is used by the U. S. Forestry Service. (June 4, 1937.)

01781. **Vendor-Advertiser—Crucifix Ring.**—J. W. Eiss, an individual, New York, N. Y., vendor-advertiser, was engaged in selling Crucifix Wondrous Luck 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 the article designated Crucifix Wondrous Luck Ring is a jewel, or set with a jewel;

(b) That by inference or otherwise said ring will bring to the wearer good luck or happiness. (June 9, 1937.)

01782. **Vendor-Advertisers—Medicinal Preparations.**—Eugene Sonkin and Max Sonkin, copartners trading as Perso Products Co., and Personal Products Co., Chicago, Ill., vendor-advertisers, were engaged in selling medicinal preparations, 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' products are an effective remedy or competent treatments for weakness, debility and nervousness;

(b) That the use of respondents' products will remove once and forever the weakening, despairing nerve wracking nightmare of uncertainty and doubt;

(c) That through the use of respondents' products one can be a living example of vibrant health, energy, strength and living force;

(d) That respondents' products will overcome the effects of age;

(e) That respondents' products will help to restore the normal functions of the nerves, blood or various internal glands, or will assist in bringing about "the desired results";

(f) That respondents' products will condition the system, will give the system pep or vigor, or produce strong vigorous manhood, or prevent premature loss of vim, vigor or vitality;

(g) That through the use of respondents' products the user can "come back," "act like a colt again" or regain lost vigor;

(h) That through the use of respondents' products one can feel young at 60;

(i) That respondents' products are an effective aphrodisiac;

(j) That respondents' products are safe and harmless. (June 9, 1937.)

01783. **Vendor-Advertiser—Medicinal Preparation.**—James C. Bailey, an individual, doing business under the trade name of James C. Bailey & Co., Chicago, Ill., vendor-advertiser, was engaged in selling a certain preparation known as Herb-Lax Tea, 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 Herb-Lax Tea is a competent remedy in the treatment of constipation, stomach troubles, biliousness, indigestion, pains between the shoulders, aching back, sick headache, bladder troubles, rheumatic pains, nervousness, sluggishness, liver trouble, kidney trouble, or colitis;

(b) That Herb-Lax Tea reaches the very root of practically all human ailments, stomach trouble, biliousness, liver and kidney complaints, colds, weakness, nervousness, sluggishness, sleeplessness, rheumatism, arthritis, headaches, excess fat, poor complexion, pimples, blotched skin and the like;

(c) That Herb-Lax Tea—

1. Is a wonderful body conditioner, reducer, body builder;
2. Is one of the greatest medical discoveries;
3. Takes off excessive fat;
4. Drives from the body such poisons and gases as may accumulate or be generated in the system;
5. Eliminates poisons from the body;
6. Regulates the normal functions of the natural organs to their highest state of efficiency;
7. Wards off disease;
8. Clears the complexion;
9. Keeps one well;
10. Stimulates the system;
11. Drives poison from the body;
12. Prevents acid breath;
13. Regulates normal action;
14. Purifies the breath; or
15. Prevents and breaks up colds. (June 10, 1937.)

01784. **Vendor-Advertiser—Face Cream.**—Isabell Rothschild, an individual, operating under the trade name of The Belle Co., Santa Monica, Calif., vendor-advertiser, was engaged in selling a certain product designated Bella Foundation Cream, 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 moving picture actresses use Bella Foundation Cream;
 (b) That the regular retail price of this product is any amount greater than that at which it is regularly sold, or that—

1. Sixty cents is less than half price, or
2. That the current price is a special offer, or is for a short time only;

(c) That people are wanted to address postcards, that neat handwriters are wanted, that addressers are wanted for a postcard campaign, or any other terminology indicating that the nature of the employment which respondent offers is addressing postcards unless such representation is accompanied by a statement clearly explaining that prospective employees will be paid only for orders received by respondent, that they will be required to purchase material and that the purchase price of such material will not be refunded unless sales of respondent's cream are effected, or, in the absence of such explanation, that—

1. Stamp brings details, or
2. Supplies are sent postpaid;

Respondents 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 held 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. (June 10, 1937.)

01785. **Vendor-Advertiser—Booklet.**—Tom Boom, an individual doing business under the trade name of National Press Syndicate, Los Angeles, Calif., vendor-advertiser, was engaged in selling a booklet entitled "Press Clipping and Picture Manual," 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 purchasers of the "Press Clipping and Picture Manual"

1. Earn "big" money weekly clipping and preparing;
2. Can begin making money at once;
3. Can immediately start to make money in this most fascinating way;
4. Can write Feature articles and Trade Journal Items;
5. Can turn out a feature a day and five or six of the shorter items which bring up to \$10 each; or
6. Can re-write the same item half a dozen times, from a different angle or slant, and sell it to as many editors;

(b) That the Manual of Instructions contains "complete" information on how and where to find valuable articles and where to send them for cash;

(c) That purchasers of the "Press Clipping and Picture Manual" can make "big" money by merely clipping newspapers;

(d) That the "Press Clipping and Picture Manual" discloses a "fascinating new way" to make "Big" money and build up an active and growing income;

(e) That purchasers of the "Press Clipping and Picture Manual" are shown a "unique idea" in Feature writing and newspaper clipping that will mean "Big"

money, or that they may write and sell a single article for \$100., or a tiny few lines for \$50.;

(f) That Feature writing, writing for Trade Journals, or newspaper clipping is "as easy as A-B-C", or that the purchaser of "Press Clipping and Picture Manual" can make a success of this business;

(g) That to be a successful feature writer, writer of Trade Journal items, or newspaper clipper one needs—

1. No special ability or training;
2. No previous experience; or
3. No "connections";

(h) That the "Press Card", issued to purchasers of the "Press Clipping and Picture Manual", will gain attention, consideration and entree for the holder, or that it is the "Open Sesame" to otherwise barred places;

and from making any other claims or assertions of like import.

Respondent, in soliciting purchasers for his "Press Clipping and Picture Manual," further agreed;

(i) Not to make unmodified representations or claims of earnings in excess of the average earnings of respondent's active full-time purchasers or customers achieved under normal conditions in the due course of business;

(j) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's purchasers or customers under normal conditions in the due course of business;

(k) Not to represent or hold out as maximum earnings by the use of such expressions as "up to," "as high as," or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's purchasers or customers 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.

Respondent further agreed, in soliciting the sale of his product in interstate commerce, to cease and desist from using the words, "Press Syndicate," as a part of his trade name. (June 10, 1937.)

01786. **Vendor-Advertiser—Bunion Plaster.**—Frank Lotreck, an individual, Oak Park, Ill., vendor-advertiser, was engaged in selling Pedix Bunion Plaster, 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 is a competent treatment or an effective remedy for bunions, unless specifically limited to relief from the pain thereof;

(b) That the Pedix Bunion Plaster will reduce the size of a bunion, or—

1. "Conquer" bunions;

(c) That this product is healing;

(d) That the Pedix Bunion Plaster will—

1. "Stop" suffering from bunions,
2. "End" bunion pain almost instantly or at all,

3. "Rid" one of bunion pain,
4. Get "rid" of all anguish and unnecessary pain and torment,
5. "Banish" the ache, pain or hump of a bunion, or
6. "Stop" bunion pain almost instantly or at all;

(e) That wonderful results "surely" are awaiting prospective users of this product;

(f) By direct statement or by reasonable inference that this product will produce satisfactory results when all other treatments have failed;

(g) That the use of Pedix Bunion Plaster will enable one to wear smarter, trimmer shoes;

(h) That even one Pedix Bunion Plaster will soothe away the burning pain of a bunion. (June 11, 1937.)

01787. **Vendor-Advertiser—Medicinal Preparation.**—Bradley's Laboratory, Inc., a corporation, Matoaka, W. Va., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Hy-Phen, 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 Hy-Phen will relieve all types of pain and headache;

(b) By direct statement or by reasonable inference, that Hy-Phen is safe in all instances, or that it—

1. Does not contain any dangerous or habit-forming drugs,
2. Will safeguard health,
3. Does not depress the heart, or
4. Gives safe relief;

(c) That Hy-Phen constitutes a competent treatment or an effective remedy for colds, or that it—

1. Will enable one to avoid colds, or
2. "Stops" a cold;

(d) That Hy-Phen will "stop"—

1. Neuralgia,
2. Twitching nerves,
3. Toothache,
4. After extraction pain, or any other physiological condition;

The respondent further agreed to cease and desist from the use of the words "Laboratory" and "Manufacturers," or from otherwise representing that it owns, controls, or operates a laboratory, or that it manufactures this preparation. (June 10, 1937.)

01788. **Vendor-Advertiser—Medicinal Preparations.**—Minnie McElroy, an individual doing business as The Worth Pharmacal Co., New York, N. Y., vendor-advertiser, was engaged in selling preparations designated Hexsanol and Vi-Tonol, 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 Hexsanol and Vi-Tonol alone or in combination is a competent treatment or effective remedy for:

1. Bladder weakness;
2. Prostatic irritation;

3. Functional troubles of the kidneys and bladder;
4. Catarrh of the bladder or kidneys;
5. Inflamed conditions of the mucous lining of the kidneys and bladder;
6. Prostate or kidney disorders;

(b) That the use of Hexsanol and Vi-Tonol is "safe" unless the same is used according to directions;

(c) That prostatic disorders are often accompanied by a burning and smarting pain when the urine is passed;

(d) That most men past middle life are affected by some disorder of the prostate gland, although trouble may occur in earlier life;

(e) That Vi-Tonol or Hexsanol "go right to the seat of the trouble" or act "directly;"

(f) That the use of Vi-Tonol or Hexsanol will have any effect upon the age or vitality of the user;

(g) That Hexsanol or Vi-Tonol will "overcome" any functional disorder of the bladder, kidneys or prostate gland, or that the effect of Hexsanol or Vi-Tonol is permanent, or that either or both products produce a flow of bland non-irritating urine;

(h) That by the use of Hexsanol or Vi-Tonol a person can "correct" or "prevent" any functional troubles of vital organs or of the kidneys and bladder;

(i) That by the use of Hexsanol or Vi-Tonol a person will be able to live free from pain and discomfort.

The respondent further agreed to cease using literature under the signature of or in reference to Ross O. McElroy, late deceased, as though he were still living. (June 22, 1937.)

01789. Vendor-Advertiser—Mineral Water.—Petersime Incubator Co., a corporation, Gettysburg, Ohio, vendor-advertiser, was engaged in selling a mineral water designated Buckeye Mineral 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 Buckeye Mineral Water is:

1. High in balanced mineral properties;
2. Conducive to good health;
3. Nature's remedy for many human ills;
4. Alkaline and either neutralizes or reduces the excess acids in your system;
5. Highly charged by nature with health promoting minerals;

(b) That Buckeye Mineral Water adds to your diet those elements that nature intended you should have;

(c) That Buckeye Mineral Water acts on the liver and kidneys or aids these organs to function properly;

(d) That the use of Buckeye Mineral Water will cause:

1. The digestive tract to take on its normal function;
2. Aches and pains to leave;
3. One to take on a new feeling of energy;
4. Digestion to be improved;
5. One to get started on the road to better health and happiness;

(e) That Ultra-Violet Ray as used in the treatment of Buckeye Mineral Water makes it highly vitalized or adds to the beneficial properties of the water;

(f) That the action of Buckeye Mineral Water is effective in stimulating the secretions of the digestive tract, neutralizing acidity of the stomach or aiding in dissolving Uric Acid deposits;

(g) That Buckeye Mineral Water is of value in the treatment of catarrhal conditions, rheumatism, lumbago, gout, stomach trouble or any other ailment of the human body;

(h) That Buckeye Mineral Water will bring quick relief from over indulgence in either food or intoxicants;

(i) That Buckeye Mineral Water:

1. Will supply the mineral reserve for better health;
2. Rids one's body of poisonous wastes;
3. Adds to the system the minerals taken out of filtered city water;

(j) That Buckeye Mineral Water is not marketed for profit.

The respondent further agreed that, in the furtherance of the sale of its said product in interstate commerce, it will not quote any medical authority regarding the therapeutic value of mineral water unless in direct connection therewith it is stated that such statement was not made of Buckeye Mineral Water, unless and until such be the fact. (June 22, 1937.)

01790. Vendor-Advertiser—Medicinal Preparations.—Dearborn Supply Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling Mercolized Wax, Parker Belmont Beauty Cream, Powdered Saxolite, Powdered Tarkroot and Phelactine 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 Mercolized Wax will free the skin of blemishes and all discolorations that are not superficial and due to external causes;

(b) That Mercolized Wax:

1. Keeps the skin young; or
2. Brings new loveliness and radiance up from beneath the discolored surface skin;

(c) That the use of Mercolized Wax is the "only" way to completely beautify a discolored blemished complexion;

(d) That Mercolized Wax:

1. Dissolves coarseness and other blemishes;
2. Is a simple remedy which will always easily remove the old complexion and produce a new one;
3. Will convert a faded, wornout or discolored complexion into one of captivating loveliness;
4. Is always a successful treatment for a bad complexion;
5. Will make any complexion smoother, clearer or younger;
6. Takes away all imperfections; or protects;
7. Clears away oiliness, sunburn or any other blemishes that are not superficial and due to external causes;
8. Causes all defects, such as blackheads and large pores, to disappear;

(e) That Parker Belmont Beauty Cream:

1. Is an oxygen cream;
2. Lightens and whitens dark skin 2 or 3 shades; or
3. Normalizes a dry or too oily skin;

(f) That Parker Belmont Beauty Cream is a blend of all the creams the skin requires;

(g) That Parker Belmont Beauty Cream is a scientific blending of creams for pore-deep cleansing;

(h) That Powdered Saxolite:

1. Smooths out wrinkles and age lines; or
2. Refines coarse pores; or
3. Eliminates oiliness;

(i) That Powdered Tarkroot is beneficial for almost every condition, such as age lines, wrinkles, enlarged pores, blackheads and other surface blemishes;

(j) That a Tarkroot Beauty Mask revives a fatigued, drooping face more quickly and completely than anything else can;

(k) That Powdered Tarkroot or a Tarkroot Beauty Mask:

1. Smooths out wrinkles and age lines;
2. Pulls relaxed, sagging contours into proper position;
3. Arouses circulation to nourish drooping tissues; or
4. Purges pores of all impurities;

(l) That Tarkroot Beauty Mask:

1. Wakes up dull skin;
2. Relieves facial fatigue;
3. Beautifies the skin;
4. Renews the complexion; or
5. Performs a four-purpose plan of beautifying, by tightening, refining, purifying and stimulating;

(m) That Phelactine:

1. Removes superfluous hair "gently"; or
2. Is the "different" hair remover. (June 22, 1937.)

01791. **Vendor-Advertisers—Medicinal Preparation.**—F. J. Lipinski and James E. Crampton, copartners doing business under the trade name of Grant Laboratories, Buffalo, N. Y., vendor-advertisers, were engaged in selling a medicinal preparation designated J. E. C.'s Rectal Remedy, 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 J. E. C.'s Rectal Remedy is a competent treatment or effective remedy for:

1. Bleeding piles;
2. Protruding piles;
3. Itching piles;
4. Hemorrhoids;

(b) That by the use of J. E. C.'s Rectal Remedy one may—

1. Get rid of piles without operation;
2. Conquer piles;
3. Obtain entire relief;

(c) That J. E. C.'s Rectal Remedy has conquered piles or hemorrhoids;

(d) That J. E. C.'s Rectal Remedy has the power to arrest bleeding and reduce swelling and pain;

(e) That J. E. C.'s Rectal Remedy was used by soldiers in the Civil War.

The respondents further agreed to cease and desist from using the terms "Laboratory" or "Laboratories" as a part of their trade name

unless and until they shall actually operate a laboratory where scientific research is conducted under the supervision of a competent scientist. (June 22, 1937.)

01792. **Vendor-Advertisers—Medicinal Preparation.**—Frontier Asthma Co., Inc., a corporation, and George H. Calkins, Ernest N. Post, Harry I. Partridge, William Stanton, B. F. Van Duzee, C. P. Bonham, individuals, Buffalo, N. Y., vendor-advertisers, were engaged in selling a treatment for the paroxysms of asthma, 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 treatment is an effective treatment or remedy for the cause of asthma, or that it will remove the cause of asthma;

(b) That the treatment can be relied upon to protect the system against recurring attacks of asthma;

(c) That the treatment is competent or effective for hay fever;

(d) That hay fever or the "suffering" thereof is annual in its attack;

(e) Inferentially or otherwise, that the treatment will prevent hay fever;

(f) That the treatment will enable one to take up one's duties without suffering the hardships resulting from a nervous or run-down condition, or that it will enable one to avoid suffering;

(g) That by use of the treatment one will be enabled to "accomplish the object of building up the system to the point of affording immunity";

(h) That by use of the treatment one will not have a return of the distress of asthma or hay fever;

(i) That the amount charged covers professional advice and personal supervision alone, or that no charge is made for the medicine;

(j) That the treatment will have any therapeutic effect upon persons afflicted with asthma other than alleviation of the symptoms of asthma. (June 22, 1937.)

01793. **Vendor-Advertisers — Spark Plugs.** — Joseph Krawetz and Mayer Krawetz, co-partners doing business as—Spark Plug Service Co., formerly trading as—Automotive Products Co., St. Paul, Minn., vendor-advertisers, were engaged in selling reconditioned Spark Plugs, and agreed in soliciting the sale of and selling their said product, in interstate commerce, to cease and desist from representing directly or otherwise:

(a) That respondents operate the largest rebuilt spark plug factory in the world;

(b) That respondent's rebuilt spark plugs will give perfect performance for 10,000 miles;

(c) That respondents' products are individually tested;

(d) That respondents' products perform with the exact efficiency, or same performance, as new spark plugs;

Further, respondents in soliciting sales persons or dealers in aid of the sale of such merchandise, agreed:

(e) 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;

(f) 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; and

(g) 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. (June 24, 1937.)

01794. **Vendor-Advertiser—Printed Instructions.**—R. R. Dixon, an individual, Jefferson City, Mo., vendor-advertiser, was engaged in selling printed instructions regarding a method of earning money 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 offers to prospective purchasers a business opportunity;

(b) That purchasers of respondents' printed instructions may expect to earn any amount per week or in any other time when such amount exceeds the average amount previously earned by purchasers of said printed instructions in a period of time. (June 24, 1937.)

01795. **Vendor-Advertisers—Sun Lamp.**—William K. Beyer and Emil R. Hahnewald, copartners, operating under the firm name of Beyer Manufacturing Co., Chicago, Ill., vendor-advertisers, were engaged in selling a lamp designated Tropic Sun, 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 rays of this lamp are deeply penetrating, or that they penetrate the skin to any appreciable extent at all;

(b) That the use of this lamp will—

1. Build up resistance to colds and other winter ailments;
2. Aid one in maintaining a general condition of good health;
3. Prevent colds;
4. Normalize circulation;
5. Avoid dread possibilities that sometimes develop from a cold;
6. Retard and relieve head and chest colds;
7. Enable one to be healthy;
8. Assure the users of feeling fine and fit;
9. Be the guardian of one's health;
10. Enable the user to escape epidemic disorders;
11. Enable the blood to carry toxins quickly out of the system; or
12. Have any effect on the user's mentality;

(c) That the rays of this lamp constitute a competent treatment or an effective remedy for—

1. Scalp disorders;
2. Psoriasis;
3. Rickets;
4. Influenza;

5. Colds;
6. Rheumatism;
7. Arthritis; or
8. Sinus and other such ailments;

(d) That this lamp is safe to use, or that injuries are prevented;

(e) That this lamp produces enough infra-red light for all therapeutic purposes, or enough ultra-violet light for prophylactic purposes, or that the ultra-violet rays produced are powerful. (June 24, 1937.)

01796. Vendor-Advertiser—Cleaner.—Drums, Inc., a corporation, Detroit, Mich., vendor-advertiser, was engaged in selling a cleaner for silks, rayon, etc., designated "Drums" 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 Drums will not shrink, fade, spot, streak or harm any fabric that cold water will not harm, unless qualified by the words "when used according to directions", or words of like meaning;

(b) That Drums

1. "Renews" colors;
2. "Revitalizes" and "restores" to new beauty dulled and dirty fabrics;
3. "Restores" dull fabrics;
4. "Restores" colors;
5. "Restores" original colors; or
6. Makes fabrics like new. (June 28, 1937.)

01108.¹ Vendor-Advertiser—Medicinal Preparation.—French Clinical Laboratory and Supply Depot, a corporation, San Antonio, Tex., vendor-advertiser, was engaged in selling a preparation designated FFP, French's Foot 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 FFP, French's Foot Powder, will "cure" Athlete's Foot and other infections at once, within a few days, or at all;

(b) That FFP, French's Foot Powder, will assure quick and permanent relief in the treatment of Athlete's Foot and all foot odors;

(c) That FFP, French's Foot Powder, is a "sure" remedy for Athlete's Foot, or for all foot odors. (June 29, 1937.)

01797. Vendor-Advertiser—Face Powder.—Affiliated Products, Inc., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling Outdoor Girl Face 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 olive oil is the base of the product or that it is the only face powder containing olive oil;

(b) That olive oil will bring freshness or a natural bloom or radiance to the skin;

(c) That olive oil keeps the skin smooth or supple or gives the skin the "seductive freshness of youth;"

¹ Substitute for original stipulation published in 21 F. T. C. 1186.

(d) That Outdoor Girl Face Powder is pure and safe "beyond question" or that it is safe for the most delicate skin;

(e) That Outdoor Girl Face Powder cannot clog or stretch the pores or cannot scratch or irritate;

(f) That the color tones or shades of Outdoor Girl Face Powder are natural or that any of them become a part of the skin itself;

(g) That Outdoor Girl Face Powder is unconditionally guaranteed to meet the requirements of any health department ruling or Pure Food and Drug Act either local or Federal;

(h) That the formula for Outdoor Girl Face Powder is the film colony's formula;

(i) Inferentially or otherwise that Outdoor Girl Face Powder either banishes shine or prevents or overcomes drying, wrinkling or aging of the skin;

(j) That the formula for Outdoor Girl Face Powder has been adopted by Warner-First National Studios;

(k) That Outdoor Girl Face Powder is an "olive oil" face powder;

(l) That Outdoor Girl Face Powder is the only face powder containing olive oil;

(m) That Outdoor Girl Face Powder has been ordered by the Hollywood makeup experts as the official face powder or as standard cosmetic equipment in the dressing rooms of the stars in the Warner Bros.-First National Studios;

(n) That by using Outdoor Girl Face Powder one will be doing what the screen stars do to gain their appeal or fascination;

(o) That the colors of Outdoor Girl Face Powder are different from all other powder colors or that said colors can only be found in the said powder;

(p) That the colors of Outdoor Girl Face Powder were created by screen makeup experts;

(q) That the colors of Outdoor Girl Face Powder are "Hollywood" colors;

(r) That Outdoor Girl Face Powder is the face powder of the Hollywood stars;

(s) Inferentially or otherwise that Outdoor Girl Face Powder is used by the studios as a part of the makeup for its actors or actresses when they are engaged in making pictures. (July 2, 1937.)

01798. Vendor-Advertiser—Radios.—Tinytone Radio Co., a corporation, Kearney, Nebr., vendor-advertiser, was engaged in selling Tinytone Pocket Radios and Tinytone Midget Portable 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 the Tinytone New Pocket Radio—

1. Has a range of 50 miles or greater under good conditions;
2. Has a range of 50 to 100 miles during daytime with aerial;
3. Can be used everywhere;
4. Is an all-wave radio;
5. Has coast to coast reception;
6. Works without aerial;
7. Gets all stations on wave band;
8. Gets all short waves to all police or all airplane calls;
9. Tunes from 150 to 600 meters—just like the round-the-world radios;
10. Is fool proof;
11. Will not wear out;

12. Can be used while walking or while riding in cars or on bicycles unless qualified in direct connection therewith to indicate the equipment and conditions necessary to produce these results;

13. Has no static or interference;

(b) That the Tinytone Midget Portable Universal Radio—

1. Has clear loudspeaker reception on all stations;

2. Tunes broadcast bands to police calls or short wave;

3. Will not cause trouble or expense;

4. Has highest efficiency;

5. Reproduces every sound as faithfully as radios costing many times as much;

6. Is trouble-free or foolproof. (July 6, 1937.)

01799. Vendor-Advertiser—Medicinal Preparation.—Hoffman-La Roche, Inc., a corporation, Nutley, N. J., vendor-advertiser, was engaged in selling Cal-C-Malt, 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 Cal-C-Malt is the only nutritive preparation which contains chemically pure vitamin C;

(b) That Cal-C-Malt is a "health protector" for children and adults;

(c) That Cal-C-Malt acts as a prophylactic against susceptibility to infection, dental caries, gingivitis, pyorrhea, allergic manifestations in the skin or intestinal tract, disturbed calcium metabolism, or the blood diseases traceable to imperfect maturation of the blood elements, unless limited to conditions due to or associated with vitamin C deficiency;

(d) That scientists have found vitamin C to be "all" important in the building of strong teeth and in keeping them and the gums sound and healthy;

(e) That Cal-C-Malt is a safeguard against dental caries, diseased gums and pyorrhea or maintains normal health of teeth or gums; unless limited to conditions due to or associated with vitamin C deficiency;

(f) That Cal-C-Malt protects against infection, colds, sore throat, bronchitis, anemia, fatigue or run-down system, unless limited to conditions due to or associated with vitamin C deficiency;

(g) That Cal-C-Malt favors convalescence from febrile infections or debilitating diseases, unless limited to conditions due to or associated with vitamin C deficiency;

(h) That Cal-C-Malt affords positive health protection;

(i) That Cal-C-Malt is indicated for or that the therapeutic value of vitamin C has been demonstrated in conditions as follows when not due to or associated with vitamin C deficiency;

1. Acute infectious processes attended by toxemia;

2. Dental caries;

3. Non-specific gingivitis;

4. Anemias;

5. Hemorrhagic diathesis;

6. Disturbed mineral metabolism;

7. Nutritional disturbances;

8. Coeliac disease;

9. Intestinal dysfunction;

10. Psoriasis;

11. Faulty lactation. (July 6, 1937.)

01800. **Vendor-Advertisers—Photographs and Frames.**—C. A. Montgomery and C. F. Aldrich, copartners operating under the firm name of Aldrich & Montgomery, St. Paul, Minn., vendor-advertisers, were engaged in selling Photographs and Frames, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) Inferentially or otherwise, that an answer to the Scrambled Name contained in contact advertisements or in radio broadcasts or in any other manner of publication, is alone sufficient to qualify a person to participate in any of their contests unless and until such is a fact;

(b) Inferentially by such statements as "Send no Money," or otherwise, that no payment of money nor the purchase of any article is necessary in order to be properly qualified to participate in any of their contests unless and until such is a fact;

(c) That in cases of ties as many prizes will be reserved as there are persons tied unless the statement is so qualified as to clearly and unequivocally indicate the number of prizes that actually will be awarded. (July 6, 1937.)

01801. **Vendor-Advertiser—Electrical Experimental Kits.**—B. C. Burden, an individual trading as Electrical Salvage Co., Lincoln, Nebr., vendor-advertiser, was engaged in selling electrical experimental kits, 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 Detectophone is used by Secret Service Men, Detectives or G-Men;

(b) That respondent's Secret Service Detectophone is ultra sensitive;

(c) That the Generator and Arc Equipment furnished with respondent's Kit is equivalent to lamps costing \$50.00. (July 8, 1937.)

01802. **Vendor-Advertiser—Mange Medicine and Medicated Soap.**—H. Clay Glover Co., Inc., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling certain products designated Glover's Imperial Sarcoptic Mange Medicine and Glover's Medicated Soap, 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 respondent's products will "rid" one of or cause one to have no dandruff;

(b) That respondent's products "promote" hair growth;

(c) That respondent's medicine will keep one rid of baldness;

(d) That the regular use of respondent's medicine will enable one to have a good head of hair;

(e) That barbers swear by Glover's for baldness;

(f) That the regular use of respondent's products is an effective guard against the loss of a good head of hair unless limited to Alopecia Areata (patchy baldness or bald spots);

(g) That dandruff, dry, oily or falling hair conditions are due to improper functioning of the glands or malnutrition of hair follicles;

(h) That respondent's medicine is an antiseptic preparation that is an effective treatment for dry, oily or falling hair conditions;

(i) That Glover's Mange Medicine, used in combination with Glover's Medicated Soap and Glover's System of Massage is the "greatest discovery" ever made for dandruff and other common scalp and hair conditions;

(j) That respondent's products save the hair;

(k) That there is "nothing like" respondent's products to help keep away dandruff, check falling hair, itching scalp, and put new lustre into dull, drab hair;

(l) That Glover's Mange Medicine, if adhered to consistently, tends to darken light, white or gray hair a trifle and aids other shades to retain their natural color. (July 8, 1937.)

01803. Vendor-Advertiser—Perfumes & Horoscopes.—The House of Astro, Inc., a corporation, trading as The House of Astro, vendor-advertiser, was engaged in selling Astro Perfumes and Horoscopes, 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 Astro Perfume—

1. Is a luxurious horoscope perfume created specially for you;
2. Has been created for you according to the type your birth dictates;

(b) That a horoscope is given free with each bottle of perfume when in fact a price therefor is included in the price charged for the perfume;

(c) That a horoscope is a personal horoscope when in fact the same is prepared in advance of a request therefor and without any knowledge of the prospective purchaser thereof;

(d) That only one bottle of perfume is sold to a customer;

(e) That the price of \$1.00 is a special introductory offer. (July 8, 1937.)

01804. Vendor-Advertiser—Cosmetics.—Affiliated Products, Inc., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling certain products designated Angelus Rouge, Angelus Lipstick, Kiss-proof Lipstick, and Kissproof Rouge, 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 its products are recommended by make-up experts of the moving picture industry when in fact such is not the case;

(b) That Louis Philippe is "world famed" or that women of Paris or of any other defined geographical section follow him "in matters of make-up like a religion";

(c) That any of its products put color directly "into" the skin or that by use of any of its products such make-up becomes a part of the skin;

(d) That "virtually every expensive beauty shop" in France or America have discarded "old ways in cheek make-up" or that they apply the principle of cream rouge exclusively;

(e) That any of respondent's products will "end" artificiality, "cheapness", unnaturalness, or unevenness in make-up;

(f) That Angelus Rouge has become the "rage" of Paris;

(g) That Angelus Rouge "stays just the way you put it on all day long no matter what you do";

- (h) That Angelus Rouge blends directly "into" the skin;
- (i) That Kissproof lipstick is made from the "costliest" ingredients that can be imported from France;
- (j) That Angelus Lipstick is the favorite of "all" French women;
- (k) That the colors of either Kissproof Lipstick or Angelus Lipstick are totally unlike those found in any other lipstick;
- (l) Inferentially or otherwise that all of the ingredients of which any of its products are composed are imported from any geographical section unless such is a fact;
- (m) That one will find Kissproof Rouge in the dressing rooms of great stars of the movies;
- (n) That Angelus Lipstick gives a make-up devoid of artificiality;
- (o) That Kissproof Lipstick is standard cosmetic equipment in the dressing rooms of Paramount Pictures, Inc.;
- (p) That Kissproof Lipstick was put by "special order of the make-up experts" into every Paramount Studio dressing room in Hollywood. (July 8, 1937.)

01805. Vendor-Advertiser—Spinal Device.—Philo Burt Manufacturing Co., a corporation, Jamestown, N. Y., vendor-advertiser, was engaged in selling a device designated Spinal Appliance, 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 said appliance is efficient in cases of spinal injury, ailment, weakness, or deformity, unless limited to its aid as a mechanical support in the treatment thereof;
- (b) That said appliance is a competent treatment or an effective remedy for spinal disease;
- (c) That said appliance will cure, "correct" or overcome crooked spines or a deformed, injured or broken back, or any spinal condition unless limited to such assistance in the treatment thereof as mechanical support will afford;
- (d) That said appliance is a competent treatment or an effective remedy for paralysis;
- (e) That said appliance affords instant relief;
- (f) That by use of the Appliance crooked spines will be "completely" straightened;
- (g) Inferentially or otherwise that the Appliance will be beneficial in all cases;
- (h) That said appliance will enable one to be "spry";
- (i) That the Appliance will restore the vertebrae to normal position or alignment, unless limited to cases where the vertebrae has been adjusted to its normal position and then held in such position by the appliance until nature can correct the displacement;
- (j) That only through elongation of the spine can permanent relief be expected;
- (k) That one will never outgrow spinal curvature without mechanical assistance;
- (l) That said Appliance is the "only safe Appliance";
- (m) That incurable cases will "yield" by use of the Appliance;
- (n) That the Appliance will stop the progression of the "trouble";
- (o) That without regard to the nature of the spinal "trouble" the appliance will afford more lasting benefit than any other method;

(p) That the Appliance will enable one to "plunge" into life with renewed vigor or activity;

(q) That the Appliance will enable the spine to regain its strength, unless limited to mechanical support after adjustment while nature is restoring the strength of the muscular structure;

(r) That the Philo Burt "method" is "the" right way;

(s) That the Appliance is a competent treatment or an effective remedy for Potts disease, spinal "irritation", or spinal tuberculosis;

(t) That the Philo Burt "method" will "restore" one to "a life of health and usefulness";

(u) Inferentially or otherwise that use of the Appliance will prevent one from being an invalid, unless limited to cases that require a constant support. (July 8, 1937.)

01806. Vendor-Advertiser—Cleaning Compound.—Edward J. Zimmer, an individual trading as Bestever Products Co., Chicago, Ill., vendor-advertiser, was engaged in selling a preparation designated Uko Cleaning 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 Uko will not injure the most sensitive skin;

(b) That there is nothing else like Uko;

(c) That Uko makes paint brushes as good as new;

(d) That no rubbing or scrubbing is required when Uko is used;

(e) That Uko will harm nothing that water alone will not injure;

(f) That Uko will leave no streaks or spots unless limited to its use on hard surfaces;

(g) That Uko is a safe cleanser for every purpose;

(h) That sales are guaranteed;

(i) That Uko is non injurious;

(j) That Uko does not harm paint unless qualified by the statement when used in cold dilute solutions;

(k) That Uko is entirely different or is the most amazing product for washing or whitening clothes ever developed;

(l) That Uko heals skin chap;

(m) That Uko will not harm fabrics,

(n) That any merchandise is given "free" when the purchase of other goods is required;

(o) That Uko keeps the hands nice and soft. (July 9, 1937.)

01807. Vendor-Advertiser—Correspondence Course.—Scientific Crime Detection Institute of America, Inc., a corporation, Huntington, W. Va., vendor-advertiser, was engaged in selling a certain correspondence course of training in Scientific Crime Detection, 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 law enforcement field is unable to secure sufficient experts, or that—

1. The field "is in need" of experts;

2. Scientifically trained men are in big demand;

3. Scientifically trained investigators are always at a premium;
 4. After studying this course, one will be in big demand;
 5. The nation needs more handwriting experts;
 6. After studying this course, one will be in a position to charge large fees for professional services;
 7. The nation needs trained men in Scientific Crime Detection; or
 8. The field is crying for scientifically trained men;
- (b) By direct statement or by reasonable inference, that one can learn fingerprinting only by studying a course such as this, or that no established fingerprint bureaus train their own experts as required, or that—
1. Personal training in an established Bureau requires years of effort;
 2. No resident schools offer courses in Scientific Crime Detection;
- (c) That graduates of this Institute are furnished any "official" credentials;
- (d) That everyone who has studied this course—
1. Will be mentally equipped to give the world expert professional advice;
 2. Will be prepared to qualify before high tribunals as an authority;
- (c) That, sooner or later, every county will have a complete Scientific Crime Detection Laboratory, or that they would have now, if the personnel were available;
- (f) That, sooner or later—
1. Every important town will have its corps of experts;
 2. Every big industry will employ fingerprint experts and scientifically trained investigators;
 3. Every city and town will require its citizens to have their fingerprints filed in their respective Bureaus of Identification;
 4. Every citizen of the United States will be compelled to have his or her fingerprints taken;
- (g) That students may be assured of obtaining a job after graduating, either because of a great "need" for men so trained, or otherwise;
- (h) That the type of employment service offered by respondent is not offered by any other similar institution;
- (i) That the work of a fingerprint expert is as simple as looking up a word in a dictionary;
- (j) That respondent's Enrollment officers meet to discuss individually the failure of prospective students to enroll;
- (k) That anything is given free when in truth and in fact the price thereof is included in the purchase price paid for the course, or that—
1. Students are given, free, one year's subscription to "The Detective";
 2. A valuable book is given free to graduates;
- (l) That students of this course receive confidential reports and information intended for law enforcement bodies only;
- (m) That after graduating one will have become the supreme master of Scientific Crime Detection in his locality;
- (n) That this course teaches every phase of the science of fingerprinting;
- (o) That everyone who studies this course—
1. Will become a master psychologist;
 2. Will have a thorough knowledge of all important phases of secret service work; or
 3. Will be capable of maintaining any fingerprint bureau in the United States—no matter how large, and no matter how many people you may employ;
- (p) That these lessons comprise the finest training obtainable in this science;
- (q) By direct statement or by reasonable inference that training is offered

in the work of the United States Secret Service, or that respondent's training will qualify the student for a position with said Service. (July 7, 1937.)

01808. Vendor-Advertiser—Book of Instructions.—G. S. McGill, an individual operating under the trade name of Publishers' Service Bureau, Chicago, Ill., vendor-advertiser, was engaged in selling a book of instructions designated Free Lance Corresponding for Newspapers and Magazines, 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 issues or is authorized to issue a "press card," or by direct statement or by reasonable inference that the holder of the card issued by respondent is entitled to or may expect to receive the benefits accruing to the possessor of a legitimate press card issued to the staff of orthodox newspapers;

(b) That the holder of such credentials as are supplied each subscriber to respondent's course is thereby identified as an active press correspondent. (July 7, 1937.)

01809. Vendor-Advertiser—Scalp Treatment.—Wildroot Co., Inc., a corporation, New York, N. Y., vendor-advertiser was engaged in selling products designated Wildroot Hair Tonic and Wildroot Instant Shampoo, 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 Wildroot Hair Tonic—

(1) Keeps the scalp or hair "healthy" unless the claim is limited to the effect of its cleansing and antiseptic qualities in helping to maintain a more nearly normal and healthy condition of scalp and hair;

(2) That it cleans up dandruff "completely" unless qualified by the explanation that repeated and continued use is necessary to obtain result;

(3) That it is an effective treatment for falling hair unless limited to those cases of falling hair due to seborrhoic eczema;

(4) Will "rid" one of dandruff or scalp trouble; or from otherwise implying a permanent cure;

(b) That Wildroot Hair Tonic "penetrates" or regulates sebaceous glands, or that it regulates the flow of oil; or that it thereby stimulates the growth of hair;

(c) That any results claimed for Wildroot products are "guaranteed";

(d) That Wildroot Instant Shampoo helps to "correct" abnormal oiliness or dryness unless limited to such benefits as may result from its cleansing and antiseptic action on scalp and hair;

(e) That dandruff kills the hair, or in any other way contributes to the loss of hair, except as it may form cover protection to the organisms that cause seborrhoic eczema. (July 7, 1937.)

01810. Vendor-Advertiser—Construction Kits for Radio.—William Harrison, an individual operating under the trade name of Ace Radio Laboratories, New York, N. Y., vendor-advertiser, was engaged in selling Ace Construction Kits consisting of parts for radio re-

ceiving sets to be assembled by the purchaser, 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 Ace Construction Kits are so easy to wire that—

1. Even the most inexperienced youth will have no difficulty in obtaining excellent results;

2. Errors are impossible;

(b) That the materials supplied for the prices advertised are sufficient to make up a complete, self-sufficient, radio receiver, or that every necessary part and accessory to complete an entire receiver is included, so long as it is necessary for the purchaser to have or obtain certain accessories in order to operate the radio;

(c) That the components of these radio sets are effectively shielded;

(d) By direct statement or by reasonable implication that radios sold by respondent will afford world-wide reception; or

1. Is a "world-wide" radio;

2. Will bring in stations many a \$60.00 radio can't get; or

3. Will bring in foreign stations from all parts of the world;

(e) That a radio constructed from the parts furnished at the advertised price—

1. Is a short and long wave set; or

2. Has a wave length of 15 to 600 meters, or any wave length not in accordance with the facts;

(f) That Ace Radios give guaranteed Foreign reception. (July 9, 1937.)

01811. **Vendor-Advertisers—Artificial Teeth.**—Dr. Joseph S. Lippert, an individual and Dr. Joseph S. Lippert Dental Laboratory, Inc., a corporation, Chicago, Ill., vendor-advertisers, were engaged in selling artificial teeth, 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 respondents' roofless plates will defy detection;

(b) That respondents' roofless plates are the best in denistry;

(c) That respondents' roofless plates are held firmly by a vacuum cup suction;

(d) That respondents' roofless plates will restore the natural voice and facial expression;

(e) That either a gold filling or a gold tooth is free when the cost is included in the price of another article;

(f) That any offer is for a limited time unless a definite period is specified and the offer withdrawn at the end of such period;

(g) That respondents guarantee the plates. (July 9, 1937.)

01812. **Vendor-Advertiser—Shampoo, Etc.**—Rap-I-Dol Distributing Corp.; a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a certain shampoo and hair coloring preparation designated Rap-I-Dol Conditioning Shampoo and Rap-I-Dol Hair Coloring, and agreed in soliciting the sale of and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

Rap-I-Dol Conditioning Shampoo

(a) That Rap-I-Dol Conditioning Shampoo—

1. Rids one of dandruff immediately, or at any time,
2. Adds life and vigor to the hair,
3. Adds body to the hair

(b) That Rap-I-Dol Conditioning Shampoo prevents dandruff and perspiration acids from forming;

(c) "Corrects" scaliness, dryness and acid scalp;

Rap-I-Dol Hair Coloring.

(d) That Rap-I-Dol Hair Coloring banishes gray or faded hair. (July 9, 1937.)

01813. **Vendor-Advertiser—Clothing.**—Three Star Clothes, a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling tailor made clothes, 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 suits are made of wool until and unless all such suits are made from all wool materials;

(b) That respondent's suits are sold at "wholesale" prices; or that respondent is engaged in a "wholesale" business;

(c) That a suit or suits are given "free" unless the same are given to the donee without expenditure of time, money, labor or effort or any condition precedent or subsequent to be performed on the part of the donee. (July 8, 1937.)

01814. **Vendor-Advertiser—Medicinal Preparation.**—Western Refining Co., a corporation, trading as The Motex Co., Lowell, Mass., vendor-advertiser was engaged in selling a medicinal preparation designated Motex 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) Either directly or by reasonable implication that Motex Pills constitute an abortifacient;

(b) That Motex Pills have afforded relief in over-due or delayed cases where other compounds have failed;

(c) That by the use of Motex Pills results may be obtained without harm, pain or inconvenience;

(d) That by reading or studying the folder entitled "A Secret Every Woman Should Know" one may learn how Motex Pills will bring about a return of menstruation, or how to get rid of delay;

(e) That respondent's advertising circular contains secret information, and from designating such circular as "A Secret Every Woman Should Know";

(f) That Motex Pills are "Our Highest Strength" unless respondent also sells other similar preparations which are weaker or less effective;

(g) That Motex Pills cost the respondent 300% or any other amount not supported by the facts, more than ordinary preparations;

(h) That Motex Pills are a blessing to women. (July 9, 1937.)

01815. **Vendor-Advertiser—Wax for False Teeth Plates.**—George D. Berdan, an individual operating under the trade name of Medical Arts Laboratories, Ft. Worth, Tex., vendor-advertiser, was engaged in selling a product designated Dixans Reliner Wax, 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 Dixans Reliner Wax is newer and different from other preparations intended to tighten false teeth;

(b) That this preparation will refit plates to the gums;

(c) That regardless of the condition of the plates, this product will assure mouth comfort and sense of safety;

(d) That this preparation will tighten false teeth permanently or perfectly fit them to the gums;

(e) That Dixans Reliner Wax saves the cost of new plates, or obviates the necessity of new plates;

(f) That one application of the wax lasts several months.

The respondent further agreed to cease and desist from the use of the word "Laboratories" as a part of its trade name or from otherwise representing that he owns, operates or controls an adequate laboratory under the supervision of a competent chemist or pharmacist where research or experimental work is performed. (July 9, 1937.)

01816. **Vendor-Advertiser—Booklet.**—Rosa V. Thomas, an individual, operating under the trade name of Ace Advertising Agency, Birmingham, Ala., vendor-advertiser, was engaged in selling a mimeographed booklet containing suggested "methods of earning money at home with a typewriter", 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 everyone who can operate a typewriter can be assured a comfortable income by following the plan sold by respondent;

(b) That those purchasing respondent's instructions will earn \$30.00 per week, or that any of such purchasers have earned said amount;

(c) That no experience is needed to put respondent's plan into operation.

The respondent further agreed:

(d) Not to make unmodified representations or claims of earnings in excess of the average earnings of purchasers of respondent's instructions, achieved under normal conditions in the due course of following such suggestions;

(e) 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 instructions under normal conditions. (July 9, 1937.)

01817. **Vendor-Advertiser—Medicinal Preparation.**—Owens & Minor Drug Co., Inc., a corporation, Richmond, Va., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Dr. David's Sanative Wash, 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. David's Sanative Wash will relieve itch, mange, scabies, scratches, camp itch or Seven Years' Itch in one-half hour or with one application;

(b) That Dr. David's Sanative Wash is a competent treatment for the relief of mange unless in direct connection therewith it is stated that it is not a competent treatment for demodectic or follicular mange;

(c) That Dr. David's Sanative Wash is a specific for any ailment unless and until the proper number of necessary applications are prescribed to cause the same to be a specific therefor;

(d) That Dr. David's Sanative Wash is a competent treatment for itch unless the same is qualified as itch frequently known as Scabies, Scratches, Camp Itch or Seven Years' Itch;

(e) That Dr. David's Sanative Wash is a guaranteed treatment. (July 9, 1937.)

01818. Vendor-Advertiser—Astrological Forecasts, Etc.—Mahlon Norvell, an individual, trading as Norvell, Hollywood, Calif., vendor-advertiser, was engaged in selling Astrological and Numerological Readings, Birth date analysis, and booklets, 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 charts, analyses, forecasts or any services are furnished "free" when other purchases are required;

(b) That respondent's astrological or numerological readings or forecasts are individual, complete, reliable or unusual;

(c) That respondent can forecast the future of any person who sends in a birth date;

(d) That respondent by studying the answer to certain form questions can reveal one's past or future life experiences, or

1. Tell how to avoid disaster or tragedy;

2. Assure happiness;

3. Make the most impossible day dreams, or any other day dreams, come true; or

4. Cover all factors bearing on the emotional life;

(e) That directly or inferentially the use of respondent's Mystic Love Chart enables one to attain the ends sought or desired in either his romance, marriage or business affairs;

(f) That respondent's so-called Mystic Love Chart ordinarily sells for \$1.00 so long as it is sent regularly for 25c or any other price less than \$1.00;

(g) That by the use of respondent's Mystic Love Chart, one may know the secrets of his loved ones, or

1. May rely upon any sign therein indicated, either for his romance, marriage or business,

2. Be enabled to "read the heart secrets of sweetheart or friend";

3. Know how any one will react to you, or how to win the heart in love and marriage;

(h) That the Zodiac Science of Numerology is a science or is self revealing;

(i) That respondent is enabled through answers to form questions to discern any "subtle streams of radiation" or that the person diagnosed is "radically different", or "attracts a strange and thrilling destiny";

(j) That respondent has a Mystic Message for persons who send in their birth dates;

(k) That respondent's booklet "How You Can Hold True Love" directly or inferentially is based upon the love secrets and success of the movie stars;

(l) That respondent is able to designate any so-called ruling numbers upon the information called for in his form; or that any designated number has any significance or bearing upon one's destiny;

(m) That respondent is enabled to discern through information called for in his forms whether a person is subject to stomach disturbances, nervous troubles, minor complications due to colds, or any other physiological or mental condition. (July 9, 1937.)

01819. Vendor-Advertiser—Weight Reducer.—Larx Co., Inc., a corporation, operating under the trade name of Dietene Co., Minneapolis, Minn., vendor-advertiser, was engaged in selling a certain product known as Dietene, 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 loss of weight by the use of Dietene can be "guaranteed;"

(b) That Dietene builds vitality while assisting the user to reduce weight;

(c) That any positive assurance can be offered users that any definite decrease of weight will be effected in a given period of time;

(d) That the seal of approval of the Good Housekeeping Institute is the buyer's assurance that Dietene will accomplish all that is claimed for it;

(e) By direct statement or by reasonable implication that Dietene itself accomplishes any loss of weight or that the properties thereof extend beyond those of a preparation which, when used as directed, provides meals low in calories and supplements the low-caloried diet by supplying vitamins, minerals and proteins which might otherwise be lacking in a mere restriction of the calorie intake. (July 9, 1937.)

01820. Vendor-Advertiser—Cleanser for False Teeth.—Wernet Dental Manufacturing Co., Inc., a corporation, Brooklyn, N. Y., vendor-advertiser, was engaged in selling a preparation for cleansing false teeth, designated Polident, 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 Polident will remove tartar when formed as an incrustation;

(b) That Polident will achieve any given results in a specified period of time unless supported by actual and competent tests and demonstrations;

(c) That Polident will sterilize;

(d) That "your" dentist will recommend Polident;

(e) That Polident ends false look of dentures;

(f) That by the use of Polident one will get rid of his plate worries. (July 9, 1937.)

01821. Vendor-Advertiser—Medicinal Preparations.—Woman's Mutual Benefit Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling preparations designed Primeda Balm, Primeda Cerate, Primeda Tonic Tablets, Primeda Lidex Tablets, Primeda Rectal Cones, Primeda Neriton Tablets, Primeda Laxative Tablets,

Primeda Stomachic Tablets and Primeda Diuretic 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 Primeda Balm is a competent treatment or an effective remedy for "ailments" peculiar to the female sex;
- (b) That use of any of the preparations or any combination thereof will enable one to regain or sustain health;
- (c) That any of the preparations or any combination thereof will have any definite effect within any definite period of time;
- (d) That by use of any of the preparations or any combination thereof one will gain any definite number of pounds within any definite period of time;
- (e) That Primeda Cerate will afford relief from all kinds of pain;
- (f) That any of the preparations or any combination thereof will enable one to safely undergo "change of life";
- (g) That Primeda Balm is effective in checking unnatural discharges peculiar to the female sex;
- (h) That Primeda Tonic Tablets are a competent treatment or an effective remedy for any type of anemia;
- (i) That Primeda Lidex Tablets are of benefit in improving the action of the bowels or in relieving the conditions resulting from constipation;
- (j) That Primeda Rectal Cones are of "special" value in improving the capillary circulation of the rectum, or in the relief of piles;
- (k) That Primeda Neriton Tablets exert a soothing influence on the nervous "system" or in relaxing nervous tension;
- (l) That Primeda Neriton Tablets are an aid in inducing sleep or in relieving nervous headache, nervous indigestion, or other "manifestations due to a functional disturbance of the nerves;"
- (m) That Primeda Laxative Tablets are non-irritating or that they will produce no griping. (July 14, 1937.)

01822. Vendor-Advertiser—Medicinal Preparation.—McNeil Drug Co., Inc., a corporation, Jacksonville, Fla., vendor-advertiser, was engaged in selling a medicinal preparation designated McNeil's Magic Remedy, 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 McNeil's Magic Remedy—
 1. Is all that its name implies; or
 2. Is a "perfect" remedy for any ailment, or is a remedy for rheumatism, neuritis, lumbago, gout, glandular swellings, unless such representation is limited to palliative relief from the pain associated with such conditions;
- (b) That McNeil's Magic Remedy stimulates the glandular system, embracing the kidneys and liver;
- (c) That McNeil's Magic Remedy is a blood purifier, unless limited to the antiseptic action of the potassium iodide;
- (d) That McNeil's Magic Remedy builds up and strengthens the system or drives out disease;
- (e) That the continued use of McNeil's Magic Remedy will "conquer" disease;
- (f) That McNeil's Magic Remedy—
 1. Eradicates uric acid and other impurities from the blood;

2. Makes thin blood rich and healthy;
3. Builds strength and vigor;
4. Is always effective;
5. Is "the only genuine magic remedy";
6. Will "cure", or has "cured" anyone suffering with rheumatism, lumbago, neuritis, gout, etc.;
7. Will do for one what two doctors, one specialist and four or five rheumatic remedies failed to do; or
8. Makes one "free" from pain. (July 14, 1937.)

01823. Vendor-Advertiser—Medicinal Preparation.—International Vitamin Corp., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a medical preparation designated I. V. C. Vitamin Pearls, 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 "Nature's own tonic";
- (b) That ordinary foods do not supply Vitamin A or Vitamin D in sufficient quantities;
- (c) Inferentially or otherwise that Vitamin A is effective in the prevention of colds, unless limited to those cases in which there is a deficiency of Vitamin A;
- (d) That Vitamin D is of value in the prevention of colds. (July 19, 1937.)

01824. Vendor-Advertiser—Medicinal Preparation.—The Knox Co., a corporation, Chamber of Commerce Bldg., Los Angeles, Calif., vendor-advertiser, was engaged in selling a medicinal preparation designated Cystex, 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 effects of taking Cystex are "sure", or that—
 1. If one uses Cystex he does not "take chances" with functional disorders;
 2. "You need not suffer another day";
- (b) That Cystex "corrects" functional disorders, or any other condition, unless clearly limited to aiding nature to restore normal functional activity;
- (c) That Cystex brings any specified results within any specified time, or that it will bring new "vitality" at all;
- (d) That any results are "guaranteed" to users of Cystex;
- (e) That Cystex—
 1. "Kills" kidney acids;
 2. "Clears" the skin;
- (f) That Cystex purifies the blood, unless clearly limited to assisting the kidneys to purify the blood;
- (g) That this preparation "cleans out" acids and poisons, unless clearly limited to assisting the kidneys to eliminate acids and poisons;
- (h) That acid in the blood is dangerous to health unless specifically limited to excess acid in the blood;
- (i) That one risks nothing in trying Cystex, so long as the user pays for the treatment and the statement refers only to an advertised refund in case of dissatisfaction. (July 21, 1937.)

01825. **Vendor-Advertiser—Reducing Preparation.**—Joseph Breyer, an individual operating under the trade name of Nanta Co., New York, N. Y., vendor-advertiser, was engaged in selling a reducing preparation designated Nanta, 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 users of said preparation may “eat plenty” unless such representation is so qualified as to limit the foods to those appearing in the directions supplied with Nanta;

(b) That said preparation is an effective treatment for obesity, unless such representation is qualified by a conspicuous statement made in direct connection therewith to the effect that the preparation is recommended only for cases of obesity due to overeating, drinking, faulty elimination, indiscretion in diet or toxic condition;

(c) That by taking Nanta one will gain health;

(d) That the theory of reducing exemplified by Nanta is a new discovery.

Respondent further agreed in soliciting the sale of and selling said preparation in interstate commerce that in all advertising literature prospective purchasers will be informed that in connection with the taking of Nanta it is advisable and desirable to take certain exercises and to follow certain diets as suggested by respondent.

The respondent further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

The respondent further agreed in soliciting the sale of and selling said preparation in interstate commerce that it will not:

(e) Represent that purchasers may expect to reduce weight or measurements in any specific amount or so reduce within any definite period of time; provided, however, that this inhibition is not intended to prevent the use of truthful testimonials properly verified before publication with headings sustained by the statements made in such testimonials;

(f) Represent by direct statement that purchasers may expect the same results as shown by those giving testimonials;

(g) Publish testimonials until statements therein have been properly verified. (July 23, 1937.)

01826. **Vendor-Advertiser—Perfume.**—James McCreery & Co., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a perfume designated “Parfum De Toilette,” and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from using the phrase “of France” in connection with the name or designation of its product, or from otherwise representing or implying that its product is manufactured or compounded in France; and from making any other claims or assertions of like import. (July 23, 1937.)

01827 **Vendor-Advertisers—Books.**—Prosperity Publishers, Inc., a corporation, and Albert G. Illich, individually and as president of

Prosperity Publishers, Inc., doing business under the trade name of Prosperity Institute, New York, N. Y., vendor-advertisers, were engaged in selling books designated Library of Business Opportunities, 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 respondents' Library of Business Opportunities

1. Enables one to Make "lots" of money;
2. Enables one to increase his income to \$100,000 cash, or any other definite or fabulous amount;
3. Enables one to receive or earn from \$100 to \$1,000 a day; or any other specified amount in any specified time;
4. Starts one toward personal prosperity;
5. Ends one's money worries;
6. Causes one to become a "big fellow";
7. Is, in the opinion of experts or otherwise, the best book on the mail order business ever printed;
8. Has enabled the author to make several good sized fortunes;
9. Enables one immediately to operate a producing mail order business without any previous knowledge or experience;
10. Guarantees ones future to be prosperous;
11. Enabled the respondent, Albert G. Illich or anyone else to earn \$12,184 or any other sum of money through the operation of any one scheme or plan contained therein;
12. Enables one to start his own business, or provides the "Big Chance";
13. Provides one with the means of obtaining those extras in life not possible where one is earning a salary;
14. Contains plans for business ventures hitherto closely guarded;
15. Enables anyone—rich or poor, old or young, male or female, educated or uneducated, with or without business experience to attain success and prosperity;
16. Provides such a wide choice of plans and information, that "anyone will make good";
17. Contains a plan for selling silk shirts that enabled a woman to make \$1,000,000 in six months;
18. Contains plans whereby persons earn \$25, \$50 or \$75 weekly or any other amounts, monthly, yearly or in any other period of time, unless substantiated by reliable information;
19. Contains plan whereby anyone may earn more at home in the evenings than he does during the daytime at his usual occupation or employment;
20. Enables one to realize any definite or specified profit from any definite or specified investment;
21. Enables anyone to earn money through the employment of others services;
22. Contains formulas or directions for making medicinal preparations that are efficacious remedies for any diseases whatsoever;
23. Contains any scheme or plan whereby one may start making money within a week or any other definite specified period of time;

(b) That respondents' book How to Succeed

1. Helps thousands make more money;
2. Shows one the right method of success or the right path to follow;
3. Contains incontrovertible rules for success;
4. Discloses why many fail who should have succeeded;

(c) That respondents, or either of them, join in any form of partnership arrangement with persons replying to their advertisements for the purpose of enabling such persons to make more money;

(d) That persons purchasing respondents' set of books receive the privilege or opportunity of associating themselves with respondents or either of them in a "ready-made" mail order business that is considered by experts as being the best thing in twenty years;

(e) That bankers, clerks, lawyers, ministers, professors, insurance agents have taken advantage of respondents' plans for making money;

(f) That respondents' money-making plans or schemes are automatic or foolproof;

(g) That the respondent, Albert G. Illich, or anyone else "put over" property deals running into millions of dollars by using mail order methods or has banked \$19,000 in twelve months operating any of the mail order schemes set forth in said books;

(h) That anyone connected with respondents' business served as counsellor, pilot or mentor for anyone purchasing respondents' books or schemes;

(i) That any of the plans or schemes offered by respondents are more successful than other schemes or plans sold singly by others at a greater price;

(j) That respondents, or either of them, guarantee any return on the money invested in any of their plans or schemes; or guarantee the safety of said investments;

(k) That respondents' plans are tested, tried, and certain pullers; and make prosperity and success a certainty;

(l) That respondents, or either of them, maintain a Business Counsel Department possessed of the best thoughts of the best minds in business to give purchasers of their books helpful ideas and to take said purchasers step by step from the very inception of the idea or scheme until the profits are banked;

(m) By the use of simulated negotiable instruments, or otherwise, that every ambitious person by following plans set forth in respondents' books may expect to profit to the extent of \$550.35, or any other amount in excess of the average profit realized by those who have previously purchased said books and followed plans set forth therein;

(n) That any of the plans or ideas set forth in respondents' books are comparable or similar to the plan or idea followed by Wrigley or by any other person who has made an outstanding business success.

Respondents further agreed in soliciting the sale of said product in interstate commerce to cease and desist from using any trade name containing the word "Institute." (July 26, 1937.)

01828. Vendor-Advertiser—Medicinal Preparations.—G. Knewitz, an individual, E. St. Louis, Ill., vendor-advertiser, was engaged in selling medicinal preparations designated Stopake and Oilax, 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 Stopake Tablets will enable one to avoid or conquer misery, suffering or distress;

(b) That Stopake is indicated for any or all aches or pains, or that Stopake is a competent treatment for pain irrespective of cause;

(c) That Stopake relieves backache or any other aches unless limited to relief of pain due to minor and temporary causes;

- (d) That Stopake makes suffering and pain unnecessary;
- (e) That Stopake chases away, drives away or subdues pain unless limited to minor aches and pains;
- (f) That one can avoid, stop or prevent constipation with Oilax;
- (g) That through the use of Oilax one experiences a change from a tired, sluggish, weak feeling to a condition of eagerness or health;
- (h) That constipation causes liver troubles;
- (i) That Oilax will relieve stomach, kidney or liver troubles, rheumatism or high blood pressure;
- (j) That the use of Oilax will enable one to keep healthy or live longer or keep the stomach functioning perfectly;
- (k) That the use of Oilax will drive away stomach troubles;
- (l) That Oilax will restore the stomach to normalcy;
- (m) That the use of Oilax will prevent colds.

The respondent further stipulates and agrees to cease and desist from the use of the term "Oilax" as a trade name for the laxative remedy now so designated. (July 26, 1937.)

01829. Vendor-Advertiser—Cosmetics.—Muriel Maxwell Harvey, an individual trading as Vahrah Beverly, San Francisco, Calif., vendor-advertiser, was engaged in selling certain cosmetics designated as Golden Oil, Razi-Hajat, Cleansing Cream, Skin Tone, Pore Cream, Hormone Cream, Skin Firm, Skin Food, Tissue Cream, Dawn of Youth, Vahrah Beverly's Oil, and other preparations designated as Vahrah Beverly's Secret From India Preparations, 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 the preparations will bring back "youth" of the skin;
- (b) That any of the preparations will change or restore the neck to a "youthful" contour or free the neck from double chin, crepey throat or heavy lines;
- (c) That any of the preparations will remove wrinkles, double chin or crows' feet;
- (d) That any of the preparations will rejuvenate the neck;
- (e) That age is not accountable for a wrinkled or crepey neck;
- (f) That any of the preparations will rebuild shrunken tissues;
- (g) That one will see or feel the effects of recreated youth by use of any of the preparations;
- (h) That any of the preparations will "banish" wrinkles, crows' feet or sagging muscles;
- (i) That any of the preparations are used or endorsed by celebrities, unless and until such is a fact;
- (j) That any of the preparations will "restore" an old neck;
- (k) That any of the preparations will revitalize or rebuild the tissues;
- (l) That any of the preparations will reach underlying muscles or tissues or between the layers of the skin;
- (m) That any of the preparations are a skin "food" or a "Hormone", "Tissue" or "Pore" cream;
- (n) That any of the preparations are nourishing or that they will bring new life to falling cells;
- (o) That any of the preparations "youthify" the skin or "renew" muscles;

- (p) That any of the preparations will rid the skin of blackheads or acne;
- (q) That any of the preparations will "clear away" blemishes or "arouse" the skin to natural health;
- (r) That any of the preparations will "transform" the neck or face;
- (s) That any of the preparations re-plant the hormones of youth into the skin structure;
- (t) That by use of any of the preparations:
1. Drooping muscles are fed new vigor,
 2. Wasted tissues are rooted with new life,
 3. The face is resculptured or energized;
- (u) That any of the preparations will enable one to keep alluringly young.
(July 30, 1937.)

01830. Vendor-Advertisers—Correspondence Course in Art.—Frank L. Miller and Alfred C. Schmidt, individuals trading and doing business as Artists and Models Studio, Manhattan Bank Bldg., Memphis, Tenn., vendor-advertisers, were engaged in selling a certain correspondence course in art designated as Art Course and Nude Art Studies, 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 their Sight-Correcting Art Course enables the student:
1. To draw and/or make big money;
 2. To instantly correct mistakes;
- (b) That respondents' course is a new invention;
- (c) That said course
1. Offers a sure way to gain a truthful vision;
 2. Completely analyzes your drawing;
 3. Assures quick progress;
- (d) That thousands of others have been successful;
- (e) That the price charged for said course is a limited offer unless and until a definite time limit is determined as the date of expiration of such offer;
- (f) That art studies offered for sale are limited in quantity and will not be reproduced unless and until such be a fact determined before the release of such representation;
- (g) That all necessary materials are included with said course or that paper furnished with said course is "drawing paper."

The respondents further agreed that in offering for sale said course of instruction they will cease and desist from designating, directly or otherwise, the plates or drawings sold in said course as lessons. (July 30, 1937.)

01831. Vendor-Advertiser—Rings and Watches.—H. Birnbaum, doing business as Fashion Jewelry Co., New York, N. Y., vendor-advertiser, was engaged in selling rings and 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) Representing directly, or by reasonable implication, that any article or group of articles is sold on an installment plan or upon deferred payments,

unless at the time of the initial payment the respondent delivers to the purchaser said article, or all of the articles in said group;

(b) Representing directly or otherwise that the watches and rings are hand engraved and/or chased, until such time as the same is a fact. (July 28, 1937.)

01832. Vendor-Advertiser—Reducing Cream.—Youthful Face & Figure, Inc., a corporation, formerly trading as Youthful Face & Figure Institute, New York, N. Y., vendor-advertiser, was engaged in selling a certain cream designated Dr. Hatch's Formula Massage Cream, 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 reducing cream;

(b) That through the use of respondent's product excess fat can be removed, unless it is clearly shown that the cream is to be used with massage for removal of superficial fat;

(c) That many prominent society women and stars of stage and screen owe their youthful-appearing figures to the use of respondent's product;

(d) That respondent's product is effective for general reducing;

(e) That users of respondent's product may lose weight without limited diets, or while eating what they like, or without effort;

(f) That respondent is "sure" that its product will do the same for the user as it has done for hundreds of celebrities;

(g) That by applying the respondent's product to spots where superficial fat has accumulated the excess fat may be removed.

The respondent further agreed to cease and desist from the use of the word "Institute" in its trade name. (July 28, 1937.)

01833. Vendor-Advertiser—Medicinal Preparations.—Louis Tillery, M. D., an individual operating under the trade names of Dr. Lone Starr's Last Chance Medicine Co., Dr. Lone Starr's Laboratory, Dr. Starr's Laboratory, and Dr. Lone Starr, Chicago, Ill., vendor-advertiser, was engaged in selling medicinal preparations designated Vitality Tablets, Manhood Tablets, Laxative Pills and Diuretic Pills, 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 medicinal preparations sold by respondent constitute a competent treatment or an effective remedy for lost vitality or—

1. Will overcome fatigue,
2. Eliminate poison from the system,
3. Increase the blood flow,
4. Stimulate all glands, or
5. Purify the blood;

(b) That men and women past 40 need respondent's preparations or any of them.

The respondent further agreed to cease and desist from the use of the word "laboratory" as a part of his trade name or from otherwise representing that he owns, operates or controls an adequate labora-

tory under the supervision of a competent scientist, where research or experimental work is conducted.

The respondent further agreed to cease and desist from representing that any goods are given "free" so long as said goods are given only to reimburse agents for shipping costs on goods purchased, or on any other condition whereby the recipient is expected to make any payment or perform any act or service before qualifying to receive the goods. (July 28, 1937.)

01834. Vendor-Advertiser—Rebuilt Watches—Sales Plan.—Solomon Michelson, an individual, trading as The New York Jobbers, New York, N. Y., vendor-advertiser, was engaged in selling rebuilt watches—sales plan, 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 the watches offered for sale by the respondent are "engraved", until such be a fact;

(b) Inferentially or by direct statement that any of said watches are new, and will publish in direct connection with such advertisements in equally conspicuous type a statement to the effect that such watches are not new.

The respondent further agreed in all future advertising of rebuilt watches to indicate in direct connection with any such advertisements, and in type equally conspicuous, that such watches are rebuilt. (July 28, 1937.)

01835. Vendor-Advertiser—Plating Preparation.—D. Borovitz, an individual trading as Puritan Laboratories, Akron, Ohio, vendor-advertiser, was engaged in selling a plating preparation designated Kwik-Silver, 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 Kwik-Silver will plate pure silver on silver articles;

(b) That respondent's Kwik-Silver contains no injurious ingredients;

(c) That by applying one coat of Kwik-Silver after another, a light or heavy plate may be secured;

(d) That Kwik-Silver plating is permanent;

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed:

(e) 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;

(f) 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;

(g) 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

(h) 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.

Respondent further agreed to cease and desist from the use of the word "Laboratory" or "Laboratories" as a part of his trade name. (Aug. 4, 1937.)

01836. **Vendor-Advertiser—Baby Chickens.**—The House of Gurney, Inc., a corporation, Yankton, S. Dak., vendor-advertiser, was engaged in selling baby chickens, 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 direct statement or by reasonable inference that respondent owns, operates or controls a hatchery, incubators, a chick nursery or laying flocks, supplying eggs for hatching purposes, or

1. "We * * * set our incubators,"
2. "Our flocks," or
3. "Our first batch." (Aug. 4, 1937.)

01837. **Vendor-Advertisers—Medicinal Preparation.**—Howard D. Blackburn and Robert B. Blackburn, co-partners, operating under the firm name of The Sulfex Co., Dayton, Ohio, vendor-advertisers, were engaged in selling a medicinal preparation designated Sulfex, 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 Sulfex is a competent treatment or an effective remedy for pimples, acne or any other skin condition, unless limited to such conditions as are actually relieved by the use of Sulfex, or that Sulfex—

1. Will clear the skin, or clear up the skin;
2. Constitutes a treatment for "pimply skin";
3. Is the most dependable means of clearing the skin of common acne, or unsightly pimples and blotches;
4. Will normalize bowel elimination; or
5. Will "end" any skin condition;

(b) That there is nothing which will so quickly wreck a complexion as the lack of sulphur in the diet;

(c) That a lack of sulphur causes—

1. Common acne;
2. Pimples and blotches;
3. Itching skin;
4. Muddy or sallow skin; or
5. Too dry or too oily skin;

(d) That after taking Sulfex, complexion troubles or skin troubles will vanish;

(e) That any results are "guaranteed" to users of Sulfex;

(f) That any results may be assured users of Sulfex within 4 weeks or any other specified period of time;

(g) That the simplest and quickest means of supplying the body requirements of sulphur is by the use of Sulfex;

(h) That every physician approves Sulfex. (Aug. 4, 1937.)

01838. Vendor-Advertiser—Insulation Fabric and Metal Lath.—Silvercote Products, Inc., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling certain products designated Silvercote Insulation Fabric and Milcor Metal Lath, 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 Silvercote represents 100% more insulation value than other insulation materials, at one-half the price, or that it cuts insulation costs in half;

(b) That one layer of Silvercote Fabric equals the efficiency of two commercial thicknesses of ordinary insulation board;

(c) That all ordinary insulations absorb moisture which depreciates them as much as 80%, or any other figure not substantiated by reliable scientific evidence;

(d) That Silvercote "actually blockades" the passage of heat, or that it accomplishes any effect except to reduce the flow of radiant heat and to increase the insulating efficiency of closed air spaces by subdividing them;

(e) That the surface of this product is not affected by time or elements;

(f) That two-thirds of the heat lost from houses passes through the roof;

(g) That heat loss through the roof is or can be "stopped" by the use of this product;

(h) That Silvercote gives "double efficiency";

(i) That Silvercote reflects 80% to 95% of the radiant heat that strikes its surface, or any other percentage unless established by competent, reputable scientific authority;

(j) That all Silvercote Fabric possesses equal insulating value, or that such fabrics when used for decorative wall or ceiling effects are of equal benefit for insulating purposes;

(k) That when walls are covered with Silvercote Fabric they cost one-half the price of wall of customary finish;

(l) That Silvercote provides more permanent insulation than any other material known;

(m) That the insulating value of metallic insulation is materially lessened by oxidation or corrosion, unless supported by competent evidence;

(n) That Silvercote is the only known combination which effectively meets all tests for plaster base and insulation;

(o) That ordinary insulation materials are damaged and their value impaired by wetting and subsequent drying, by dry rot, or by fungi;

(p) That Silvercote furnishes insulation by making effective the same principle utilized in the thermos bottle. (Aug. 6, 1937.)

01839. Vendor-Advertiser—Evaporated Milk.—Sego Milk Products Co., a corporation, Salt Lake City, Utah, vendor-advertiser, was engaged in selling an irradiated evaporated milk designated Sego Milk, 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 Sego Milk will add more whole milk solids when used in place of ordinary milk, unless limited to the use of Sego Milk in undiluted form;

(b) That Sego Milk will prevent rickets unless limited to indicate that it will prevent rickets only when used by normal babies;

(c) That Sego Milk will insure alertness, vigor or physical fitness in an infant;

(d) That the ordinary diet does not contain adequate amounts of vitamin D, unless limited to the diet consumed by infants and young children;

(e) That the vitamin D content of Sego Milk is the same as sun's rays;

(f) That Sego Milk supplies grownups with an adequate amount of vitamin D when the sun's rays are cut off by clouds, smoke, houses and clothes;

(g) That Sego Milk is equivalent to mother's milk;

(h) That Sego Milk will supply pregnant and lactating women with necessary additional quantities of vitamin D to protect them against bone softening and tooth decay;

(i) That Sego Milk is the only milk similarly treated to produce a vitamin D content. (Aug. 6, 1937.)

01840. Vendor-Advertiser—Chick Feed.—Quisenberry-Hobbs Co., a corporation, Kansas City, Kans., vendor-advertiser, was engaged in selling a product designated Gold Bond Chick Starter Feed, 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 no other feed will produce results equal to those produced by Gold Bond Chick Starter Feed;

(b) That Gold Bond Chick Starter Feed is "the safest" or that it will save every livable chick;

(c) That Gold Bond Chick Starter Feed will cause chicks to grow quicker or more uniformly or will make chickens lay earlier than any other feed;

(d) That Gold Bond Chick Starter Feed supplies every need for bones, body, health, frame, feathers or quick maturity;

(e) That Gold Bond Chick Starter Feed will raise chicks "when all others fall;"

(f) That by use of Gold Bond Chick Starter Feed the egg yield will be doubled;

(g) That by use of Gold Bond Chick Starter Feed chickens will lay any definite number of eggs within any definite period of time;

(h) That any certain vitamin is necessary unless established by the weight of scientific authority;

(i) That vitamins must "blend" or "interlock" or inferentially or otherwise that action of individual vitamins is related. (Aug. 6, 1937.)

01841. Vendor-Advertiser—Photographs.—Pictorial Statues of America, Inc., a corporation, Janesville, Wis., vendor-advertiser, was engaged in selling photographs designated Statues, 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 photographs are:

1. Statues or miniature statuettes, unless qualified by the word "pictorial," or other word or words of like import;

2. Fade-proof;
3. Able "to turn people into statues";
4. Everlasting;
5. Capable of being preserved forever;

(b) That respondent's photographs—

1. Live forever;
2. Permanently preserve the likeness of loved ones;
3. Last a life-time, or for generations;

(c) That all a salesman or agent for respondent's photographs has to do is to "just show the sample" to prospective customers and then "take the orders" therefor; or that he will make sales 9 out of 10 times;

(d) That respondent's salespersons have earned enough money in one week to permit them to pay all expenses and start a bank account;

(e) That the price at which respondent regularly offers its photographs is an introductory offer or that the value of its photographs is any amount greater than that at which they are regularly sold;

(f) That respondent makes prospective salespersons a free offer unless the articles referred to are sent without requiring the payment of any money or the rendering of any service;

(g) That respondent's salesmen made themselves thousands upon thousands of dollars;

(h) That respondent's product is a new invention;

(i) That respondent's salespersons encounter no competition;

(j) That respondent's product is a magic money-maker with a 10 million dollar market.

Respondent in soliciting salespersons or dealers in aid of the sales of its product in interstate commerce, hereby further agreed:

(k) 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;

(l) 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;

(m) 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

(n) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally conspicuous with, as to form, and at least one-fourth the size of the type used in printing such statement or representation of earnings. (Aug. 6, 1937.)

01842. Vendor-Advertisers—Poultry and Stock Feed.—Mrs. W. J. Johnson and M. J. Maystadt, co-partners, operating under the firm name of The Nu Lac Yeaston Co., Jefferson, Iowa, vendor-advertisers, and were engaged in selling poultry and stock feed designated—Nu Lac for Cattle, Horses and Sheep, Special Necro Treatment, Nu Lac Poultry Mixture, 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 Nu Lac contains ingredients which will balance any feeding ration, or that it gives chickens everything needed to build bones, muscles, tissues and feathers;

(b) That Nu Lac will make or keep poultry healthy;

(c) That it is not necessary to feed buttermilk, cod liver oil, etc., when Nu Lac is fed, or by any other terminology that the cod liver oil contained in the product maintains its efficiency in this form and supplies chickens with vitamins;

(d) That Nu Lac will materially increase the supply of lactic acid, or be effective in destroying disease germs and their eggs in the digestive organs;

(e) That the yeast contained in Nu Lac supplies the product with fats, mineral salt, and vitamins;

(f) That the administration of Nu Lac will prevent leg weakness;

(g) That the special Necro Treatment is a competent treatment or an effective remedy for Necro, or that it will—

1. Be effective in the worst stages of bloody scours, or
2. Clean up the herd;

(h) That Nu-Lac—

1. Prevents hairlessness, or
2. Builds larger and stronger frames, or
3. Increases vitality and disease resistance;

(i) That NuLac will help digest all the grain and roughage consumed by a steer;

(j) That when combined with home grown grains, Nu Lac will—

1. Keep a cow toned up physically, or
2. Increase and enrich milk production, or
3. Practically eliminate abortion. (Aug. 9, 1937.)

01843. Vendor-Advertiser—Dentifrice.—The R. L. Watkins Co., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a dentifrice designated Dr. Lyon's Tooth 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 tooth powder outlasts tooth paste two to one;

(b) That Dr. Lyon's Tooth Powder has twice the "cleansing properties" of tooth paste or "is doubly efficient," or "costs only half as much to use";

(c) That there is nothing known that will clean, whiten or polish teeth so quickly, remarkably or effectively as powder;

(d) That nothing else, cleans, lightens, beautifies, polishes or removes film from teeth like powder, or that your dentist tells you so;

(e) That "dentists everywhere" recommend Dr. Lyon's Tooth Powder;

(f) That teeth cannot remain dull and film coated when Dr. Lyon's powder is used;

(g) That Dr. Lyon's Tooth Powder cleans off all stains or leaves the teeth many shades whiter;

(h) That clean teeth mean firm healthy gums and the least possible tooth decay;

(i) That through the use of powder one may have gleaming white or brilliant, clear colored teeth or that discoloration disappears;

(j) That, inferentially or by direct statement, people by the thousands or millions are quitting or discarding ordinary or less effective methods of teeth cleansing for powder;

(k) That Dr. Lyon's Tooth Powder is a "new way" or a "new scientific way" of cleaning teeth;

(l) That through the use of powder one's teeth will attain a brilliance never before attainable;

(m) That the use of powder makes a quicker way to clean teeth;

(n) That the use of powder "makes dull, off-color teeth a folly;"

(o) That the use of powder will do something for teeth that regardless of brushing remain grey, dull and lustreless;

(p) That "a new whiteness, a new brightness" for your teeth is promised;

(q) That the use of powder will give "every" woman sparkling teeth;

(r) That the use of powder will assure brilliant, clear colored teeth;

(s) That Dr. Lyon's Tooth Powder gives dull teeth a sparkling brilliance "like nothing else does." (Aug. 9, 1937.)

01844. Vendor-Advertiser—Bunion and Arch Appliances, Medicated Soaps, etc.—The Scholl Manufacturing Co., Inc., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling certain products designated as Bunion and Arch Appliances, Medicated Soaps, etc., 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 by the use of any of respondent's appliances bunions may be permanently relieved or the cause of bunions corrected;

(b) That respondent's bunion appliances build up crippled structures and tissues, or that the appliances are recognized by orthopedic surgeons as practical in every detail;

(c) That respondent's device "Toe-Flex":

1. Corrects bunion trouble;
2. Affords permanent results;
3. Is of value in cases of deformity;
4. Will correct enlarged joints or crooked toes;

(d) That respondent's device "Dr. Scholl's Bunion Reducer":

1. Arrests the growth of bunions or enlarged joints;
2. Draws out inflammation;
3. Reduces enlargements;

(e) That respondent's appliance "Dr. Scholl's Onixol" is a competent treatment or effective remedy for ingrown toe nails, or that:

1. It will remove ingrown toe nails;
2. Permanent relief is effected;
3. It banishes inflammation, hardens tissue or aids in preventing infection;

(f) That respondent's product "Dr. Scholl's Pedicreme" is a competent treatment or effective remedy for:

1. Sore feet;
2. Aching feet; or that it
3. Opens up the pores;
4. Tones up the muscles & tissues;

(g) That respondent's product "Dr. Scholl's Wenal Ointment" is a competent treatment or effective remedy:

1. For loosening up and making painful bunions and stiff joints more elastic;

2. For rheumatism of the joints, arthritis, or gout; or that

3. It penetrates;

4. It lubricates the tissues;

(h) That respondent's product "Dr. Scholl's "2" Drop Corn Remedy":

1. Does not cause irritation to the surrounding tissues;

2. Is the most satisfactory liquid corn remedy on the market;

(i) That respondent's product "Dr. Scholl's Foot Soap" is a competent treatment or effective remedy for aching feet or that it:

1. Stimulates the skin;

2. Opens the pores;

3. Offers complete relief;

(j) That respondent's product "Dr. Scholl's Foot Balm" will give quick and grateful relief to aches and pains of the feet unless qualified to exclude the aches and pains caused by functional disorders, or that it:

1. Tones up the tissues;

2. Tones up the muscles;

(k) That respondent's appliance "Dr. Scholl's Scientifically Designed Arch Supports":

1. Remove all pressure on the nerves;

2. Provide perfect foot balance;

(l) That respondent's product "Dr. Scholl's Ligtone" is a competent treatment or effective remedy for sprains, or that it will:

1. Penetrate;

2. Reach the muscles and ligaments;

3. Assure quick and pleasing results;

(m) That by the use of any of respondent's appliances, devices or treatment, one may rid oneself or obtain permanent or immediate relief from whatever foot trouble one has, or that any or all of respondent's products tone up the feet or enable one to wear smaller shoes;

(n) That persons subject to foot strain later develop flat feet.

The respondent further agreed to cease and desist from the use of the word "Ligtone" as a designation of a product, unless and until the word "Ligtone" is immediately followed by words equally conspicuous which clearly designate that this product is of no beneficial or therapeutic value to the ligaments of the body.

The respondent further agreed to cease and desist from using pictorial representations which depict conditions or alleged improvements of foot disorders which are either exaggerated or untrue. (Aug. 16, 1937.)

01845. Vendor-Advertiser—Cosmetics.—Desider Rosenberg, an individual operating under the trade name of Seboline Co., Box 2408, Kansas City, Mo., vendor-advertiser, was engaged in selling a certain treatment for the skin consisting of products designated Seboline Facial Cleanser, Seboline Over-Night Application, and Seboline Soothing 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 Seboline Treatment will be effective regardless of what other treatments have been tried, how stubborn the case or how long it has continued;

(b) That this treatment will enable one to have a "clear" skin, or a "healthy" skin;

(c) That this treatment will "correct", "overcome", "end", or "banish" pimples or any other skin condition or "rid" or "free" the user of said conditions;

(d) That the said treatment attacks pimples or other skin conditions from every possible angle;

(e) That this treatment will keep pores free from clogging and prevent their enlarging;

(f) That the Seboline Treatment is a competent treatment or an effective remedy for pimples, skin blemishes or any other disease or condition unless clearly limited to superficial skin conditions due to or aggravated by external causes;

(g) That the sole cause of pimples is too much grease resulting from over-production by the sebaceous glands;

(h) By direct statement or by reasonable inference, that pimples should not be treated by internal medication, or that such treatment is ineffective;

(i) That pimples are caused by a local condition in every case;

(j) That no facial blemishes correct themselves. (Aug. 16, 1937.)

01846. **Vendor-Advertiser—Medicinal Preparation.**—Eli Sperry Leffler, an individual, operating under the trade name of Bromo-Phos, 741 Walnut Avenue, St. Louis, Mo., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Bromo-Phos, 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 Bromo-Phos is safe, or that it has no dangerous effect on the heart action;

(b) That Bromo-Phos—

1. Gets to the cause of "stomach disorders," or

2. Is a competent treatment or an effective remedy for any physiological condition unless specifically limited to such disorders as may be relieved by a sedative, laxative and effervescent. (Aug. 16, 1937.)

01847. **Vendor-Advertiser—Device for birth control.**—Scientific Instruments, Inc., a corporation, 3410 West 60th St., Chicago, Ill., vendor-advertiser, was engaged in selling a certain device for birth control designated "The Rule of Life," 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 Rule of Life will accurately and quickly reckon the sterile and fertile days of women every month;

(b) That the Rule of Life provides or assures a definite, accurate or perfect method of birth control;

(c) That the Rule of Life provides the means for definitely controlling or regulating the size of a family;

(d) That the Rule of Life provides a method of birth control more sure than any other method;

- (e) That the Rule of Life provides the means of avoiding having a child.
- (f) That the Rule of Life eliminates the necessity for the use of dangerous contraceptives;
- (g) That the Rule of Life permits one to choose the months babies are born or bring about pregnancy in any month desired;
- (h) That the American Medical Association endorses the Rule of Life method of birth control and recommends it to physicians for use in their practice as against artificial contraception;
- (i) That there are only eight days of possible pregnancy and three days of almost certain fertility and that marital relations during the remaining days are unfruitful;
- (j) That respondent's method of birth control is based on a proven natural law and is absolutely reliable. (Aug. 20, 1937.)

01848. Vendor-Advertiser—Medicinal Preparations.—R. Schiffmann Co., a corporation, 1734-36 N. Main Street at Gibbons Street, Los Angeles, Calif., vendor-advertiser, was engaged in selling certain medicinal preparations designated as Asthmador, Nasaldor and Expectorant, 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 Asthmatics get quick relief from using respondent's product and that Dr. Schiffmann's Asthmador powder is the world's standard treatment for quick relief from hay fever, and that the medical profession attests this method of relief;
- (b) That respondent's product, Asthmador, gives relief when all other things fail, and that it brings almost instant relief;
- (c) That when the fumes from respondent's product, Asthmador, are inhaled deeply hay fever sufferers find quick relief;
- (d) That the use of Dr. Schiffmann's Asthmador in the form of cigarettes will afford a convenient means of securing quick relief under almost any circumstances;
- (e) That seasonal hay fever and rose colds respond to Dr. Schiffmann's Asthmador treatment;
- (f) That Nasaldor will effectively or quickly relieve head colds, nasal irritations, ease pain, suffering, difficult breathing and congestion;
- (g) That Nasaldor is a remedy for nasal ailments;
- (h) That cold sores around the mouth and nose will yield and clear up with a few applications of Nasaldor;
- (i) That Expectorant is an effective remedy for coughs due to colds and that it is a concentrated competent cough remedy. (Aug. 20, 1937.)

01849. Vendor-Advertiser—Medicinal Preparation.—Walgreen Co., a corporation, 744 Bowen Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a certain medicinal preparation designated "20 Minute Dandruff 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 this preparation has any therapeutic value in the treatment of dandruff unless specifically limited to the removal of the scales of dandruff;

(b) That this preparation reaches the hair roots or performs any corrective function;

(c) That this product will "stop," "kill," or "destroy" dandruff or "rid" the scalp of dandruff;

(d) That this preparation will enable the hair to take on new life;

(e) That the product will bring about a normal healthy condition of the scalp;

(f) That this preparation is guaranteed unless such guarantee is specifically limited to the refund of the purchase price. (Aug. 20, 1937.)

01850. Vendor-Advertiser—Medicinal Preparation.—Rex L. Jones, an individual doing business under the trade name of Zn-Bor Laboratories, Tulsa, Okla., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Zn-Bor, 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 Zn-Bor:

1. Has proven effective in every recorded case;
2. Can be used with complete safety for infants, invalids and adults;
3. Relieves severe cases of mucous congestion with two applications;
4. Produces gratifying results in cases of Hay Fever;
5. Gives prompt and lasting relief in long-standing chronic cases;
6. Is a new scientific discovery;
7. Is a safeguard against colds and sinus infections;
8. Relieves dust poisoning and hay fever immediately;
9. Is one of the greatest reliefs yet discovered for asthma;
10. Is unsurpassed for croup;
11. Is an effective antiseptic and germicide for eye, nose and throat inflammations;
12. Is an effective relief for all eye, nose and throat inflammations;
13. Is an antiseptic; or
14. Is a germicide;

(b) That Zn-Bor is a competent remedy in the treatment of Hay Fever, Sinus Troubles, Colds, Croup, Asthma or severe mucous congestion.

The respondent further agreed, in promoting the sale of his product in interstate commerce, to cease and desist from using the word "laboratories" as a part of his trade name until such time as said respondent actually owns or operates a laboratory or laboratories. (Aug. 20, 1937.)

01851. Vendor-Advertiser—Medicinal Preparation.—Frank A. Urban, an individual trading and doing business as Novogen Laboratories, 149 Metropolitan Ave., Brooklyn, N. Y., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Aidone 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 Aidone Tablets give either sure or maximum relief;

(b) That suffering from headaches, neuralgia, colds or muscular pains is unnecessary;

(c) That Aidone Tablets go to the seat of the trouble or will drive out pain;

- (d) That Aidone Tablets will stop pain;
- (e) That Aidone Tablets may be used freely or safely.

The respondent further agreed to cease and desist from the use of the word "Laboratories" in the trade name under which said product is marketed. (Aug. 20, 1937.)

01852. Vendor-Advertiser—Skin-Scraping Device.—Grace K. Davis, an individual doing business under the trade name of Hollywood Beautifier, Glendale, Calif., vendor-advertiser, was engaged in selling a certain skin-scraping device designated as Hollywood Beautifier, 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 respondent's device one may:
 1. Remove cosmetics and dirt from the pores of the skin;
 2. Keep the skin free from blackheads, skin blemishes and wrinkles;
 3. Tone and/or beautify one's face;

(b) That respondent's device is "new" or "Scientific" or that the same will cleanse clogged pores in a "jiffy" or in any length of time. (Aug. 20, 1937.)

01853. Vendor-Advertiser—Herb Tea.—Beauty Tea Corp., a corporation, 565 Fifth Ave., New York, N. Y., vendor-advertiser, was engaged in selling a certain herb tea designated as Beauty Tea, 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 Beauty Tea of itself will cause a definite reduction in weight;
- (b) That Beauty Tea provides a "sure," "safe," "harmless" and "reliable" method of reducing, or of ridding one of excessive fat;
- (c) That Beauty Tea works the same way that nature itself works;
- (d) That Beauty Tea cleanses the system, or keeps it functioning normally or as it should and/or prepares it for the loss of weight;
- (e) That Beauty Tea will enable one to reduce 15 to 20 lbs., or any other specified number of pounds or to normal;
- (f) That Beauty Tea will enable one to reduce without strict diets or exercise.
- (g) That Beauty Tea contains no drugs;
- (h) That Beauty Tea will not upset nature's proper functions; and may be taken with a complete sense of security;
- (i) That the Beauty Tea method is the best and safest method of reducing.
- (j) That Beauty Tea is a tonic for the system;
- (k) That Beauty Tea will enable one to lose weight while eating three full meals a day;
- (l) That one cup of Beauty Tea every day is all that one need take to reduce, do away with a bulky, ungainly figure, or make sure that one will never regain weight;
- (m) That Beauty Tea is an extraordinary scientific product that can make every woman's figure youthful and slim;
- (n) That the blending of the herbs by a secret scientific principle makes it possible for Beauty Tea to attack the excess fat cells and leave the rest of the body untouched;
- (o) That Beauty Tea contains elements that insure one's good health while taking said tea for reducing weight;

(p) That Beauty Tea is "sure" to cause a reduction in weight and enable one to maintain a slender figure;

(q) That Beauty Tea is everyone's protection against overweight;

(r) That Beauty Tea guards one's health while reducing. (Aug. 23, 1937.)

01854. Vendor-Advertiser—Medicinal Preparation.—Dr. Rud Hoermann, Inc., a corporation, 2200 No. Third St., Milwaukee, Wisc.; vendor-advertiser, was engaged in selling a certain medicinal preparation designated as a Treatment for Eczema, 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 eczema is not a skin disease;

(b) That modern medical science has now thrown a new light on eczema and reveals that eczema does not originate in the skin at all;

(c) That eczema originates

1. As a constitutional disorder; or

2. As inadequacy of an important glandular organ of the body;

(d) That the skin rash, the itching, the irritation caused by eczema are merely the external symptoms of a deep-seated constitutional disorder;

(e) That definite results in the treatment of eczema can only be obtained by counteracting the deficiency of this important glandular organ;

(f) That Dr. Hoermann's Treatment—

1. Increases vitality,

2. Strengthens resistance, or

3. Enables one to combat the constitutional cause of eczema;

(g) That an internationally famous European physician recommends this treatment as the only logical treatment for eczema;

(h) That Dr. Hoermann's "personal attention" is given to every case;

(i) That the questionnaire requesting information "will enable Dr. Hoermann to have a complete understanding of your case";

(j) That D. Hoermann's Treatment for Eczema will—

1. "Banish" eczema suffering;

2. Induce sound sleep at night;

3. Do what twenty others could not do;

4. Practically clear up the skin;

5. "Free" one from eczema;

6. Produce astonishingly quick relief; or

7. Cause one to gain weight;

(k) That Dr. Hoermann's internal treatment is the logical method of relieving eczema;

(l) That the service rendered in the selling of this treatment goes further than merely supplying remedies;

(m) That, in purchasing this treatment, the patient is getting not only a treatment which has conclusively proven its merit, but is also securing the "personal" services of a physician who has had outstanding success in curbing eczema;

(n) That the cause of eczema is internal;

(o) That Prescription 33 corrects, by internal medication, the constitutional disorder which is the cause of eczema. (Aug. 25, 1937.)

01855. Vendor-Advertiser—Radios.—Little Giant Radio Co., 1166 Diversey Parkway, Chicago, Ill., vendor-advertiser, was engaged in

selling radios designated Midget Pocket Radio, 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 his Midget Pocket Radio tunes in the broadcast band;
 - (b) That respondent's Pocket Radio should or will last for years;
 - (c) That respondent's Pocket Radio does not wear out from listening;
 - (d) That respondent's Pocket Radio is precisely assembled or rigidly tested.
- (Aug. 28, 1937.)

01856. Vendor-Advertiser—Cosmetics.—A. J. Krank, Inc. (a corporation), 1885 University Ave., St. Paul, Minn., vendor-advertiser, was engaged in selling various cosmetic products, 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 Balm Argenta—
 1. Banishes skin age;
 2. Rejuvenates the skin;
 3. Speaks the language of youth, or in any manner contributes or restores youth or youthful beauty to any part of the body;
 4. Prevents scraping or rasping due to shaving;
 5. Corrects rough skin conditions, unless associated with chapping;
 6. Prevents "winter itch";
 7. Will work miracles;
 8. Replenishes natural oils;
- (b) That by the use of Balm Argenta one may obtain skin which one has envied in others;
- (c) That Balm Argenta is a competent treatment or effective remedy for creepy skin or skin imperfections;
- (d) That the product sold as "Face Value" is a "fountain of youth";
- (e) That the product sold as "Scalphealth Tonic" stimulates circulation or "frees" the scalp of dandruff;
- (f) That the product sold as "Astringent Lotion" closes the pores, "firms the skin", or is a "youthifier";
- (g) That the product sold as "Lemon Cleansing Cream" is "indispensible", "penetrates deeply", "dissolves impurities", "dissolves embedded dirt and hardened secretions", or "penetrates clogged pores";
- (h) That the product sold as "Skin-Health Tissue Cream" will cause "enlarged facial muscles to respond to its restorative action", or that "uneven texture of the skin responds to its restorative action", or "stimulates vital cells"; or that it possesses a restorative action;
- (i) That the product sold as "Cold Cream" is not "greasy";
- (j) That the product sold as "Special Cleansing Cream" is penetrating;
- (k) That the product known as "Honey Rose Cream", "conditions and rejuvenates those deep lying tissues which surface creams cannot benefit", or that "it floods every pore with all the oils and unguents necessary to a lovely skin";
- (l) That the product sold as "Poudre Krank" is "hand-blended", "hand made quality", or that "nothing in it can be chemically acted upon by perspiration or skin acids"; or that it "clings perfectly all day and will not cake when wearer perspires";
- (m) That the product sold as "Odo-Ban" "banishes" perspiration odor;

(n) That the product sold as "Skintone" "rejuvenates" or "stimulates" the skin;

(o) That the product sold as "Permanent Wavoll" puts "life" into hair, or "prevents falling hair";

(p) That the product sold as "Sporicide" relieves all forms of itching and skin irritation instantly, or that it will act as a preventative of or afford relief from any or all skin disorders unless limited to the relief of the itching, smarting, and burning of the disorder;

(q) That the product sold as Hair Root Oil invigorates the scalp, loosens dandruff or prevents falling hair;

(r) That the product sold as "Fix-A-Gloss" acts as a safeguard against dandruff.

The respondent further agreed to cease and desist from—

The use of the words "Hair Root Oil" as a name or designation for any product, unless qualified by some phrase immediately following and equally conspicuous that will disclaim any implication that it is an oil beneficial for the roots of the hair;

The use of the words "Muscle Oil" unless qualified by some phrase immediately following and equally conspicuous that will disclaim any implication that its product is beneficial to any muscle of the body. (Aug. 27, 1937.)

01857. Vendor-Advertiser—Poultry & Stock Remedies.—J. H. Oesterhaus, an individual doing business under the trade name of Farmers Serum & Supply Co., 1612 W. 16th St., Kansas City, Mo., vendor-advertiser, was engaged in selling Poultry and Stock Remedies 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 respondent's Abortion Vaccine will provide "permanent" protection from abortion;

(b) That respondent's combined treatment is a "guaranteed method" for preventing and treating blackhead in turkeys;

(c) That respondent's remedies will prevent or control poultry diseases, without proper limitation;

(d) That respondent's products are government licensed, except such products which are so licensed. (Aug. 27, 1937.)

01858. Vendor-Advertiser—Glass.—Harold Warp, an individual doing business under the trade name of Flex-O-Glass Manufacturing Co., 1451 North Cicero Ave., Chicago, Ill., vendor-advertiser, was engaged in selling a certain product designated Flex-O-Glass, 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 Flex-O-Glass

1. Matures 2-pound broilers in 8 weeks;

2. Doubles winter egg production;

3. Matures laying pullets in 6 months;

4. Has a health value that has never been equalled;
5. Admits far more actual sunlight than glass;
6. Admits more healthful light than any other material;
7. Is necessary or essential to raising chickens;
8. Is a preventative against diseases;
9. Prevents roup, or
10. Puts the sun to work for you;

(b) That Flex-O-Glass gives hens June sunshine full of egg-making ultra-violet rays all winter long;

(c) That Flex-O-Glass turns chick losses into profits;

(d) That a flock kept under Flex-O-Glass during the winter months are less apt to have roup and canker than other flocks. (Aug. 23, 1937.)

01859. Vendor-Advertisers—Cosmetics.—Duart Manufacturing Co., Ltd., a corporation, 984 Folsom St., San Francisco, Calif., and Duart Sales Co., Ltd., a corporation, Humbolt Building, San Francisco, Calif., vendor-advertisers, were engaged in selling a face cream designated Creme of Milk, 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 Creme of Milk is made from milk unless in direct connection therewith it is stated that it contains ingredients other than milk oils;

(b) That Creme of Milk is the only face cream that contains "natural oils" or oils that are "most" closely related to the oils of the human skin;

(c) That Creme of Milk will banish dryness, coarse pores, blackheads or any other skin faults or will do more than aid in reducing or modifying some superficial skin blemishes and disorders;

(d) That Creme of Milk will replace the natural oils of the skin;

(e) That the cells of the human skin will drink in Creme of Milk;

(f) That by using Creme of Milk an improvement in one's skin will be noticed within any definite period of time;

(g) That the use of Creme of Milk will cause blackheads to melt away, coarse pores to reduce or "blemishes" of a skin deficient in natural oil to "banish" or "disappear";

(h) That Creme of Milk—

1. Is the one perfect creme for the skin;
2. Will nourish the skin or the pores of the human body;
3. Has "beautifying" qualities that have never been duplicated or is rich with "beauty-giving" qualities;
4. Will build up the natural youth-giving oils;
5. Is the newest and most revolutionary face creme ever developed;
6. Was developed by Duart;
7. Will penetrate deep into the tissues;
8. Gives deep down protection;
9. Banishes lines caused by cold weather aging;
10. Will refine or nourish every pore;
11. Will cause skin cells to regain their normal condition;
12. Is the first really new face creme offered in modern times;

(i) That with the use of Creme of Milk the beauty of youthful complexions will return;

(j) That Creme of Milk is endorsed by the Motion Picture Hairstylists Guild or any other group of persons, unless and until it is a fact that such Guild

or group as such or an officer thereof, after being duly authorized so to do, has given such endorsement.

The respondents further agreed to cease and desist from designating their product "Creme of Milk" unless in close proximity therewith and in equally conspicuous terms it is stated that said product contains ingredients other than butterfat or milk oils. (Aug. 23, 1937.

01860. **Vendor-Advertisers—Medicinal Preparation.**—M. J. Baalman and M. H. Baalman, a copartnership doing business under the trade name of Tysmol Co., 1263 Mission St., San Francisco, Calif., vendor-advertisers, were engaged selling a medicinal preparation designated Tysmol Absorbent, 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 healing preparation is quickly absorbed through the pores of the skin;

(b) That the application of Tysmol will—

1. Usually "stop" pains at once; or

2. Cause the last trace of soreness to disappear at once;

(c) That Tysmol is a penetrating emollient which goes in through the pores;

(d) That the application of Tysmol to the arms, neck, legs or thighs will "rid" one of aching rheumatic pains;

(e) That the application of Tysmol to the affected parts will cause all misery to cease;

(f) That Tysmol is a powerfully penetrating absorbent which goes in through the pores and quickly reaches the burning, aching tissues;

(g) That the application of Tysmol should cause those stubborn pains in the back of the neck, about the shoulder blade, face or head, in the forearm and fingers, or extending down the thigh to the toe tips to disappear, unless limited to such pains when superficial and due to exposure;

(h) That the application of Tysmol should "free" one from soreness, swelling, stiffness or tenderness of the muscles or ligaments, unless limited to such conditions when superficial and due to exposure. (Aug. 27, 1937.)

01861. **Vendor-Advertiser—Medicinal Devices.**—Harold Wells Turner, an individual, trading as Health Supplies Co., 1133 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling devices designated Dr. Wright's Irrigation Outfit and the Wilhide Exhaler, 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 Dr. Wright's Irrigation Outfit will keep the inside of the body or the colon clean; or constitutes an internal bath;

(b) That failure to keep the inside of the body clean, and free from impurities will necessarily cause indigestion, appendicitis, biliousness, headache, rheumatism, colds, catarrh, sore throat, influenza, la grippe, pneumonia, malarial and all kinds of fevers and other disorders, typhoid, typhus, scarlet fever, piles, dysentery, lung and throat troubles, boils, and carbuncles, or that the best physicians now say that nearly all diseases come from an overloading of the system with an accumulation of retained impurities;

(c) That every dose of physic sets up an irritation the whole length of the intestinal tract and renders the digestive functions weak and disordered;

(d) That the colon can be effectively washed only by the use of Dr. Wright's New Colon Syringe;

(e) That the use of Dr. Wright's Irrigation Outfit is absolutely free from all objections, or that the "New Internal Bath" is superseding all other methods;

(f) That the use of the high enema in routine of practice by Dr. Wright has led to the general introduction of what is known as Dr. Wright's Colon Syringe;

(g) That all physicians familiar with the results that come from the use of the high enema as used in the hospitals recommend the use of Dr. Wright's new colon syringe for cleansing the system from impurities;

(h) That irrigation alone can flush and cleanse the intestinal pouches of dangerous bacteria;

(i) That more advanced doctors who look to natural methods of healing rather than drugs and serums are convinced that colonic irrigation is the only sure way of checking auto-intoxication;

(j) That colonic irrigations flush the sides of the intestinal walls leaving them toned up thus preventing absorption;

(k) That thousands of cases are on record where colonic irrigation has caused the patient to improve where all other forms of treatment had failed;

(l) That use of Dr. Wright's Irrigation Outfit will add years to the life, or remove the poisons that have been accumulating in the system for ages;

(m) That Toxemia is the cause of human illness;

(n) That use of Dr. Wright's Irrigation Outfit constitutes a new and improved method of flushing the colon and administering an enema;

(o) That use of Dr. Wright's Irrigation Outfit will afford relief from troubles that have become chronic and supposed to be incurable;

(p) That use of Dr. Wright's Irrigation Outfit will cure those suffering from consumption, rheumatism, catarrh, constipation, dysentery in its worst forms, emaciation, obesity, female disorders, biliousness, kidney troubles, headaches, nervousness, etc.;

(q) That appendicitis, diarrhoea, all forms of fever and nearly all acute diseases can be prevented or immediately relieved by the use of Dr. Wright's Irrigation Outfit, or that it removes the cause of such ailments;

(r) That Dr. Wright's Irrigation Outfit will cure progressive self-poisoning;

(s) That Dr. Wright's Irrigation Outfit is an effective treatment for colds, biliousness, sick headache, neuralgia, dysmenorrhoea, chlorosis, gastritis, dyspepsia, persistent constipation, congestion and inflammation of the kidneys and bladder, cholera infantum, summer diarrhoea, convulsions, infantile colic, cholera morbus and intestinal infusoria;

(t) That use of Dr. Wright's Irrigation Outfit is advisable for pneumonia, la grippe, bilious colic, gastritis, inflammation of the liver, intestinal catarrh, obstruction of the intestines in all cases, gall stones, paralysis and cancer of the stomach;

(u) That daily flushings should be resorted to at the outset of every disease for at least one week, or until there is improvement, and then every other day and finally once a week until fully recovered;

(v) That Dr. Wright's Irrigation Outfit is a competent treatment for inflammation of the bowels, womb, ovaries, bladder or kidneys, or a competent treatment for fevers;

(w) That use of Dr. Wright's Irrigation Outfit will cause a cold to disappear, or convert influenza or grippe into a simple mild attack;

(x) That use of Dr. Wright's Irrigation Outfit will cause neuralgia, gout and rheumatism to yield gracefully, or constitute a competent treatment for jaundice and rheumatism;

(y) That use of Dr. Wright's Irrigation Outfit will speedily remove the cause or check the course of diarrhoea, cure cholera infantum, and usually abort an attack of inflammation of the kidneys in a few days;

(z) That Dr. Wright's Irrigation Outfit constitutes a competent treatment for gall stones, inflammation of the liver, bowels, appendicitis, etc., and all diseases located above the bowels;

(aa) That use of Dr. Wright's Irrigation Outfit will usually abort mental attacks in the case of incipient insanity, or constitute a competent treatment for nervous disorders;

(bb) That use of Dr. Wright's Irrigation Outfit constitutes a competent treatment for worms, convulsions, and intestinal irritation, permits fevers to be avoided, and benefits every disease by its use;

(cc) That the use of Dr. Wright's Irrigation Outfit will eradicate the cause of disease originating in the alimentary canal;

(dd) That flushing the colon is not debilitating in any case;

(ee) That the use of Dr. Wright's Irrigation Outfit will preserve the health, or is a competent treatment for acute and chronic diseases;

(ff) That the use of the Wilhide Exhaler constitutes scientific deep breathing and lung culture;

(gg) That advantages of the Wilhide Exhaler are manifold; that its use strengthens the lungs, adds to the power of the voice, promotes the power of resisting disease, especially pulmonary disease, improves the entire health of the user, or is more effective than any other device known to physical culture for such purposes;

(hh) That the Wilhide Exhaler is a great improvement over any breathing tubes that have ever been made;

(ii) That the Wilhide Exhaler constitutes a complete pocket gymnasium;

(jj) That use of the Wilhide Exhaler will widen and strengthen the six million air cells in the lungs, increase their capacity and strengthen the elasticity of their tissue;

(kk) That the daily use of the Wilhide Exhaler for a short time insures a habit of deep breathing without its use;

(ll) That the use of the Wilhide Exhaler has most favorable results for catarrhal affections, enlarging the lungs, strengthening the vocal chords, and giving staying power to the voice;

(mm) That the Wilhide Exhaler is the only hope of many; that it has cured others and will cure the user; that daily use for months and even years may be necessary to establish a permanent cure, but faithfulness in its use will win its sure reward—health;

(nn) That the use of the Wilhide Exhaler can never prove harmful.

The respondent further agreed to cease and desist from representing directly or otherwise, that any ordained clergyman is connected with his business when such is not the case. (Aug. 27, 1937.)

01862. Vendor-Advertisers—Tires.—Max Gordon, J. H. Levin, and J. J. Becker, copartners trading as Economy Tire and Rubber Co., 1615 Grand Ave., Kansas City, Mo., vendor-advertisers, were engaged in selling reconditioned tires designated Economy Reconditioned Tires, 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 respondents' tires are guaranteed or that purchasers are protected by a guarantee unless in direct connection with such statement and in equally conspicuous type there are also stated all material conditions imposed upon the purchaser including the requirement that transportation charges must be paid by the purchaser;

(b) That respondents' reconditioned tires are offered at certain specified prices unless in direct connection with such offer and in equally conspicuous type it is also stated that such prices are F. O. B. with the shipping point indicated or that the purchaser is required to pay transportation charges in addition to the prices quoted. (Aug. 20, 1937.)

01863. Vendor-Advertiser—Medicinal Preparation.—B. Gordon, an individual trading as Vital Herb Products, Brooklyn, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Vital Herbs, 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 use of respondent's products will give the user increased health or energy;

(b) That the use of respondent's products is a natural, quick way or exclusive method for men who want pep;

(c) That the respondent will furnish confidential information for a 3¢ stamp to men who want pep;

(d) That respondent's products contain sex secrets of youth or increases or develops vigor and vitality or gives better control;

(e) That respondent's method is recommended by Doctors or has given excellent results among Doctors or in clinics;

(f) That respondent's Herb Tabs have aphrodisiac properties; or are an excellent stimulant or have real merit as "pep" tablets.

The respondent further agreed to cease and desist from designating his herb tabs as "Spanish" or any other designation that would lead to the belief that said products are made in or imported from Spain or of Spanish origin. (Sept. 2, 1937.)

01864. Vendor-Advertiser—Medicinal Preparation.—Bristol-Myers Co., a corporation, International Building, Rockefeller Center, New York, N. Y., vendor-advertiser, was engaged in selling a certain preparation designated Minit-Rub, 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 Minit-Rub affords double relief from chest colds, unless limited to relief from the symptoms associated with, or resulting from, chest colds;

(b) That Minit-Rub will penetrate to the muscles;

(c) That Minit-Rub will penetrate deep into the pores;

(d) That Minit-Rub will afford "long-lasting" relief;

(e) That Minit-Rub is a "special" analgesic, or contains drugs other than those commonly used in analgesics;

(f) That Minit-Rub contains pain soothing ingredients that act "at once" in affording relief;

(g) That Minit-Rub will stimulate the circulation at the seat of the trouble, unless limited to indicate that such circulation will result from the use of Minit-Rub where the seat of the trouble is superficial and not muscular;

(h) That Minit-Rub will relieve the discomfort of improper breathing due to colds, better than any other preparation;

(i) That Minit-Rub will overcome insomnia, or is efficacious for said condition unless due to excited nerves;

(j) That Minit-Rub will relieve throbbing headaches, unless limited to indicate throbbing headaches due to nerve disturbances or nasal congestion. (Sept. 7, 1937.)

01865. Vendor-Advertiser—Medicinal Preparations.—Lester F. M. Storm, an individual, trading as Chicago Laboratory Products, Chicago, Ill., vendor-advertiser, was engaged in selling certain preparations designated Vitamin E Oil, Liquid Prolong-It, and Cream Prolong-It, 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 vitamin E is—

(1) Necessary for normal sex functioning in humans;

(2) The natural way to gain new sex power;

(b) That a lack of vitamin E leads to or causes—

(1) Loss of vigor or sex power in humans;

(2) Sexual frigidity or sterility in women;

(3) Impotence or sexual weakness in men;

(4) Testicular deterioration in men;

(5) Degeneration of the accessory sex organs in men;

(c) That lack of vitamin E in women will prevent or adversely affect the bearing of children;

(d) That by the use of vitamin E Oil—

(1) Disorders of the sex organs may be "corrected" or "prevented" in humans;

(2) Women, subject to habitual miscarriage or abortion, are enabled to go through pregnancy normally;

(e) That science has definitely identified the food vitamin E as the vitamin that gives the sex power in humans;

(f) That Vitamin E Oil will "correct" vitamin E deficiency;

(g) That the use of the products, "Liquid Prolong-It" or "Cream Prolong-It"—

(1) Enables men to enjoy life more;

(2) Gives one that control that wins women's admiration;

(3) Assures men staying power;

(h) That "Liquid Prolong-It" or "Cream Prolong-It"—

(1) "prevents prematurity";

(2) "Avoids embarrassment" or "Avoids disappointment";

(3) Can be relied upon. (Sept. 13, 1937.)

01866. Vendor-Advertiser—Medicinal Preparation.—Sherwood-Arthur Pharmacal Co., Inc., a corporation, trading as S. Arthur Co., 306 Gloyd Building, Kansas City, Mo., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Glando 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 Glando will produce a noticeable improvement within 10 days;
- (b) That the use of Glando will wake up the glands of men;
- (c) That when nature won't revive the glands Glando will;
- (d) That through the use of Glando one can regain physical vigor;
- (e) That Glando will correct or prevent premature old age or arouse the vital forces;
- (f) That Glando will help those who are suffering from prematurely old or weakened glands to "come back";
- (g) That Glando is a competent treatment or effective remedy for those suffering from youthful indulgence, or tired weak or subsecrting glands;
- (h) That the ingredients of Glando tend to revive the entire masculine system;
- (i) That the compounded ingredients of Glando will increase the secretion of the body glands, nourish them back to health or increase the sexual tone;
- (j) Directly or inferentially that the use of Glando is indicated for loss of vitality, vigor or energy; lack of sexual tone; low blood pressure; mental depression; sluggish mind; physical weariness, hardening of the arteries; premature old age or presenility;
- (k) That Glando is the result of much research and experimentation or was devised by science;
- (l) That Glando is a tonic for the entire endocrine system. (Sept. 21, 1937.)

01867. Vendor-Advertisers — Medicinal Preparations. — Raymond C. Grandone, Janet Grandone, and H. G. Grandone, copartners trading as Grandone's Laboratory, and as H. G. Grandone, Son & Co., 1434 Market St., Harrisburg, Pa., vendor-advertisers, were engaged in selling certain medicinal preparations designated Herbolax, Charmolla Tea, Grandone's Super Salve, Grandone's Cornoff, Grandone's Navidin, 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 Grandone's Herbolax "ends" constipation, or that the use of it enables one to "free" himself from constipation;
- (b) That Grandone's Herbolax is a competent remedy in the treatment of headache or "that tired feeling";
- (c) That the use of Grandone's Herbolax affords one a great opportunity to build health or vitality, or that it is a wonderful discovery;
- (d) That "results" are "guaranteed" where only a money-back agreement is intended;
- (e) That Grandone's Cornoff removes soft corns or "assures" comfort to the feet;
- (f) That the use of Grandone's Navidin:
 1. Increases weight;
 2. Fills out wrinkled skin;
 3. Brightens hair, eyes or skin;
 4. Helps to stimulate mental action;
 5. Eases over-excitible nerves;
 6. Gives pep to nervous people;

7. Preserves youth;

8. Feeds starved glands;

9. Makes one sleep better;

(g) That by the use of Navidin one may start enjoying good health;

(h) That by the use of Natural Iodine thousands, or any specified number of persons, have found relief from:

1. Stomach, kidney or bladder disorders;

2. Anemia;

3. Goitre;

4. Premature aging;

5. Skin disorders;

6. Acidity.

The respondents further agreed to cease and desist from the use of the word "Laboratory" as a part of their trade name until such time as they shall maintain a research or commercial laboratory as the term is construed and accepted by scientists generally. (Sept. 21, 1937.)

01868. Vendor-Advertiser—Sign Letters.—J. R. Bourdeau, an individual trading as Metallic Sign Letter Co., 431 N. Clark St., Chicago, Ill., vendor-advertiser, was engaged in selling Sign Letters, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

From the use in his advertisements and advertising matter of the words "gold" or "silver", either alone or in connection or conjunction with the word "metallic", or any other word or words, or in any way, so as to import or imply, or which may have a capacity or tendency to confuse, mislead or deceive purchasers into the belief that said products are made or composed of gold, in whole or in part, or are made or composed of silver, in whole or in part, when such is not the fact.

The respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, further agreed:

(a) 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;

(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;

(c) Not to represent or hold out as maximum earnings by the use of such expressions as "up to," "as high as" or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business; and

(d) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally conspicuous with, as to form, and at least one-fourth the size of the type used in printing such statement or representation of earnings. (Sept. 21, 1937.)

01869. Vendor-Advertisers—Medicinal Preparation.—M. J. Baalman and M. H. Baalman, copartners doing business under the name of

J. Baalman, Manufacturing Chemist, 1263 Mission St., San Francisco, Calif., vendor-advertiser, were engaged in selling a certain medicinal preparation designated Baalman's Gas-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 Baalman's Gas Tablets are a competent treatment or effective remedy for:

1. Nervous indigestion;
2. Gastric Neurasthenia;
3. "All gone" feeling at the pit of the stomach;
4. Extreme nervousness;
5. Gas pains in chest;

(b) That Baalman's Gas Tablets are a competent treatment or effective remedy for the following conditions unless such conditions are due to the accumulation of gas in the stomach or intestinal tract;

1. Heartburn;
2. Sour risings;
3. Bloating;
4. Drowsiness after meals;
5. Headaches;
6. Dizziness or labored breathing;
7. Nausea;
8. Belching;
9. Palpitation;
10. Gnawing pain at pit of stomach;

(c) That by the use of Baalman's Gas Tablets one may:

1. "Rid" one's self of gas in the stomach and bowels;
2. Obtain "lasting" or "genuine" relief;
3. Prevent all bad effects from gas;

(d) That Baalman's Gas Tablets promote the functional activity of the stomach, and assist digestion or improve the appetite. (Sept. 22, 1937.)

01870. Vendor-Advertiser—Radio Tube.—The Perfect Manufacturing Co., a corporation, trading as R. E. Engineers, Madison Road at B. & O. R. R., Oakley, Cincinnati, Ohio, vendor-advertiser, was engaged in selling a radio tube designated Add-A-Tube, 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 use of respondent's Add-A-Tube will give longer life to radio tubes;

(b) That respondent's Add-A-Tube will improve radio reception unless limited to improvement of reception in the older types of radios;

(c) That the user of respondent's Add-A-Tube will receive broadcasts from domestic or Foreign stations not previously received;

(d) That respondent's Add-A-Tube will bring one's radio "up-to-date";

(e) That respondent's Add-A-Tube will give any radio the same tone, sharpness of selectivity or static free reception as the latest, most expensive set on the market;

(f) That respondent's Add-A-Tube will improve reception on every type of set;

(g) That respondent's Add-A-Tube will give one's radio automatic volume control;

(h) That respondent guarantees clear local or distant reception with the use of Add-A-Tube;

(i) That respondent's Add-A-Tube will enable the user to tune out local stations and tune in distant stations unless limited to reduction of interference from local stations;

(j) That respondent's Add-A-Tube will cut out static, distortion or interference unless limited to a reduction of distortion or interference in many older types of radios. (Sept. 22, 1937.)

01871. **Vendor-Advertiser—Moth Proofing Compound.**—Nish A. Jamgotch, an individual trading as Nish A. Jamgotch Co., 2628 Hennepin Ave., Minneapolis, Minn., vendor-advertiser, was engaged in selling a certain moth proofing compound designated Mothola, 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 Mothola is an effective moth proofing treatment or affords permanent protection against moths;

(b) That the odor in most moth proofing compounds is the moth destroying property or that when the odor is gone the moth proofing is gone;

(c) That the use of Mothola insures safety from moths;

(d) That the moth preventive properties of Mothola will resist any cleaning method. (Sept. 22, 1937.)

01872. **Vendor-Advertiser—Medicinal Preparation.**—Sara B. Plant (an individual), operating under the trade name of Cravex Co., P. O. Box 942, Burbank, Calif., vendor-advertiser, was engaged in selling a medicinal preparation designated Cravex, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) By direct statement or by reasonable inference, that Cravex is a cure for alcoholism, or that it will—

1. "Stop" drink habit;

2. Cause the craving for liquor to disappear;

(b) That Cravex will have any effect directly on the liquor habit unless expressly limited to soothing the nerves and improving the appetite;

(c) That a patient will lose his craving for liquor by the administration of Cravex without his knowledge. (Sept. 23, 1937.)

01873. **Vendor-Advertiser—Course in Hypnotism.**—F. Ellerton Smith, an individual trading as Fernando Publishing Co., Springfield, Mass., vendor-advertiser, was engaged in selling a 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 method is the "New Swiss" method;

(b) That "no matter what your station in life may be you need this knowledge to rise from low to high and from high to higher";

- (c) That the course will enable one to:
1. "Control your destiny";
 2. "Influence others to do your bidding";
 3. "Cure the sick";
 4. "Gain her love and keep it";
 5. "Acquire the respect of the community and of your friends and relatives";
 6. "Become a magnetic healer";
 7. "Become a power among men";
 8. Become "qualified as a hypnotist";
 9. "Overcome obstacles of every sort";
 10. "Gratify every ambition you have";
 11. "Win the friendship and love of others";
 12. "Be happy though married";
 13. "Mould the character of your children" or to "correct vicious and bad habits in them and in grownups";
 14. "Cure disease of any sort without medicine";
 15. "Cure headaches, rheumatism, neuralgia, constipation and hundreds of other nervous or functional disorders";
 16. Cure "stammering, stuttering, eye-blinking, cigarette habits, drinking, smoking, chewing, cocaine, morphine, St. Vitus Dance";
 17. "Cause a person or a number of persons to change their minds to suit your convenience";
 18. "Produce Sleep" or to "put a person to sleep who may be a thousand miles from you and make him do your bidding";
 19. "Hypnotize by mail";
 20. "Hypnotize by telephone";
 21. "Hypnotize by telegraph";
 22. "Produce anaesthesia in the whole body so as to perform a major operation";
 23. "Make any part of the body insensible to pain while the subject is awake";
 24. "Cause any set of muscles or all of them to become perfectly rigid so as to support enormous weights without injury to the body";
 25. "Put any subject to sleep for a long time (from twenty four hours to two weeks) without any trouble to the subject";
 26. "Change the character of anyone";
 27. "Change the pulsebeat in the subject";
 28. "Cause a person to have two different pulsebeats at one and the same time";
 29. "Cure after everything else fails";
 30. "Cure and produce wonderful results in all functional ailments without the aid of hypnosis";
 31. "Keep well";
 32. "Relieve pain";
 33. "Cure diseases that have baffled the best medical practitioners";
- (d) That respondent guarantees "results";
- (e) That the course is practical or that it is not theoretical;
- (f) That the course will enable one to hypnotize any definite number or percentage of persons;
- (g) That the course will enable one to develop an iron will power or an irresistible will power;
- (h) That the course will enable one to control the desires of others or to influence their every action and thought;

- (i) That the course will make one successful or the master of every situation;
- (j) That the course will enable one to sell goods when all others fail;
- (k) That the course will enable one to cure one's self of sickness or to hypnotize one's self at will or to become magnetic, invincible or powerful;
- (l) That the course will enable one to have teeth extracted painlessly or to have operations performed painlessly;
- (m) That the course will enable one to hypnotize "instantly like a flash";
- (n) That the course is different from all other methods or that it is unfailling;
- (o) That the course is a course in magnetic "healing";
- (p) That the course will enable one to build up a large practice or a big income or to "cure and keep in good health your entire family and friends";
- (q) That the course will enable one to be successful in everything;
- (r) That hypnotism is absolutely harmless;
- (s) That hypnotism is of untold benefit to persons suffering from disease or habits;
- (t) That a knowledge of the laws of suggestion and hypnotism is essential to one's moral or financial success;
- (u) That by use of the course it is impossible for one to fail;
- (v) That the course will cure one of disease or the use of drugs or alcohol;
- (w) That the course will enable one to "induce anyone to buy what you want to sell";
- (x) That the course will enable anyone to write what another says while asleep;
- (y) That the course is a competent treatment or an effective remedy for rheumatism, neuralgia, earache, heart trouble, paralysis, indigestion, fever, eye-trouble or general debility;
- (z) Inferentially or otherwise that the course is approved by any branch of the U. S. Government.

The respondent further agreed to cease and desist from use of the words "Dr." or "Doctor" as a descriptive term for himself, unless it is clearly stated in connection therewith that respondent is a doctor of dental surgery.

The respondent further agreed to cease and desist from the use of the words "Institute of Science," alone or in any combination thereof as a part of his trade name.

The respondent further agreed to cease and desist from the use of the word "professor" as a title for or as a descriptive term for himself or for any person who has been or is presently connected with him in business or for the author of the course. (Sept. 23, 1937.)

01874. Vendor-Advertiser—Magazines and Booklets.—Resolute Publications, Inc. (a corporation), 404 Fourth Ave., New York, N. Y., vendor-advertiser, was engaged in selling magazines and booklets, 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 "Great Master Course" or "Fourteen Lesson Course" or any other article is given to anyone "free" so long as the recipient is required to subscribe and pay for a magazine in order to obtain the "free" article;

(b) That the "Great Master Course" or "Fourteen Lesson Course" or a study of psychology—

1. Will enable one to obtain happiness, love, buoyant health or security;
2. Will "free" one from the fetters of fear, worry, habit, inferiority complex, or failure;
3. Will enable one to so train and direct his "other self" so that it will do one's bidding;
4. Will get for one the cherished things of life—physical, mental and spiritual;
5. Is the complete key to life's supreme prizes;
6. Will enable one to climb to superb heights of triumphant living;
7. Will enable one to rise to complete self mastery;
8. Will enable one to "throw off" fear, inferiority, worry, disease and to replace them with health, happiness and splendid prosperity;
9. "Is worth a million dollars";
10. Is the "supreme inspiration" of life;
11. Means the beginning of a new and happier life;
12. Will do what a dozen doctors have failed to do;
13. Will rid one of the tobacco habit;
14. Will revolutionize all of life;
15. Will bring about universal happiness, health and prosperity;
16. Will reveal one's hidden powers;
17. Embraces the best that has ever been written;
18. Brings about "astonishing healings";
19. Solves domestic difficulties;
20. Averts divorces;
21. Brings about financial independence;
22. Achieves supreme happiness;
23. Reveals latent powers;
24. Shows the infallible laws of success;
25. Teaches one how to banish conditions that depress, discourage and defeat;
26. Builds up one's personality;
27. Shows how to rise to supreme heights of personal and social power;
28. Awakens the sleeping giant within one;
29. Tells how to climb to the realization of the loftiest aspirations;
30. Reveals the complete laws of self-mastery and the mastery of any hostile factor in life;
31. Enables one to break destructive habits at will; or
32. Enables one to understand and/or control sex. (Sept. 23, 1937.)

01875. Vendor-Advertiser—Dental Preparation.—Earle J. Hansch, an individual trading as Snugfit Co., Los Angeles, Calif., vendor-advertiser, was engaged in selling a dental preparation designated Snugfit, 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 use of the product one can "correct" plate trouble;
- (b) That by use of the product one can "overcome" loosening or slipping of the plates;
- (c) That the product fills in "all" depressions;
- (d) That the product gives a "perfect" adaptation of plate to mouth tissues;
- (e) That by use of the product the suction necessary to hold the plate in position will come;

(f) That the product relines the plate to fit the "exact" crevices of the mouth;

(g) That by use of the product "There's just no more slipping";

(h) That any comfort which may be derived by use of the product is permanent;

(i) That nothing will remove the product from the plate except the solvent;

(j) That one can end plate trouble with the product. (Sept. 24, 1937.)

01876. Vendor-Advertiser—Massage Devices and Ointment.—Foster Manufacturing Co., a corporation, Elyria, Ohio, vendor-advertiser, was engaged in selling an ointment designated Meco-Sazh and devices designated Meco-Sazh Body Machine, Meco-Sazh Head Massage Machine and Meco-Sazh Hand Pads, and agreed in soliciting the sale of and and selling said products in interstate commerce to cease and desist from representing directly or otherwise:

(a) That either of respondent's products

1. Grows Hair;

2. Makes one feel 100% all day;

3. Keeps one from losing his hair;

4. Stops dandruff accumulation;

5. Stops dandruff;

6. Peps one up;

7. Keeps the scalp healthy, unless limited to scalp conditions due to lack of normal blood supply in the scalp area;

8. Saves hair, unless limited to loss due to lack of normal blood supply in the scalp area;

9. Keeps the skin in a healthy condition, unless ill health is due to lack of blood quantity or quality in that area;

(b) That respondent's ointment Meco-Sazh

1. Is rich in vitamin D; or

2. Brings back natural color to the hair;

(c) That the Meco-Sazh Body Machine offers one the same as the "constant" attendance of an expert masseur;

(d) That getting blood to the scalp effects a cure of dandruff or other hair ailments;

(e) That overweight is more serious than underweight, unless limited to persons past middle age;

(f) That putting on fat in the wrong places is an indication of let-down in muscular tissue condition;

(g) That diet or fasting impair physical or mental alertness;

(h) That dandruff cannot exist where the supply of blood keeps the scalp skin healthy.

Respondent further stipulates and agrees to cease and desist from using the term "nutriment" to designate or describe its ointment and from otherwise representing that said ointment will nourish the skin or flesh. (Sept. 24, 1937.)

01877. Vendor-Advertiser—Correspondence Course in Taxidermy.—Alfred C. Schmidt, an individual doing business under the trade name of Schmidt School of Taxidermy, 141 North Main St., Memphis, Tenn., vendor-advertiser, was engaged in selling a correspondence

course in taxidermy, 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 "guarantees"—

1. He can teach anyone by mail to mount animals and birds or to tan hides;
2. Satisfaction to his students;
3. His course to be the finest regardless of the cost of other similar courses;
4. To teach taxidermy to anyone easily and quickly;

(b) That the advertised price of his course is made as a "limited offer" or otherwise limited as to time of acceptance, or otherwise, when said price is the regular price of said course and no limitation as to the acceptance thereof exists;

(c) That respondent gives a "free" diploma after completion of his course, when the price of said diploma is included in the price charged for the course;

(d) That 30,000 books comprising his course or any other specified number were sold during any particular year, unless such figures are supported by evidentiary facts;

(e) That the rankest amateur can do splendid work right away upon receipt of respondent's course;

(f) That respondent's school is the only school of taxidermy with a practicing professional taxidermist as its head.

Respondent further agreed in soliciting the sale of said commodity in interstate commerce to cease and desist from issuing and awarding diplomas to purchasers of said course unless and until such purchasers are required to demonstrate their knowledge of the art of taxidermy by passing appropriate examinations or meeting other adequate requirements. (Sept. 24, 1937.)

01878. Vendor-Advertiser—Dental Plates.—L. C. Cleveland, an individual trading as Dr. Cleveland, and Dr. L. C. Cleveland, E. St. Louis, Ill., vendor-advertiser, was engaged in selling dental plates, 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 it is easier for a layman to take impressions than for "someone to do it for you";

(b) That "results" are guaranteed;

(c) That the plates will correct stomach troubles or ailments;

(d) Inferentially or otherwise that the plates will correct an old or wrinkled appearance;

(e) That one's health depends on good fitting plates;

(f) That the plates will be proper or "fine" fitting;

(g) That the plates will restore natural contour;

(h) That the plates will build up sagging muscles;

(i) That any offer is limited unless a definite period of time is set and all offers to purchase under the offer received after the expiration of such time are refused. (Sept. 24, 1937.)

01879. Vendor-Advertiser—Medicinal Preparation.—M. R. Temple, an individual operating under the trade name of The Bartow Co.,

Topeka, Kans., vendor-advertiser, was engaged in selling a certain medicinal preparation designated Dr. Robinson's Foot 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 Dr. Robinson's Foot Powder constitutes a competent treatment or an effective remedy for athlete's foot unless specifically limited to relief of local manifestations and symptoms thereof;

(b) That this product will afford relief in all cases in which the "feet are hurting * * * desperately";

(c) That this preparation is "guaranteed";

(d) That Dr. Robinson's Foot Powder is a competent treatment or an effective remedy for

1. "Bad feet," or

2. "Tired, aching and smelly feet";

(e) That fifty percent of all people have athlete's foot. (Sept. 24, 1937.)

01880. Vendor-Advertiser—Medicinal Preparation.—Excelsior Laboratory, Inc., a corporation, 205 East 42nd St., New York, N. Y., vendor-advertiser, was engaged in selling a certain medicinal preparation designated D. Gosewisch's Garlic 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 D. Gosewisch's Garlic Tablets are of any value in the treatment of high blood pressure unless such representation is limited to the relief of dizziness, headaches, or other symptoms accompanying high blood pressure, or to the relief of high blood pressure, when used continuously and in specified doses at prescribed intervals;

(b) That this product will "rid" the system of toxins or of anything else;

(c) That it will be of any appreciable value in preventing "old age ailments";

(d) That this product constitutes a competent treatment or an effective remedy for—

1. Gastric disorders;

2. Intestinal putrefaction; or

3. "Other distressing symptoms";

(e) That this product or any element thereof will—

1. Normalize glandular action;

2. Purify the blood stream;

3. Adequately supply minerals needed by the body; or

4. Neutralize poisons in the system;

(f) That this product is an antiseptic;

(g) That this product gives results impossible to obtain from garlic in any other form;

(h) That by the use of this product high blood pressure will be reduced by any specified number of points excepting the publication of authentic reports of clinical treatments;

(i) That this preparation will combat deficiency ailments;

(j) That this product is "guaranteed," unless specifically limited to the refund of the purchase price.

The respondent further agreed to cease and desist from designating any goods as free so long as the recipient thereof is expected to

pay therefor, or must perform some service before receiving the same. (Sept. 22, 1937.)

01881. **Vendor-Advertiser—Air Rifles and Pistols.**—The Benjamin Air Rifle Co., a corporation, St. Louis, Mo., vendor-advertiser, was engaged in selling air rifles and pistols, 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 only Benjamin has the genuine safe compressed air pistols, unless limited to such safety devices as are exclusively pertinent to respondent's products;

(b) That respondent's products are the only genuine compressed air rifles and pistols on the market, unless limited to those type of rifles and pistols in which the employment of compressed air as the propellent force is an exclusive feature of respondent's equipment;

(c) That the Benjamin air rifle is the hardest shooting air rifle made, unless limited to such types of respondent's air rifles as are known to employ a greater propellent force than similar types sold by competitors;

(d) That ammunition is given "free" when the purchase of any product or the rendering of a service is required in order to secure the product which is offered free. (Sept. 22, 1937.)

01882. **Vendor-Advertiser—Water Softener.**—Bathasweet Corp., a corporation, New York, N. Y., vendor-advertiser, was engaged in selling a chemical compound for softening water designated Bathasweet, 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 Bathasweet contains the secret of beautiful body skin;

(b) That the addition of Bathasweet to the bath water will give the bather a lovelier or more alluring body; unless limited to such benefits to the skin as may reasonably be expected to result from softening the bath water and improving its detergent properties;

(c) That through the use of Bathasweet in the bath water skin imperfections disappear;

(d) That the use of Bathasweet in the water makes the skin softer or clearer; unless limited to such benefits to the skin as may reasonably be expected to result from softening the bath water and improving its detergent properties;

(e) That the use of Bathasweet enables the skin to breathe;

(f) That Bathasweet cleanses the pores;

(g) That bathing in hard water dries and ages the skin;

(h) That the use of Bathasweet imparts new health to the skin;

(i) That Bathasweet relieves burn or itching. (Sept. 27, 1937.)

01883. **Vendor-Advertiser—Cosmetic Preparation.**—Ethel Townsend, an individual trading as Granwell Sales Co., New York, N. Y., vendor-advertiser, was engaged in selling a certain preparation designated Dawson's Cream, 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 has no odor;
- (b) That the product is "absolutely" safe;
- (c) That water dissolves the product;
- (d) That the product will "correct" eyebrows;
- (e) That the product will remove all hairs;
- (f) That the product is prepared from "natural" materials;
- (g) That the product is free from harmful or irritating chemicals;
- (h) That no danger is incurred from use of the product;
- (i) That the product discourages hair growth. (Sept. 27, 1937.)

01884. **Vendor-Advertiser — Auctioneering Correspondence Course.** — Fred Reppert, an individual trading and doing business as Reppert School of Auctioneering, Decatur, Ind., vendor-advertiser, was engaged in selling a correspondence course designated Home Study Course in Auctioneering, 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 what one person has been able to do by reason of having taken his Home Study Course in Auctioneering another can do;

(b) That by subscribing to or following the instruction of his Home Study Course a person can make any definite sum or have an income equal to or better than the average income from a business investment of \$50,000.00 or any other sum or that the income from the service of an auctioneer is steady or for life;

(c) That any price for his course is a special price unless and until a definite time for the duration of such price is set; at the expiration of which the price will be increased;

(d) That the income from auctioneering is limited only to the amount of time, effort or energy a person is willing to expend;

(e) That testimonial letters relate to his Home Study Course when in fact they are written by persons not familiar with his Home Study Course or were in fact not written with such Course in mind;

(f) That his Home Study Course may be obtained free when in fact a price is charged therefor and the amount paid is merely credited as part payment for another course of instruction offered.

The respondent further agreed to cease and desist from issuing certificates to the effect that a subscriber to his Home Study Course is a qualified auctioneer unless and until an adequate plan is adopted and followed to determine whether or not such is a fact and the issuance of such certificates is limited to those meeting the requirements of such plan. (Sept. 27, 1937.)

01885. **Vendor-Advertiser—Radio Device.**—R. B. Hanson, an individual trading as F. & H. Radio Laboratories, Fargo, N. Dak., vendor-advertiser, was engaged in selling Aerial Eliminators, 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 give results equal to those obtained from a 75 foot wire aerial;

(b) That respondent's product will enable the user to get nation wide reception unless limited to its use with modern high powered receiving sets;

(c) That respondent guarantees better tone and distance or that his product will improve the selectivity, tone and volume of radio receiving sets;

(d) That respondent's product will reduce fading;

(e) That the satisfied customers are any number greater than is established by actual reports from users;

(f) That respondent's product will give as good results as an outside aerial;

(g) That respondent's product is used by Government Hospitals. (Sept. 29, 1937.)

01886. Vendor-Advertiser—Food Supplement.—Makers of Kal, a corporation, Los Angeles, Calif., vendor-advertiser, was engaged in selling a food supplement designated Kal, 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 Kal is a revolution in scientific diet;

(b) That Kal protects the body from the harmful or devitalizing effects of malnutrition;

(c) That Kal is sure and/or certain to build up or revitalize the system;

(d) That when children are nervous, irritable or uncontrollable it is because of a lack of calcium;

(e) That calcium has the power to build up a tired body and restore energy;

(f) That glowing skin, healthy nails, strong teeth and bones or a harmonious nervous system depend on calcium or a quickly available source of calcium;

(g) That we need calcium phosphorus and vitamin D, to rebuild living cells;

(h) That with Kal one can have health, energy, vitality or fight old age;

(i) That sufficient calcium phosphorus, vitamins B, D and G will revitalize weary organs and muscles, rebuild worn-out tissues and cells, soothe irritable nerves and give one pep, energy or good health;

(j) That two teaspoonfuls of Kal contain calcium equal to three pints of milk. (Sept. 29, 1937.)

01887. Vendor-Advertiser—Arch Supports.—H. M. Heefner, an individual trading as Heefner Arch Support Co., Louisville, Ky., vendor-advertiser, was engaged in the sale of a device designated Heefner Arch Support, 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 enable one to "walk normally";

(b) That the product will cure one of foot troubles or ailments;

(c) That the product is a competent treatment for or an effective remedy for rheumatism, or bunions;

(d) Inferentially or otherwise that the product will prevent one from being a cripple;

(e) That the product will end foot suffering;

(f) That the product restores the structure of the foot and fallen arch, or the natural structure of the arch, unless limited to its aid to nature in the restoration thereof;

(g) That the product removes or prevents the cause of or that by its use one will be "well" of foot troubles;

(h) That corns, bunions, callouses, swollen feet or enlarged joints are sure to follow disarrangement of the bones of the feet;

(i) That corns, bunions, callouses, swollen feet or enlarged joints are sure to follow disarrangement of the bones of the feet;

(j) That by the use of the product alone or in combination with any other item, crooked joints will disappear;

(k) That the principle upon which the product was developed is "a natural way";

(l) That any definite number or percentage of persons suffer with any certain foot ailment;

(m) That "after all other appliances fail," or "where all other methods fail," the product will give relief;

(n) That the principle embodied in respondent's product is "absolutely essential";

(o) That the product holds the structure of the natural arch in "nature's correct" position;

(p) That any result which may be effected by use of the product will be permanent;

(q) That foot troubles, nervous disorders, irritability, nervousness, indigestion or lack of patience are a direct cause of stomach trouble;

(r) That the product will bring the feet back into a normal or healthy state, unless limited to its aid to nature in effecting such results;

(s) That the product will bring the foot structure back into nature's correct relationship, or binds the foot into "nature's correct position," unless limited to its aid in effecting such results;

(t) That the product will make one's feet "over new." (Oct. 1, 1937.)

01888. **Vendor-Advertiser—Lamps, Lanterns, Stoves, Etc.**—The Coleman Lamp and Stove Co., a corporation, Wichita, Kans., vendor-advertiser, was engaged in selling lamps, lanterns, irons and cabin stoves, 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 Coleman Lamp—

1. Produces more light than any number of any specific watt electric light bulbs; or

2. Gives 300 candlepower live pressure light or any other candlepower live pressure light; or

3. Is 40 to 20 times brighter than any non-pressure wick-type lamp; or gives more or better light than 20 (or any other number of) old style, wick-type coal oil lamps; unless competent scientific tests support such claims. (This limitation applies to paragraphs 1, 2 and 3 above).

(b) That the Coleman Lamp has no glass to break, unless limited to the font and base;

(c) That the Coleman Lantern gives 300 or any other specific candlepower light or more light than 20, or any other number of old style coal-oil lanterns, unless such claims are established and supported by competent scientific tests. (Oct. 1, 1937.)

01889. **Vendor-Advertiser—Dental Device.**—I. Putnam, Inc., a corporation operating as Hart & Co., Elmira, N. Y., vendor-advertiser, was engaged in selling a dental device, for holding false teeth in

place, designated Klutch, 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 Klutch will make False teeth as efficient and comfortable as the user's natural teeth had been, or that he can eat or talk as well;

(b) That Klutch—

1. Makes loose plates firm;
2. Prevents gagging;
3. Stops plates from dropping, wobbling, rocking or chafing;

(c) That the use of Klutch will add to the health of the user;

(d) That Klutch holds a plate so snug it can't rock, drop, chafe or be played with;

(e) That Klutch "ends" loose plates.

The respondent further agreed to cease and desist from making any representation from which a reader might reasonably infer—

1. That Klutch will be of value in improving the fit of false teeth, except in those cases where slight inaccuracies occur;

2. That any results achieved by the use of the preparation are permanent; or

3. That this preparation will be of substantial value in those cases where changes in gum tissue or improper fitting makes correction of the plates necessary. (Oct. 1, 1937.)

01890. Vendor-Advertiser—Medicinal Preparations.—General Pharmaceutical Co. (a corporation), Cincinnati, Ohio, vendor-advertiser, was engaged in selling certain medicinal preparations designated Pep-Ti-Kao, Etro Tablets, and Feyex, 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 Pep-Ti-Kao will "rid" the stomach of the trouble making portion of acid, unless the word "rid" is qualified by the use of the word "temporarily" or some similar word;

(b) That Etro Tablets are "a great medical discovery;"

(c) That Etro Tablets will relieve nervous tension caused by excitement, work, or worry;

(d) That Etro Tablets are a competent remedy in the treatment of all forms of nerve pains, such as headaches, toothache, rheumatism, neuralgia, and sinus headaches;

(e) That Feyex is beneficial for daily use;

(f) That Feyex is a competent remedy in the treatment or prevention of hay fever. (Oct. 1, 1937.)

01891. Vendor-Advertiser—Accounting System.—Print-Rite, Inc. (a corporation), Minneapolis, Minn., vendor-advertiser, was engaged in selling an accounting system designated Handy Record System, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise;

(a) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent.

ent's salespersons or dealers under normal conditions in the due course of business;

(b) Not to represent or hold out as maximum earnings by the use of such expressions as "up to," "as high as" or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business; and

(c) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally conspicuous with, as to form, and at least one-fourth the size of the type used in printing such statement or representation of earnings. (Oct. 4, 1937.)

01892. Vendor-Advertiser—Plierench.—American Plierench Corp., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling Eifel-Geared Plierench, and agreed in soliciting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

That any article is given "free" when the purchase of other articles is required.

The respondent further agreed in soliciting salespersons or dealers in aid of the sale of such merchandise:

(a) Not to represent or hold out as a chance or an opportunity any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business;

(b) Not to 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;

(c) Not to represent or hold out as maximum earnings by the use of such expressions as "up to," "as high as" or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business; and

(d) That in future advertising where a modifying word or phrase is used in direct connection with a specific claim or representation of earnings, such word or phrase shall be printed in type equally conspicuous with, as to form, and at least one-fourth the size of the type used in printing such statement or representation of earnings. (Oct. 11, 1937.)

01893. Vendor-Advertiser—Medicinal Preparation.—H. R. Blumstengel, an individual trading and doing business as M-Royds Co., Kansas City, Mo., vendor-advertiser, was engaged in selling a medicinal preparation designated M-Royds 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 M-Royds Treatment will rid a person of pile torture or pain;

(b) That M-Royds Treatment will give one freedom from the affliction of piles;

(c) That the blood of persons afflicted with piles is contaminated, the liver polluted and the stomach disrupted, or that the heart and nerves are often affected;

(d) That best results are obtained by use of a pile remedy, or that continued use of such will rid the body of poisons, restore circulation and organs to normal functioning or build up broken tissues;

(e) That many nervous troubles may be traced to piles;

(f) That improvement may be noticed the first day;

(g) That M-Royds Treatment is a tonic or will help build strength;

(h) That the use of M-Royds Treatment may save one from an operation, or that the same may be used at respondent's risk. (Oct. 11, 1937.)

01894. **Vendor-Advertiser—Shaving Creams.**—The Mennen Co., a corporation, Newark, N. J., vendor-advertiser, was engaged in selling certain, shaving creams designated Mennen Lather Shave, plain, Mennen Lather Shave, menthol-iced, and Mennen Brushless Shave, 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 Mennen Brushless Shaving Cream supplies oil to the skin or is the one cream made especially for such purpose;

(b) That Mennen Lather Shave will flush out oil-clogged pores, making oily skin healthier and smoother;

(c) That Mennen Shaving Creams penetrate deep into the pores, wash them out clean, loosen deeply imbedded dirt and grease deposits, or constitute a health treatment for the skin;

(d) That Mennen Shaving Creams are "utterly" different from all others. (Oct. 12, 1937.)

01895. **Vendor-Advertiser—Laundry Preparation.**—The John Puhl Products Co., a corporation, Chicago, Ill., vendor-advertiser, was engaged in selling a laundry preparation designated "Little Bo-Peep", 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 Little Bo-Peep

1. Contains "Oehme" or any other ingredient found only in Little Bo-Peep;

2. Contains "Oehme" or any other ingredient that possesses remarkable cleansing properties, or that doubles the cleaning power of said product;

3. Is unequaled by any other ammonia product because it contains "Oehme" or any other ingredient not contained in other ammonia products;

4. That Little Bo-Peep contains "Oehme" or any other ingredient that makes hose last longer or look nicer;

(b) That the use of Little Bo-Peep in laundering hose will double the life of said hose;

(c) That Little Bo-Peep will cut one's hosiery bill in half;

(d) That Little Bo-Peep used in washing blankets and woolens prevents shrinkage;

(e) That Little Bo-Peep when used in the bath kills every trace of body odors;

(f) That Little Bo-Peep purifies as it cleans objects;

(g) That Little Bo-Peep neutralizes the poison of mosquito bites and bee stings;

(h) That Little Bo-Peep is especially treated to remove every trace of harshness and make it safe for the most delicate fabric;

(i) That Little Bo-Peep, because of "Oehme" or any other ingredient, has all the advantages of ammonia in a greater degree and none of the disadvantages of ordinary ammonias. (Oct. 12, 1937.)

01896. Vendor-Advertiser—Cosmetics and Hair and Scalp Treatments.—Bee-Dew Laboratories, a corporation, Detroit, Mich., vendor-advertiser, was engaged in selling cosmetics and hair and scalp treatments, 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 respondent's Scalp Oil is a competent treatment or effective remedy for falling hair, sensitive scalps or all scalp troubles;

(b) That respondent's Soap is healing or antiseptic;

(c) That respondent's cleansing cream penetrates the pores or brings away all impurities;

(d) That respondent's bleaching cream is a skin purifier or removes liver spots, blackheads, pimples, collar marks, sunburn or acne;

(e) That respondent's designated "hair grower" promotes the growth of hair, nourishes the scalp or restores lustre to hair;

(f) That respondent's designated "special hair grower" is double strength or promotes the growth of hair or is a competent treatment for dandruff, thin or falling hair;

(g) That respondent's designated "special hair grower" nourishes or stimulates the hair roots;

(h) That respondent's hair and scalp treatment is guaranteed to grow hair 1 to 1½ inches per month, or at all;

(i) That respondent's product contains a secret drop or is a new secret that makes hair grow faster; bleaches the skin faster or works faster on the skin or hair;

(j) That respondent's blackhead remover will remove blemishes or discoloration;

(k) That respondent's shampoo contains no alkali;

(l) That respondent's treatments will restore hair lost from illness;

(m) That any of respondent's treatments are a competent treatment for or will prevent baldness;

(n) That respondent's Special Hair Grower will "cure", clear up or relieve eczema;

(o) That respondent pays its salespersons a salary;

(p) That any of respondent's treatments will bring sure or certain relief;

(q) That respondent's treatment will penetrate, fertilize the scalp or make it strong or healthy or make it grow long, lustrous hair;

(r) That respondent's treatment will stop itching scalp or falling hair;

(s) That respondent's products are composed of health giving oils or will give the user a healthy head of hair.

The respondent further agreed to cease and desist from representing that any product is given "free" when the cost of said product is included in the price of other articles, the purchase of which is a requisite to the gift of the "free" goods.

Respondent further agreed to cease and desist from the use of the term "Laboratories" as part of the trade name. (Oct. 12, 1937.)

01897. Vendor-Advertiser—Paint.—Camel Lead, Color and Chemical Products Mfg. Corp., (a corporation), Brooklyn, N. Y., vendor-advertiser, was engaged in selling a paint designated Germ-Proof Film Paint, 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 odorless unless qualified by indicating that it is only odorless after it is dried;

(b) That respondent's product will afford "constant" sanitation or "constant" protection;

(c) That respondent's product constantly kills all germs, unless qualified by stating that respondent's product kills certain specified germs coming in contact with germ-proof paint;

(d) That respondent's product is the only germ-proof film paint;

(e) That respondent's product is the most effective and most modern method of eliminating germs, unless qualified by stating that respondent's product is one of the most effective and modern methods of aiding in the elimination of germs;

(f) That scientific reports in U. S. A. and Europe show Germ-Proof Film Paints and Enamels applied on any surface will kill germs continuously 24 hours of the day even up to four years;

(g) That rigorous hygiene demands Germ-Proof Film paint unless qualified by stating that Germ-Proof Film paints and enamels aid in obtaining rigorous hygiene;

(h) That by using respondent's product you will Germ-proof your home;

(i) That the respondent has produced a paint which constantly kills all germs that come in contact with it unless qualified by stating that the respondent has produced a paint which kills certain specified germs coming in contact with its surface;

(j) That the eggs of certain insect pests laid on respondent's paint will not hatch;

(k) That provisions and food stuffs stored in Germ-Proof painted rooms will be more safe from the spores of molds and germs left there by previously contaminated materials;

(l) That Germ-Proof Film Paint continues to kill all germs throughout the life of the paint;

(m) That respondent's product stands today as the greatest single sanitary prophylactic measure of this epoch, and is doing the thing that, up until it came into existence, was considered impossible;

(n) That eminent scientists have accepted the claims of respondent's;

(o) That one square inch of a surface painted with respondent's product will kill any specific number of bacteria within one hour;

(p) That "painteuration" safeguards your home, unless qualified by stating that "painteuration" helps to safeguard your home;

(q) That respondent's product will help prevent diseases;

(r) That respondent's product will kill any germs unless same come in direct contact with the painted surfaces;

(s) That the use of respondent's product will give public health insurance;

(t) That one single germ can multiply into any specific number in one day under any conditions;

(u) That one square inch of Germ-Proof Film Paint will kill any specific number of any bacteria. (Oct. 4, 1937.)

01898. Vendor-Advertiser—Medicinal Preparation.—Albert H. Dixon, an individual, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Wizard 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 Wizard Ointment will give either quick, permanent or sure relief from Eczema, Psoriasis, Itching Skin, Pimples, Ringworm, Erysipelas, Acne, Athlete's Foot, Poison Ivy, Blotchy Skin, Cyst of Violinist or other skin irritations or disorders;

(b) That Wizard Ointment is designed to kill parasites;

(c) That with the use of Wizard Ointment the affected parts of the skin will dry up or disappear;

(d) That Wizard Ointment is double strength;

(e) That Wizard Ointment contains healing qualities. (Oct. 18, 1937.)

01899. Vendor-Advertiser—Cleanser.—Emsee Manufacturing Co., a corporation, Monroe, Mich., vendor-advertiser, is engaged in selling a cleanser designated Slick Universal 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 Slick Universal Cleaner

1. Cleans everything it touches;

2. Cleans everything from dishes to rugs, walls, automobiles; or

3. Replaces soap and grit powders;

(b) That building managers have standardized on Slick for ALL building cleaning requirements;

(c) That laundry managers have found that one pound of Slick equals five pounds of soap;

(d) That dairy managers find Slick serves every purpose;

(e) That Slick Universal Cleaner is beneficial for washing clothes, unless limited to clothes other than wool or silk and unless the statement is qualified by a warning that it may affect the color of some textiles;

(f) That Slick Universal Cleaner

1. Dissolves dirt;

2. Neutralizes grease;

3. Kills germs; or

4. Is tasteless;

(g) That Slick Universal Cleaner is "the perfect" cleaner for painted wood-work, tile, marble, terrazzo, wood, linoleum, cement floors and walls;

(h) That Slick Universal Cleaner is a real cleaner for automobiles, unless it is stated that it should not be used on cellulose-ester (lacquer) finishes;

(i) That Slick Universal Cleaner should be used in cleaning linoleum or aluminum motor parts;

(j) That Slick Universal Cleaner should be used in cleaning aluminum ware, unless it is explained that discoloration may result from the use of hot solutions. (Oct. 19, 1937.)

01900. **Vendor-Advertiser—Medicinal Preparations.**—Della J. Ballard, an individual trading as Ballard Golden Oil Co., Bangor, Me., vendor-advertiser, was engaged in selling medicinal preparations designated Ballard's Golden Oil, Ballard's Golden Salve and Ballard's Golden Pills for the Kidneys, 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 respondent's products will bring health to the user;
- (b) That respondent's Golden Pills are an effective remedy or competent treatment for kidney diseases or ailments;
- (c) That respondent's products will stop nose and throat tickle or relieve sore throats, aches or pains;
- (d) That respondent's Golden Oil is a cold or cough relief;
- (e) That one may get rid of his cold through the use of respondent's Golden Oil;
- (f) That respondent's Golden Oil is a sure relief for colds, coughs or sore throats;
- (g) That the use of respondent's products will prevent suffering;
- (h) That the use of Ballard's Golden Oil is the quickest way to relieve colds, coughs and sore throats;
- (i) That respondent's Golden Oil is a healing remedy;
- (j) That respondent's Golden Oil is a competent treatment or an effective remedy for colds, spasmodic croup, throat irritations, muscular aches or pains, or strains;
- (k) That respondent's Golden Salve is a healing remedy or a competent treatment or an effective remedy for blisters, cuts, scalds, humors, dandruff scales, scalp irritation or rectal irritation. (Oct. 18, 1937.)

01901. **Vendor-Advertiser—Skin Lotion.**—Marjorie Ross, an individual doing business under the trade name of Clear-Skin Institute, Brooklyn, N. Y., vendor-advertiser, was engaged in selling a skin lotion designated Clear-Skin, 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:
 1. Clear the complexion of brown and liver spots, pimples and blackheads;
 2. Heal or correct blemishes of the skin;
 3. Produce a clear skin;
 4. Eliminate the handicap of an imperfect complexion;
- (b) That any results are "guaranteed";
- (c) That any price at which respondent's product is generally sold is a special or an introductory offer.

The respondent further agreed in soliciting the sale of said product in interstate commerce to discontinue the use of the word "Institute" as part of her trade name. (Oct. 18, 1937.)

01902. **Vendor-Advertiser—Medicinal Preparations.**—D. J. Lane, an individual, St. Marys, Kans., vendor-advertiser, was engaged in selling medicinal preparations recommended for the treatment of Asthma and Hay Fever designated Hay Fever and Asthma Pills,

Nasal Ointment, Asthma Treatment and Special Elixir, 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 Asthma or Hay Fever or the symptoms of such diseases are treated free by the respondent;

(b) That Lane's Treatment for Asthma has been acclaimed by thousands of users as one of the most effective treatments ever compounded for plain Asthma;

(c) By direct statement or implication that failure of the preparations of the respondent prescribed in the initial treatment of Asthma, to give satisfaction in the treatment of such disease is necessary due to the presence of complications requiring additional medicines;

(d) That while the preparations of the respondent are not intended to destroy all symptoms of Bronchial Asthma immediately, the healing qualities of such medicines should become apparent after a few days time and the system has had a chance to come under the influence of the medicines;

(e) That any or all of the preparations of the respondent designated Hay Fever and Asthma Pills, Nasal Ointment, Asthma Treatment and Special Elixir, alone or in combination—

1. Constitute a treatment for Asthma or Hay Fever, or constitute more than a palliative treatment for the symptoms of such diseases;

2. Constitute a remedy for Asthma, or will bring about the "desired result";

3. Are effective in controlling the paroxysms of Asthma;

4. Constitute a treatment through the blood stream to alleviate the conditions causing Asthma;

5. Will correct an asthmatic condition;

6. Cause Asthma or Hay Fever to yield;

7. Will do the work when used as directed;

8. Will rid one of Asthma;

9. Contain health-giving ingredients which act on the constitution and are intended to aid nature in bringing the body back to normal;

10. Will do the work where there are no complications;

11. Will give freedom from Bronchial Asthma;

12. Are unparalleled for the treatment of what is known as Bronchial Asthma;

13. Will Neutralize the unusual or poisonous conditions in the system which are the cause of most of the trouble;

14. Are the medicines needed and if taken over a sufficiently long period will correct the cause of the trouble and distress;

15. Will enable a foundation to be built for a complete recovery, and eventually permit the work of recovery to be completed;

16. Will heal the deep-seated diseased conditions present in Asthma or Bronchial Asthma;

17. Will fight the diseased conditions causing Asthma or Bronchial Asthma, build up and help to restore to normal the affected parts, all that is needed being confidence and a willingness on the part of the user of the preparations to continue the use of the preparations;

18. Will give good health and give freedom from the symptoms of Asthma and result in joy of living;

19. Have solved the health problem of thousands;

20. Will successfully combat asthmatic conditions;

21. Will drive the symptoms of Asthma out of the system entirely, without any evidence of its returning;

22. Will correct or control Hay Fever;

23. Give freedom from smothering, wheezing, coughing and other asthmatic symptoms;

24. Provide a complete relief from asthmatic troubles. (Oct. 18, 1937.)

1903. **Vendor-Advertiser—Coin Catalogue.**—National Coin Corp., a corporation, Springfield, Mass., vendor-advertiser, was engaged in selling a coin catalogue, 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 many coins and bills now in circulation are worth big cash premiums;

(b) That respondent's coin book lists all valuable coins or tells which are valuable;

(c) That respondent buys all coins or common coins;

Respondent further agreed to cease and desist from publishing statements to the effect

(d) That it will purchase coins for specified prices, unless all conditions, restrictions and limitations pertaining to such offer are published in direct connection therewith and in equally large type. (Oct. 18, 1937.)

1904. **Vendor-Advertiser—Nature's Minerals.**—P. B. Smith, an individual operating under the trade name of Nature's Mineral Food Co., Indianapolis, Ind., vendor-advertiser, was engaged in selling Nature's Minerals, 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 Nature's Minerals is prepared according to the requirements of the U. S. Pharmacopoeia or National Formulary;

(b) That Nature's Minerals is a competent treatment or an effective remedy for:

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| 1. Rheumatism, | 21. Tuberculosis, |
| 2. Toxicosis, | 22. Heart Trouble, |
| 3. Acidosis, | 23. Neuritis, |
| 4. Diabetes. | 24. Anemia, |
| 5. Serious and chronic diseases, | 25. Other bodily ailments, |
| 6. Arthritis, | 26. Spinal curvature, |
| 7. Colitis, | 27. Acute appendicitis, |
| 8. Stomach ulcers, | 28. Tonsillitis, |
| 9. Kidney ailments, | 29. Adenoids, |
| 10. Bladder ailments, | 30. Goiter, |
| 11. Low blood pressure, | 31. Gland diseases, |
| 12. High blood pressure, | 32. Malnutrition, |
| 13. Gastritis, | 33. Rickets, |
| 14. Indigestion, | 34. Decayed Teeth, |
| 15. Weak and run-down condition, | 35. Conditions of under-nourishment, |
| 16. Toxic acid poisons, | 36. Acid saturation, |
| 17. Stomach ailments, | 37. Sciatica, |
| 18. Acid stomach, | 38. Asthma, |
| 19. Nervous disorders, | 39. Bright's disease, |
| 20. Colds, | 40. Inflammation of kidneys, |

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| 41. Gas, | 44. Lack of energy, or |
| 42. Bleeding ulcers, | 45. Lost vitality, |
| 43. Prostate gland trouble, | |

or that this product will prevent, or remove the cause of any of the above conditions;

(c) That this product will:

1. Eliminate poison,
2. Rebuild the body,
3. Cause disease, sickness or surplus flesh to disappear,
4. Repair the body "as fast as it is worn out by the processes of life";
5. Enable glands to function properly,
6. Drain acids from tissue cells,
7. Promote perfect health,
8. Supply exactly where needed any element lacking or deficient in the body,
9. "Banish" or "cure" any condition,
10. Aid in the distribution of all nourishment,
11. Enable one to eat any food desired, without indigestion,
12. Have a purifying action on the blood,
13. Enable the blood to pick up greater quantities of waste matter,
14. Aid in the elimination of waste matter,
15. Reach every gland and organ in the human body, or aid in restoring their "perfect functioning," or
16. Afford the same benefits as a visit to a health resort;

(d) That Nature's Minerals is a perfect food;

(e) That the human body requires Nature's Minerals to be healthy, or that few people, if any, get the required amount of minerals in their daily diet;

(f) Is of more benefit than treatment by physicians;

(g) That this enterprise is being conducted as a corporation. (Oct. 18, 1937.)

01905. Vendor-Advertiser—Truss Appliance and Astringent Mixtures.—

E. O. Koch, an individual trading as The Easyhold Co. and Dr. Kaiser, Kansas City, Mo., vendor-advertiser, was engaged in selling an appliance designated The Easyhold Truss and an astringent mixture designated Hernaline, 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 Easyhold Truss does away with binding spring bands and harsh plug pads;

(b) That the Easyhold Truss differs from ordinary trusses as sunshine from fog;

(c) That rupture will be cured by the use of the Easyhold Truss, or that people from all parts of the United States report their rupture cured;

(d) That the Easyhold Truss will cause rupture to disappear as if by magic;

(e) That the Easyhold Truss constitutes the discovery of a newer rupture method, other than such novelty as may be involved in the half-circle hip span spring worn in the upright position described;

(f) That Hernaline will aid nature in effecting a recovery from rupture or arouse the dormant forces of nature, bringing into activity nature's strengthening and healing power, causing the process of repair to quickly become active;

(g) That Hernaline will aid nature to strengthen and build up body tissue;

(h) That no charge is made for the Easyhold Truss or that persons receiving the Easyhold Truss on trial will not be out one penny if their rupture condition

is not better in thirty days, unless and until all charges including postage are refunded the purchasers in the event of the return of the truss to the respondent under the terms of the agreement;

(i) That any article is given free by the respondent to purchasers of the Easyhold Truss, or that no money is to be paid now or ever for such article, unless the value, cost or price of such article is not included in the price paid for the Easyhold Truss and the return of such article is not required as a condition precedent to a refund in full of the price paid and the refund in full is made upon return of the Easyhold Truss only;

The respondent further agreed to cease and desist from using the name of a physician as a trade name, or from representing otherwise that a physician has a proprietary interest in respondent's business when such is not the case. (Oct. 20, 1937.)

01906. Vendor-Advertiser—Medicinal Preparation.—Pickgan Labrofacts, Inc. (a corporation), New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Allay, 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 "skillfully blended" or that it is a physician's compound;

(b) That respondent's product will relieve the most stubborn, obstinate or persistent pains; or will lick pain;

(c) That the use of respondent's product will stop or drive away a headache or throat ache;

(d) That respondent's product is prescribed, recommended or safe for children;

(e) That respondent's product acts quicker than other remedies, or effects relief when other remedies fail;

(f) That respondent's products is a competent treatment or affective remedy for "recurring headaches";

(g) That the use of respondent's product will give sure or safe relief or will insure clear heads;

(h) That through the use of respondent's product one may get rid of pain;

(i) That respondent's Allay Tablets start to act 2 to 3 seconds after being taken;

(j) That respondent's product will relieve all pains associated with common colds;

(k) That respondent's product is guaranteed to relieve pain;

(l) That respondent's product will relieve women's periodic headaches;

(m) That respondent's product is the one best or speediest relief from pain, or effects faster relief;

(n) That through the use of respondent's product one can prevent or stop a cold;

(o) That respondent's product is a "new" pain killer. (Oct. 20, 1937.)

01907. Vendor-Advertiser—Repairing Liquid.—Perfect Manufacturing Co., a corporation, trading as Metalfix Co., Cincinnati, Ohio, vendor-advertiser, was engaged in selling a repairing liquid designated "Metalfix", 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 "Metalfix" will weld;
- (b) That "Metalfix" effects permanent repairs under all conditions;
- (c) That "Metalfix" is not a cement;
- (d) That "Metalfix" will repair everything;
- (e) That "Metalfix" is a new chemical discovery;
- (f) That "Metalfix" is a metallic liquid;
- (g) That articles joined with "Metalfix" can't be pulled apart;
- (h) That "Metalfix" makes quicker, stronger repairs than old-fashioned methods;
- (i) That "Metalfix" is the World's most powerful mender;
- (j) That "Metalfix" is the only product that will permanently repair or weld, metal articles without heat, acid or soldering iron;
- (k) That salesmen will sell dozens of tubes of "Metalfix" to 9 out of 10 people they talk to or any proportion of people;
- (l) That respondent guarantees the success of persons selling "Metalfix".

Respondent further agreed to cease and desist from representing that any product or products are given "free" when the purchase of other products or the rendering of a service is required as a requisite to receive the said products.

Respondent further agreed to cease and desist from representing directly or otherwise that purchasers are protected by a guarantee, unless in direct connection with such statement and in equally conspicuous type there are also stated all material conditions including the requirement that transportation charges must be paid by the purchaser.

Respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed:

- (m) Not to represent or hold out as a chance or an opportunity for sales 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. (Oct. 20, 1937.)

01908. Vendor-Advertiser—Shoes.—The Walker T. Dickerson Co., a corporation, Columbus, Ohio, vendor-advertiser, was engaged in selling Archlock Shoes, 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 wearing of respondent's shoes will:
 1. Cure or relieve arthritis in the feet;
 2. Banish corns, bunions or callouses;
 3. Relieve foot ailments, unless limited to those types of ailments that can reasonably be expected to be relieved by respondent's shoes;
 4. Cure or relieve every type of foot trouble;
- (b) That respondent's shoes are scientifically designed to balance the body, as distinguished from such balance as may be afforded to the feet by those shoes embodying those patented features that will produce this result;

(c) That respondent's shoes are "guaranteed" to give foot comfort regardless of the foot ailment. (Oct. 22, 1937.)

01909. **Vendor-Advertiser—Medicinal Preparation for Skin Diseases.**—Capillaris Manufacturing Co., a corporation, Glen Ridge, N. J., vendor-advertiser, was engaged in selling a medicinal preparation for skin diseases designated Capillaris-X, 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 Capillaris-X is a strong germicide and disinfectant;
- (b) That Capillaris-X is a powerful germ destroyer;
- (c) That Capillaris-X is a competent treatment for:
 1. Eczema,
 2. Rash,
 3. Pimples,
 4. Itch,
 5. Piles,
 6. Boils,
 7. Scalp disorders,
 8. Open wounds,
 9. Many skin diseases or troubles,

unless limited to indicate its use as a palliative for soothing said diseased conditions. (Oct. 25, 1937.)

01910. **Vendor-Advertiser—Course in Music.**—National Academy of Music, 1525 East Fifty-Third St., Chicago, Ill., vendor-advertiser, was engaged in selling a home study course of instructions in music 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 its Home Study Course—
 1. Makes one an "accomplished" musician in a short time;
 2. Is a complete conservatory course unless limited to instructions that can be given by correspondence;
 3. Enables every man, woman and child to play a musical instrument;
 4. Gives one instruction by the "best" master artists and teachers in America;
 5. Assures "definite" results;
 6. Has developed more successful music teachers and more professional musicians and artists than all other Home Study Courses combined unless supported by competent evidence;
 7. Is a sure way to succeed;
- (b) That it has had 300,000 "enthusiastic" students, unless and until reliable records show such to be a fact;
- (c) That by subscribing to its Home Study Course a person studies "under" or "with" any teacher, unless it is clearly limited to studies by correspondence, and not personal contact;
- (d) That through its Home Study Course a person obtains personal instruction, or the finest instruction it is possible to get, unless clearly limited to instruction by correspondence;

(e) That what one person has accomplished through its Home Study Course anyone else can accomplish;

(f) That its course of instruction is far better and surer than if you had an ordinary teacher;

(g) That one will not experience the slightest difficulty in finishing the entire course within a year;

(h) That a good voice is purely a matter of proper training and the moment you undertake its course you may be positive that you are receiving the best and most complete vocal training that money and experience can provide.
(Oct. 26, 1937.)

01911. Vendor-Advertiser—Laxative.—Frank A. Wilken, an individual doing business under the trade name of Normalizing Foods Co., Detroit, Mich., vendor-advertiser, was engaged in selling a laxative preparation designated Normalax 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 words "Normalizing" and "Foods" either alone or together as part of his trade name;

(b) Using the word "Normalax" or any other word or words as a trade name for his product that may have the capacity or tendency to mislead or deceive the purchasing public into the belief that his product will produce normal activity of the bowels;

(c) Representing that his product will

1. Produce health or start one toward health and happiness;
2. Establish soothing healthy action in nature's way;
3. Remove the cause of illness;
4. Cause headaches, biliousness and other ailments to disappear;
5. Eliminate harmful wastes from the body;
6. Nourish the bowels;
7. Soothe the bowels;
8. Normalize the bowels;
9. Restore bowel tone by an amazing new health building method;
10. Overcome faulty elimination;
11. Promote normal elimination;
12. Tone the intestines;
13. Strengthen the intestines;
14. Overcome intestinal deficiency;
15. Overcome constipation;
16. Overcome the real cause of constipation;
17. Correct constipation, or any other bowel condition;
18. Overcome chronic conditions;
19. Promote permanent relief from constipation;
20. Enable one to keep regular;

(d) Representing that his product is—

1. A new bowel treatment;
2. A better way to health;
3. A pure vegetable food;
4. More than just an ordinary laxative;
5. Guaranteed;
6. A new vegetable corrective;
7. A food laxative;

8. A natural product;

9. More suitable for an individual than most of the food he eats;

10. Absolutely harmless regardless of how much or how long it is taken;

11. Entirely vegetable;

(e) Representing that his product has no equal for maintaining easy, normal action;

(f) Representing that his product is scientifically prepared with the pure vegetables best suited for overcoming constipation;

(g) Representing that his product contains those minerals, vitamins and food ingredients useful for toning up and invigorating the intestines, resulting in natural bowel movement without the use of laxatives thereafter;

(h) Representing that his product supplies food elements, which are often lacking in the diet, thereby helping to keep the system clean inside;

(i) Representing that his product affords a "safe" means of solving the problem of elimination;

(j) Representing that his product contains harmless food elements that help to correct harmful acid conditions in the upper bowel, soothe, and heal, feed and normalize the bowel condition, and give proper consistency to the bowel contents. (Oct. 26, 1937.)

1912. Vendor-Advertiser—Divining Rods and Information Relating to Location of Buried Treasure.—Frank Wyss, an individual, St. Joseph, Mo., vendor-advertiser, was engaged in selling divining rods and information relating to the location of buried treasure, 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 divining rods sold or described by respondent work the same for everyone;

(b) That respondent furnishes information relative to scientific methods of locating buried treasure;

(c) That any instrument sold or described by respondent will indicate the presence of any metal unless such claim is clearly qualified by a statement as to the conditions necessary to the achievement of such results;

(d) That any device sold or described by respondent will indicate the location of oil or water;

(e) That all matter generates rays or vibrations similar to those emitted by radium;

(f) That anyone can determine the nature of hidden body by the type of "vibrations" emitted, or otherwise, except by digging it up, or that each kind of matter emits vibrations peculiar to itself;

(g) That anything is given "free" when in truth and in fact the price thereof is included in that of another article with which it is given, or when the recipient is required to make any payment or perform any service before qualifying to receive the so-called "free" article;

(h) That with the exceptions of the Telector, the Buried Treasure Finder and the Radio Gold Locator, any device sold or described by respondent is of any practical value in locating any metal or ore;

(i) That fortunes have been located by the use of the Magic Indicator;

(j) That there is any such phenomenon as a combination of personal magnetism, indicator magnetism and mineral magnetism, which set up an emotion of attraction for hidden wealth, or that there is any attraction set up such as that of the North Pole for the compass;

(k) That any device is sold by respondent on a yearly repair guarantee;

(l) That any device sold or described by respondent carries magnetic currents from the body to a proper conductor as a negative, or that such currents cause the Magic Indicator to point out the hiding place of wealth or anything else;

(m) That any device sold or described by respondent indicates the presence of metal by magnifying nervous or muscular reactions of the operator;

(n) That any device sold or described by respondent indicates the presence of metal by serving as a medium for psychic sensitivity to said metals on the part of the operator. (Oct. 26, 1937.)

01913. **Vendor-Advertiser—System for Rupture Service.**—Capt. W. A. Collings, Inc., a corporation, Box 58-C, Watertown, N. Y., vendor-advertiser, was engaged in selling Capt. Collings' System for Rupture Service, 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 Collings System can be relied upon to "end", "stop" or "rid" one of rupture worries, troubles or burdens in any manner or connection to assert or imply that the person will not again be worried, troubled or burdened with recurring rupture conditions;

(b) That the Collings System can be relied upon to "end", "stop", or "rid" one of a rupture in any manner or connection to assert or imply that the person will never again suffer any recurring rupture conditions;

(c) That the Collings System does more than aid nature in reducing a reducible rupture by restoring and holding the intestine in its normal position, and by counter-irritant effect and massage to increase blood flow in that area to tone, strengthen and contract the muscular structure around the opening through which the hernia has protruded;

(d) That the Collings System can do more than support, for purposes of relief from discomfort, an irreducible rupture;

(e) That Collings pads are especially designed to meet every possible rupture condition, unless limited to reducible rupture or irreducible ruptures that can be supported;

(f) That respondent's treatment is offered on the basis of a "no risk trial," so long as the purchaser is required to make payment therefor with the privilege of applying for a refund in case of dissatisfaction, or that under such conditions one does not risk a dollar;

(g) That the mere fitting of the Collings appliance will immediately remedy the ruptured conditions and permit a person to "suddenly" remove the appliance;

(h) That a truss supplied in accordance with measurements furnished by mail in all cases fit as well as though made after a personal examination by the same expert;

(i) That any specified results can be "guaranteed";

(j) That any of Collings' rupture appliances will reduce fat;

(k) That the sole impulse of the writers of published testimonials is to assist suffering humanity. (Oct. 26, 1937.)

01914. **Vendor-Advertiser—Medicinal Preparation.**—Frank A. Randall, an individual doing business under the trade name of Sulpho-Sol Co., 521 Fifth Ave., New York, N. Y., vendor-advertiser, was en-

gaged in selling Sulpho-Sol, 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 lack of sulphur is a leading factor in causing arthritis, or that scientists agree that this is true;

(b) That Sulpho-Sol is beneficial in the treatment of rheumatism or "rheumatic conditions";

(c) That "this form of" iodine is a vital ingredient in the body metabolism;

(d) That Sulpho-Sol is an effective or inexpensive remedy in the treatment of arthritis unless limited to arthritis due to sulphur deficiency;

(e) That the ingredients of Sulpho-Sol:

1. Are non-toxic;

2. Are non-heart depressing; or

3. Are safe to take, unless limited to Sulpho-Sol when taken as directed;

(f) That Sulpho-Sol:

1. Relieves arthritis; or

2. Brings blessed relief, unless limited to arthritis due to sulphur deficiency.

(Oct. 27, 1937.)

01915. Vendor-Advertiser—Books and Printed Matter.—H. T. Roberts, an individual, trading as H. T. Roberts & Co., Box 203, Frenchburg, Ky., vendor-advertiser, was engaged in selling Books and Printed Matter, 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 prospective agents are paid for distributing circulars or that remuneration is other than commissions on goods sold through the circulars they distributed;

(b) That respondent's Mystic Perfume Nuggets will subdue the odors of cooking, tobacco smoke or home brewing, or will discourage moths, flies or mosquitoes;

(c) That respondent's book will enable one to make \$50 a week selling snapshots;

(d) That respondent's book "How To Be A Successful Agent" will tell one how or enable one to earn \$100 a week;

(e) That purchasers of respondent's book "Twenty-four Ways to Make Money" can make \$50 a week at home in their spare time;

(f) That respondent guarantees that those who own and study his "Library of Business Opportunities" will have a prosperous future;

(g) That respondent's Library of "Business Opportunities" is a guide to making \$12,184 or \$19,000 or any other large sums;

(h) That respondent's book "The Key to Business Opportunities" will open the door to a real financial position or that many persons have achieved prosperity because of reading the book;

(i) That respondent's "Buyers' Guide" includes information as where one may obtain a free diamond ring or where one can sell gulena pigs at \$2.00 a pair;

(j) That respondent's book "How to Get Yourself a Better Job" is given "free" and "postpaid";

(k) That respondent's book "How to Get Yourself a Better Job" gives its readers a strange power or enables them to immediately get good jobs after

months of failure, or will show one how to successfully secure or improve a job or position, or reveals the secret of successful business, or that persons applying the principles of the book have been successful in securing large salaried positions through its use. (Oct. 27, 1937.)

01916. **Vendor-Advertiser—Medicinal Preparations.**—Warner's Safe Remedies Co., a corporation, 82 St. Paul St., Rochester, N. Y., vendor-advertiser, was engaged in selling medicinal preparations designated Warner's Digestive Tablets and Warner's Compound, 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 Warner's Compound is the "best known" product of its kind;
- (b) That Warner's Compound is made of "natural Herbs";
- (c) Inferentially or otherwise, that Warner's Compound will clean out all body poisons;
- (d) That Warner's Compound stimulates the liver;
- (e) Inferentially or otherwise, that certain stated symptoms are always indicative of an ailing condition of the kidneys, when in fact such symptoms may be indicative of other conditions;
- (f) That Warner's Digestive Tablets will relieve stomach "troubles", unless the said "troubles" are specifically stated in direct connection therewith and the representation so qualified as to indicate that the tablets will be a relief only when the conditions are due to gastric hyperacidity;
- (g) That Warner's Tablets are compounded according to the formula of a "world famous" specialist;
- (h) Inferentially or otherwise, that poor digestion is always due to lack of tone in the general system.

The respondent further agreed to cease and desist from using the word "digestive" as a part of the trade name for the product heretofore known as "Warner's Digestive Tablets."

The respondent further agreed to cease and desist from representing through the use of the word "laboratories", or in any other manner, that the respondent owns, controls, or operates a chemical workroom or place devoted to experimental study in any branch of natural science or to the application of scientific principles in the testing, analysis and preparation of the products, unless and until the respondent shall own, control or operate such a place or places. (Oct. 29, 1937.)

01917. **Vendor-Advertiser—Reducing Preparation.**—Winifred Bertell, doing business as Hollywood Star Products, Ltd., Post Office Box 375, Hollywood, Calif., vendor-advertiser, was engaged in selling a certain preparation known as Reduce-Easies, 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 REDUCE-EASIES are of themselves a competent treatment for obesity;
- (b) That by the use of REDUCE-EASIES a person may—
 1. Get figure control;

2. Feel like a new person;
3. Feel and look younger;
4. Obtain guaranteed weight reduction;
5. Lose any definite amount of weight in any definite period of time;

(c) That REDUCE-EASIES are—

1. Amazing;
2. New;
3. Harmless;
4. The Hollywood Method;
5. Safe;

(d) That the use of REDUCE-EASIES will enable a person to reduce as if by magic;

(e) That a reduction in weight may be accomplished by REDUCE-EASIES without dieting or exercise. (Nov. 3, 1937.)

01918. Vendor-Advertiser—Paper Fasteners and Accessories.—The Bump Paper Fastener Co., a corporation, 1832-A, 12th St., La Crosse, Wis., vendor-advertiser, was engaged in selling Bump Paper Fasteners and Accessories, 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 an amazing invention opens a \$10,000,000.00 market for agents of The Bump Paper Fastener Company;

(b) That for one who is an agent of The Bump Paper Fastener Company there is no competition;

(c) That its sales plan should make an agent an average of \$89.00 or more weekly or any other sum unless reliable records of the sales of its agents show such to be the average net return of its full-time agents under normal conditions;

(d) That by any sales plan a prospective agent risks nothing when in fact a purchase price is charged the agent for the product and obtained before delivery thereof;

(e) That any of its products separately or in combination will clinch the whole stapler market;

(f) That because of its process of manufacture or any other reason, its products may be sold for 50% less than other makes;

(g) That a person will be made an exclusive agent unless in direct connection therewith it is stated that such is not the case unless and until it is shown to respondent's satisfaction that the agent works consistently and produces satisfactory results.

It is further agreed that respondent will not as an inducement to sell its products or to procure agents, represent that it will conduct a National Advertising Campaign for the benefit of its agents unless and until a contract for the same has been entered into or the same is actually carried on. (Nov. 4, 1937.)

01919. Vendor-Advertisers—Rose Seeds.—Edward R. Von Castleberg and Julianna Von Castleberg co-partners, trading and doing business as the Murvon Seed Co., Harbor View, South Norwalk, Conn., vendor-advertisers, were engaged in selling Japanese Rose Seeds, and agreed in soliciting the sale of and selling said product in inter-

state commerce to cease and resist from representing directly or otherwise:

(a) That Japanese rose bushes will bloom in the winter unless in direct connection therewith it is stated that such is the case only in a warm climate or when cared for in a greenhouse;

(b) That Japanese rose bushes when three years old will have five or six hundred roses, or will have roses the year round;

(c) That Japanese roses are very rare. (Nov. 5, 1937.)

01920. Vendor-Advertiser—Medicinal Preparation.—Zo-Ak Co., a corporation, 62 W. 45th Street, New York, N. Y., vendor-advertiser, was engaged in selling Zo-Ak Tablets for Men and Women, 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 Zo-Ak Tablets stimulate the sexual desires or the sexual powers of either men or women, unless limited to cases where the sex powers are temporarily reduced but not lost;

(b) That the ovarian hormone has value for promoting or stimulating spermatogenesis and increased sexual powers in the male;

(c) That the Zo-Ak preparations, for men and women, represent the very latest development in gonadal replacement therapy;

(d) That the majority of cases of male impotence

1. Are due to endocrine sluggishness; or
2. Respond to glandular stimulation;

(e) That the female sex hormone is now definitely known to "control" the menstrual cycle;

(f) That menopause symptoms can now definitely be traced to a deficiency of the female sex hormone;

(g) That desiccated ovarian substance is active when taken by mouth, unless such statement is accompanied by citation of medical authorities supporting it;

(h) That Zo-Ak Tablets promote menstrual flow, unless the Estrin ingredient is increased to an amount approved by the medical profession as adequate to increase the flow;

(i) That Zo-Ak Tablets are of material value for secondary types of amenorrhoea, or oligomenorrhoea, or dysmenorrhoea, unless the Estrin ingredient is increased to an amount approved by the medical profession as adequate to increase the flow;

(j) That Zo-Ak Tablets excites normal sexual desire in frigid women;

(k) That Zo-Ak Tablets stimulates female fertility;

(l) That taking Zo-Ak Tablets alone increases the capacity of both partners (husband and wife) for parenthood;

(m) That Zo-Ak Tablets will prove effective in aiding conception in very many cases where apparent sterility exists;

(n) That the efficacy of Zo-Ak Tablets in sex gland stimulation, or oral administration, has been "proved";

(o) That there is any such thing as a "love hormone";

(p) That the "love hormone", or Zo-Ak or any of its ingredients, when given to human beings by mouth, produce a romantic mood or increased vitality for marriage performance, as distinguished from temporary stimulation;

(q) That men who feel themselves slipping, whose powers have gradually become impaired but are not lost, may be benefited by taking Zo-Ak Tablets, unless limited to their aphrodisiac action;

(r) That Zo-Ak Tablets gives a boost to the glandular system and strengthens important functions in men past forty, unless limited to the aphrodisiac action of the tablets;

(s) That Zo-Ak Tablets—

1. Promotes marital vigor and vitality, unless limited to their aphrodisiac action;

2. Produces a feeling of well-being in men or women; or

3. Aids efficiency of men and/or women in daily work;

(t) That Zo-Ak Tablets are either a competent or effective remedy for temporary impairment of vitality due to fatigue, overwork, or remediable weakness of the glandular system;

(u) That Zo-Ak is "the most" efficacious gland stimulator for women, when taken by mouth;

(v) That doctors prescribe the ingredients of Zo-Ak for treating "periodical" irregularities in women of all ages;

(w) That Zo-Ak is a competent remedy in the treatment of "periodical irregularities" in women of all ages;

(x) That the hormone, Estrin, which "we import from Europe" is conceded by medical authorities to be the "physiological regulator" of normal periods, or that it has any value as a "physiological regulator" or normal periods;

(y) That Zo-Ak Tablets are harmless;

(z) That the lack of a certain essential hormone makes women approaching 45 hard to live with; or that taking Zo-Ak Tablets provides relief, by merely replacing in the system the hormone it lacks, in the majority of cases;

(aa) That "a newly discovered hormone" has been found to be of remarkable help in improving vigor and increasing vitality; or that clinical tests with this hormone have produced amazing results;

(bb) That any benefits from Zo-Ak Tablets for men, other than their aphrodisiac action may be expected within any definitely specified period of time or by men of any specified age particularly;

(cc) That physicians often prescribe the ingredients of Zo-Ak Tablets to relieve the headaches, hot flashes, dizzy spells, "nerves", or the pains and misery due to or incident to the menopause, which may now be obtained together with other valuable ingredients in Zo-Ak Tablets, unless and until the quantity of such ingredients equals in dosage the amount prescribed by physicians. (Nov. 8, 1937.)

01921. Vendor-Advertiser—Flavoring Syrup.—Dr. Pepper Co., a corporation, 429 Second Ave., Dallas, Tex., vendor-advertiser, was engaged in selling a flavoring syrup known as Dr. Pepper Syrup, used in manufacturing a carbonated beverage known as Dr. Pepper, 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 3 or any other particular number of Dr. Peppers per day will "keep up" a normal energy level;

(b) That drinking Dr. Pepper is the same as drinking bottled energy;

(c) That 3 or any other number of Dr. Peppers a day makes one healthy;

(d) That every bottle of Dr. Pepper contains about the same number of calories as are contained in half a glass of pure orange juice or a bowl of cream of tomato soup;

(e) That Dr. Pepper:

1. Is "packed" with energy;

2. Helps to melt fat away;
3. Cools the blood;
4. Calms the nerves;
5. Expands four times in the stomach;
6. Controls the waistline;
7. Is a tonic, or a pep tonic, or an ideal tonic;
8. Helps you get your second wind; or
9. Is the perfect pick-up for tired minds, tired nerves, or tired bodies;

(f) That there are more calories per pound in Dr. Pepper than in oranges, lemons, pineapples, spinach or buttermilk. (Nov. 8, 1937.)

01922. Vendor-Advertiser—Medicinal Preparation.—R. E. G. Zaleski, an individual trading as Zal's Laboratories, 7554 South Halsted St., Chicago, Ill., vendor-advertiser, was engaged in selling a preparation designated Zal's 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 respondent's product is a competent treatment for the relief of ulcers, gastritis, acidosis, indigestion and related stomach troubles;

(b) That the most stubborn cases yield to this preparation or its adjunct treatment;

(c) That respondent's product is helpful as a general tonic;

(d) That respondent's product is replacing former methods and that it gives immediate relief;

(e) That respondent's product or its adjunct treatment is positively effective;

(f) That respondent's product is the result of many years of research;

(g) That respondent's product will remove all irritation from inflamed and weakened parts. (Nov. 9, 1937.)

01923. Vendor-Advertiser—Course of Instruction in Radio, Television and Sound Equipment Engineering.—De Forest's Training, Inc., a corporation, 1109 Center St., Chicago, Ill., vendor-advertiser, was engaged in selling a Course of Instruction in Radio, Television and Sound Equipment Engineering, 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. Lee De Forest is now actively or financially associated with the business conducted by the corporation "De Forest's Training, Inc." or that he examines, grades, or supervises the lessons submitted by students, or in any way directs the teaching or training of students, or that—

1. Students are under the tutorage of Dr. De Forest, or

2. Salesmen are associated with the De Forest organization of Chicago;

(b) That the number of students is limited, or that applications are accepted from only a few, or only a few in a given locality unless conditions are adhered to as stated;

(c) By publication of advertisements under such headings as "Wanted," "Help Wanted," "Male Help Wanted," or headings of similar import and effect, or through the use of any other means, that respondent has positions or jobs at its disposal or that employment is being or will be offered to persons who answer said advertisements, when said advertisements are in reality

contact advertisements used in connection with the sale of respondent's course of instructions;

(d) That respondent has made arrangements with various firms, by which said firms will employ students who have concluded any course of instruction sold by it and give them permanent positions, or that respondent will do so, unless and until such be the fact;

(e) That television, radio and/or sound equipment engineering are—

1. The newest and fastest growing industries in the country; or
2. In need of men; or
3. Offering unlimited possibilities; or
4. Handicapped by a shortage of thorough and efficient technicians; or
5. Facing a serious handicap by reason of untrained personnel;

unless and until the foregoing representations (1-5) are the facts at the time they are published;

(f) That television is now ready for the public or that its general use is imminent, or that—

1. Television pictures today are clear, well-illuminated, and compare in quality and detail with home movies.

2. Opportunities for fortune, fame and lifetime security, exceeding those in other industries or branches of electronics, are to be had only in the television field;

(g) That taking this course will assure the student a steady job or big pay;

(h) That anything is given free when, in truth and in fact, the price thereof is included in that of another article, or the recipient is required to make any payment or perform any act before qualifying to receive the gift.

The respondent further agreed to cease and desist from the use of any word or words employed as a heading, title or otherwise, in newspaper advertising or other advertising media, which have the capacity, tendency and effect of confusing, misleading or deceiving the reader of such advertisement in relation to the fact that a correspondence course of instruction is being offered for sale, or that—

1. Respondent does not operate like a correspondence school,
2. Instruction is being offered by the Training Division of a large manufacturer,
3. The courses are offered in cooperation with manufacturers and dealers,
4. When a salesman is in truth and in fact selling the course, he is "selecting a man" for an industry,
5. A large corporation will train the men selected,
6. A large manufacturer wants a few ambitious men who desire to train for good paying positions,
7. A large corporation has a fine opportunity for a few ambitious men to qualify for practical work. (Nov. 11, 1937.)

01924. Vendor-Advertisers—Medicinal Preparation.—W. W. Metcalf and Mrs. Fred E. Grant, copartners trading as Dr. Fred E. Grant Co., 706 Davidson Building, Kansas City, Mo., vendor-advertisers, were engaged in selling a remedy for Epilepsy, 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 respondents' treatment controls Epilepsy attacks;

- (b) That respondents' treatment is a "private prescription";
- (c) That respondents' treatment is a competent or trustworthy treatment for convulsions, "falling sickness", or fits;
- (d) That respondents' offer to sell their medicine at a reduced price will be held open for 90 days or any limited period, unless the higher price is charged after the expiration of such period;
- (e) That the Bromide contained in respondents' treatment is recognized as the most potent agent in treating attacks of Epilepsy;
- (f) That respondents' remedy is an effective treatment of Epilepsy unless limited to relieving the severity of and lessening the frequency of the attacks;
- (g) That the use of respondents' medicine has saved the life of any person. (Nov. 12, 1937.)

01925. Vendor-Advertisers—Medicinal Preparation.—John L. Hatch, and Nancy E. Hatch, copartners, doing business under the trade name of Slimmets Co., 853—7th Ave., New York, N. Y., vendor-advertisers, were engaged in selling a medicinal preparation designated Slimmets, 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 using respondents' Slimmet Method one can reduce quickly, safely and easily, unless qualified by a statement defining said method;
- (b) That the use of Slimmet, alone or in connection with a prescribed diet or exercise will enable one to reduce any definite amount or within any definite period of time;
- (c) That one using respondents' Method will take off or get rid of superficial fat;
- (d) That respondents' Method is safe, or that it contains no harmful drugs;
- (e) That respondents' Method does not include diets or exercises;
- (f) That respondents bear all expense if the purchaser is not satisfied, or that Slimmet may be tested at the expense of the respondents so long as the respondents do not refund to the purchaser all the expenses incurred, including transportation and C. O. D. charges;
- (g) That respondents' Slimmet Method was prescribed or formulated by a Doctor. (Nov. 12, 1937.)

01926. Vendor-Advertiser—Brochures, Charms, Dream Books and Other Articles of Mysticism.—E. S. Bullock, an individual trading as Keystone Service, and Keystone Co., Box 7439, Philadelphia, Pa., vendor-advertiser, and was engaged in selling Brochures, Charms, Dream Books and Other Articles of Mysticism, 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 respondent's Lucky Dream Book or Ethiopian Dream Book—
1. Gives one's "lucky" number and days;
 2. Describes every method of fortune-telling;
- (b) That respondent's horoscopes will—
1. Enable one to know about his chances in life, about love, marriage, children, travel, inheritance, lucky days, lucky colors, best traits, hidden abilities and when to marry;
 2. Answer questions no one can answer;

3. Tell how one's star of destiny affects his future;
- (c) That the "Lucky" Lodestone sold with respondent's Ethiopian Lucky Dream Book is sold regularly at the price of \$1.00;
- (d) That "The Forbidden Books of Moses" reveals the secret designs of certain of respondent's amulets;
- (e) That "The Forbidden Books of Moses"—
 1. Reveals long hidden secrets;
 2. Contains exact copies of over 125 seals, signs, emblems, etc., used by Moses, Aaron, the Israelites, Egyptians or any other peoples;
 3. Is in accordance with old manuscripts;
 4. Is given word for word, including exact copies of all original illustrations as they exist on ancient parchment;
 5. Is the most wonderful work ever published;
 6. Is referred to by millions who never undertake any important step in life relating to finance, exchange or health without seeking guidance and advice from its pages;
 7. Contains all that is embraced by the White and Black Art, together with the ministering spirits which were hidden from David; .
 8. Contains the Seal of Treasures, the Seal of Fortune, the Seal of Power, the Seal of Visions and Dreams, the Seal of Earth's Treasures, the spirits of air, fire, water and earth, with their uses and powerful secrets, an exact engraving of the Magical Circle, the magic of the Israelites fully explained, such as second sight, healing of the sick according to scriptural teachings, visions and dreams, spiritual and sensual affection, elevation of will and higher vitality, the fiery serpent, spurious prophets, divine inspiration and mesmeric clairvoyance, the dead working wonders, the inherent power to heal disease;
 9. Contains illustrations representing the signs used by the Israelites such as the breastplate of Moses, magical laws of Moses, chalice of holiness, conjuration of Eleazor, breastplate of Aaron, citation Germuthsia, dismissal of Leviathan, Balalamis sorcery;
 10. Contains copies of engravings used by the Israelites and Egyptians to accomplish their designs for good or evil;
- (f) That respondent's charms, talismans, amulets and seals are made of "genuine" parchment and will give one victory over every earthly enemy; are useful or effective for honor and health, for attracting the opposite sex, for man's love, for woman's love, for Magical Pacts and Rituals and Ceremonial Magic, for working bewitchments and spells as well as Black and White Magic, for insuring success, overcoming disease and enemies and promoting health and success in business and trade according to Moses' Magical Spirit Art; Magical Seals according to the Key of Solomon, as well as the Great Book of Magical Art;
- (g) That any of respondent's books—
 1. Exposes the Black Art or the Sciences of Magic, Witchcraft, Alchemy, Necromancy, Mesmerism;
 2. Contains the secret art of catching fish;
 3. Contains old secrets and new discoveries or information of rare value for all classes and in all conditions of society, or the secrets of money-making by P. T. Barnum, or how one can make persons at a distance think of him or charm those he meets and make them love him;
 4. Tells how spiritualists and others can make writings appear on the arm in blood characters;
 5. Tells how to make a candle burn all night;
 6. Tells how to make a clock for 25 cents;

7. Tells how to banish and prevent mosquitos from biting;
8. Tells how to cure stammering and drunkenness;
9. Tells how to make a horse appear as though he was badly foundered, make him temporarily lame, make him stand by his food and not eat it, cure him from the crib or sucking wind, put a young countenance on him, cover up the heaves, make him appear as if he had the glanders, make a true pulling horse balk, nerve a horse that is lame;

(h) That any of respondent's books is offered at special prices or is generally sold at higher prices than offered by respondent, when such is not so in truth or in fact;

(i) That "Aunt Dinah's Policy Players Dream Book"

1. Is a sure guide to lucky dreams and lucky numbers;
2. Gives the true interpretation of dreams, and numbers to which they apply and good combinations to play;
3. Gives signification of cards dreamed of and their numbers combination tables for saddles, gigs and horses;
4. Gives tables for finding lucky numbers of dreams of the month, for days of the week;
5. Contains the Oraculum, or Napoleon Bonaparte's Book of fate;
6. Gives all sure signs;
7. Enables one to find out whether he will be rich or poor, lucky or unlucky and whether he will get expected articles that his mind is set upon;

(j) That Frank Howman's Pow-Wow—or The Long Lost Friend contains many valuable arts and remedies for man as well as for animals;

(k) That respondent's Fortune Teller's Cards are owned by the world's most famous fortune tellers;

(l) That respondent's book "How To Be Happy" will enable one to banish all depression and bring about happiness, end sorrow, misery and unhappiness and bring happiness into realization;

(m) That respondent's "The New Illustrated Silent Friend"—

1. Is a marriage guide;
2. Is a medical advisor;
3. Contains ancient beliefs and forbidden knowledge and curious old secrets never before published;
4. Contains priceless secrets and mysteries long hidden from the public;
5. Contains the wonders of the Cabala, rare old manuscripts, together with the secrets of the Great Seventh Book under the Great Seal;
6. Contains reason why every man and every woman should marry;
7. Contains information on—
How to obtain real happiness in marriage;
How to choose your wife or husband;
How to court women of all nations;
The art of coquetry, courting;
How to win the esteem of anyone;
How to cause ladies to tell their thoughts;
The new art to make young and old handsome;
The art and secret form of writing love letters;
How to obtain the greatest amount of married felicity;
How to get rich, or the great \$50,000 receipts by the aid of which anyone can earn from \$25 to \$75 per week;
Fifty (50) great money-making plans;
How to make a Goldometer;
How gamblers win at cards, dice, etc.;

How to bring dead trees to life;
 How to discover things lost, hidden or stolen;
 How to compel a thief to return stolen goods;
 Divination as practiced by the Greeks;
 Beauty Secrets, or how every woman may become handsome at trifling cost,
 How to handle fire without harm;
 How to make images hang in the air;
 How to multiply trees without seedlings or grafts;
 How magicians and Necromancers call forth spirits;
 Raphael's incantation for raising spirits;
 The magic crystal;
 Animal magnetism;
 Spiritual manifestations;
 Rappings;
 Mediums, etc.;
 The science of Necromancy, or the art of foretelling events by consulting spirits;
 Persian and Indian Mysteries;
 Catalepto Clairvoyance, or the highest state of Clairvoyance;
 The wonders of Alchemy;
 The mystery of the Planchette;
 The science of Astral Physiology;
 How to train animals to perform all sorts of tricks;
 How to become a splendid orator;
 A complete Medical Advisor for all kinds of diseases;
 The cure of diseases;
 How to strike fear and terror into the heart of an enemy;
 How to fatten fowls in four or five days;
 How to make hens lay the whole year;
 Fortunate and unfortunate days of the year;
 Table for finding lucky numbers;
 How to obtain health, strength and true manhood;
 How to catch fish in large quantities;
 How to make genuine Celestial Water;
 How to make artificial gold;
 How to make a syrup for long life;
 The Somatic Conjuror;
 Spiritual Vision, or second sight, explaining how to read the thoughts of others;

(n) That respondent's book "Albertus Magnus's 'Egyptian Secrets'" contains forbidden knowledge of the ancients, the secrets and mysteries of life unveiled, the forbidden knowledge of ancient philosophers, or is "The Book of Nature" or "The Magic Cure Book";

(o) That respondent sells "genuine" gazing crystals that test one's psychic powers;

(p) That respondent's book "The Science of Hypnotism"—

1. Is the wonder of the 20th century;
2. Explains all known methods;
3. Will enable one to become an expert operator;

(q) That any of respondent's books—

1. Provides a simple guide to character reading;
2. Makes astrology easy;
3. Will enable one to know his future by means of Palmistry and avert impending evils;

4. Will enable one to become an orator ;

(r) That respondent's Book of Luck discloses evidence of the value of talismans, amulets, charms, mascots, superstitions, lucky numbers, lucky days, lucky children, lucky colors, Xmas charms, New Year portents, etc. and efficacy thereof in presaging future events for either weal or woe ;

(s) That any of respondent's books gives scientific explanations with ancient and modern interpretations of dreams, omens and teacup fortune-telling ;

(t) That any of respondent's brochures, charms, "Lucky Dream Books" or any other articles are given free, when in truth and in fact the price of said articles are included in the price received for other articles purchased from respondent ;

(u) That respondent gives free a gazing crystal, book or any other article of a value of one dollar (\$1) to any customer sending him an order amounting to two dollars (\$2) within ten (10) days or any other specific period of time. (Nov. 12, 1937.)

01927. Vendor-Advertiser—Cosmetic.—The Lavena Corp., a corporation, 141 W. Jackson Boulevard, Chicago, Ill., vendor-advertiser, was engaged in selling a certain cosmetic designated Lavena, 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 Lavena combats the formation of blackheads or any skin disorder that is due to internal causes ;

(b) That Lavena will combat or permanently "get rid of" "skin blemishes" unless limited to temporary conditions due to external causes ;

(c) That Lavena tightens pores or permanently reduces coarse pores ;

(d) That the Lavena "two minute facial" is a "complete" facial ;

(e) That Lavena stimulates or enlivens the skin, tissues or sluggish pores ;

(f) That Lavena cleanses the pores "to their very depths" ;

(g) That Lavena has an "amazing" effect on blackheads and other skin disorders ;

(h) That Lavena is "the year's cosmetic sensation" ;

(i) That Lavena combats skin troubles "once and for all" ;

(j) That "only" a Lavena facial will soothe and soften skin made rough by winter weather conditions ;

(k) That coal soot, tar, ashes, oil, smoke, grease, and germs dig down deep into the pores of the face to stretch the pores and cause blackheads and pimples. (Nov. 16, 1937.)

01928. Vendor-Advertiser—Medicinal Preparations.—Var-Ne-Sis Medicine Co., a corporation, 578 Chestnut St., Lynn, Mass., vendor-advertiser, was engaged in selling certain medicinal preparations designated Var-Ne-Sis Green Label, Var-Ne-Sis Tablets, and Var-Ne-Sis Rub-On, 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 Var-Ne-Sis in tablet form or liquid—

1. Will combat or conquer rheumatism, neuritis, lumbago, arthritis, sciatica or chronic muscular pain, or is a competent remedy for such ailments, unless limited to the relief of some of the symptoms thereof ;

2. Will eliminate uric acid or other poisons from the human body ;

3. Is composed of roots and herbs, or is a preparation of roots and herbs ;

4. Tones up the system or builds up general good health;
5. Is a discovery;
6. Will do for any person what it is alleged to have done for another;
7. Will correct the faults that are responsible for the improper elimination of poisons from the body;
8. Strikes directly at the cause of rheumatism;
9. Has successfully been taken by thousands to regain the vigor of good health;

(b) That stubborn rheumatic cases have responded to Var-Ne-Sis;

(c) That Var-Ne-Sis has become a household word denoting relief from rheumatism;

(d) That Var-Ne-Sis Rub-On is of value for immediate relief from the pain of rheumatism, sprains, neuralgia, earache, backache, cramps in the legs, stiff joints or stiff neck;

(e) That Var-Ne-Sis Rub-On is of value in the treatment of chest colds. (Nov. 17, 1937.)

19129. **Vendor-Advertiser—Medicinal Preparation.**—Hood-Lax Corp., a corporation, 685 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Cal-Par, 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 nerve, tissue or body builder, unless limited to bones and teeth;

(b) That respondent's product is a general tonic;

(c) That respondent's product is beneficial in nervous disorders, unless limited to temporary disorders due to vitamin B deficiency, or is a help in overcoming sleeplessness;

(d) That respondent's product cleanses the skin, is very helpful in skin diseases, or in debilitated conditions generally;

(e) That calcium deficiency is the result of modern diet, unless limited to sections of the country where milk and green leafed vegetables are scarce and sparingly used, or to individuals whose diets do not include sufficient milk or green leafed vegetables;

(f) That respondent's product "revitalizes", "invigorates" or "energizes" the body, or that it stabilizes the nerves;

(g) That respondent's product builds bodily energy, unless limited by direct reference to its small calcium content as an aid in building energy;

(h) That respondent's product will curb or stop colds or catarrh, or that it builds resistance to colds or catarrh. (Nov. 22, 1937.)

19130. **Vendor-Advertiser—Course in Hypnotism and Books.**—Weltmer Institute of Suggestive Therapeutics Co., a corporation, 507 South Cedar St., Nevada, Mo., vendor-advertiser, was engaged in selling a Course in Hypnotism and Books, 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 Weltmer Absent Treatment reaches people in all parts of the world;

(b) That the Weltmer Absent Treatment is given "free";

(c) That respondent's course makes the mastery of hypnotism easy;

(d) That respondent's Absent Treatment is effective, unless limited to cases where its effectiveness has been scientifically demonstrated, or that "many cases" have gotten well or been cured by means of this treatment;

(e) That respondent's course or books will make one master over the conditions of environment in which he is involved;

(f) That respondent's students work miracles of healing, rejuvenation or prosperity;

(g) That respondent conducts the oldest school in the world teaching hypnotism;

(h) That respondent's course is reliable, or that any teaching contrary to it is wrong. (Nov. 22, 1937.)

01931. Vendor-Advertiser—Books and Pamphlets.—Geo. S. Clason, an individual doing business under the trade name of The Clason Publishing Co., 810 14th St., Denver, Colo., vendor-advertiser, was engaged in selling Books and Pamphlets, 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 treatments described in respondent's book, "Why Your Feet Hurt", will cure all foot troubles or make the feet free from aches or pain;

(b) That the respondent's book describes treatments which will cure fallen arches, bunions, pain in the ball of the foot, heel pains, or other troubles;

(c) That respondent's book describes how the reader can have strong, capable, painless or tireless feet;

(d) That through the treatments and prescriptions described in respondent's book, victims of foot ailments will regain efficient feet or walk without pain;

(e) That the prescriptions described in respondent's book are those used by foot experts;

(f) That the treatments described in respondent's book are competent treatments or effective remedies for lameness. (Nov. 22, 1937.)

01932. Vendor-Advertiser—Cosmetics.—Drezma, Inc., a corporation, 130 West 42nd St., New York, N. Y., vendor-advertiser, was engaged in selling certain products designated Drezma Lotion and Drezma Nourishing Cream, 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 by use of Drezma Lotion the pores "won't clog up" or that the product will keep the pores from clogging up;

(b) That Drezma Lotion will clear up the skin unless limited to such conditions as are temporary and due to external causes;

(c) That Drezma Lotion will dispel sallowness unless limited to the appearance thereof;

(d) That Drezma Lotion will refine pores that are "beginning to clog up";

(e) That by use of Drezma Lotion one will have "no shiny nose trouble," "no more open pores or blemishes";

(f) That by use of Drezma Lotion the nose "won't shine";

(g) That Drezma Lotion will "normalize" an oily condition of the skin or that by its use the skin will not be oily;

(h) That Drezma Lotion "works beneath your make-up to clear and beautify your skin";

- (i) That Drezma Lotion will heal unless limited to its aid in healing conditions due to external causes;
- (j) That Drezma Lotion will rid the skin of blackheads or whiteheads;
- (k) That Drezma Lotion will "overcome" acne scars;
- (l) That Drezma Lotion will keep blackheads from forming;
- (m) That Drezma Lotion is a "normalizer" for any type of skin;
- (n) That Drezma Nourishing Cream will "rid" one of squint lines;
- (o) That Drezma Nourishing Cream will prevent wrinkles or that by its use the skin "can't wrinkle" or will not wrinkle;
- (p) That Drezma Nourishing Cream is penetrating;
- (q) That by use of Drezma Nourishing Cream the skin will be youthful;
- (r) That Drezma Nourishing Cream will reach the "root of the trouble".

The respondent further agreed to cease and desist from the use of the word "nourishing" as a part of the trade name for the face cream, provided however, that for a period of six months from date of the acceptance of this stipulation, the respondent shall be permitted to use, in connection with such trade name as it might assume, the words "Formerly Drezma Nourishing Cream". (Nov. 19, 1937.)

01933. Vendor-Advertisers—Course in Lettering.—Karl W. Martinitz and Richard W. Paltridge, Jr., copartners, doing business under the trade name of Western Art Lettering, 5512 Venice St., Los Angeles, Calif., vendor-advertisers, were engaged in selling a course in lettering designated Art of Lettering, 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 words "Art of Lettering" or similar words as the title of their book unless and until said book shall in fact consist of a complete course in the art of lettering;

(b) Using the words "Art Lettering," or words of similar import, as a part of their trade name until such time as they shall offer the purchasing public a book or course furnishing complete and adequate instruction in the art of lettering;

(c) Representing through advertisements in magazines, other periodicals, or otherwise, that persons qualified in the art of lettering signs, showcards, layouts, etc. are "Wanted at Once" for employment; or that there is a crying demand for men and women in said profession for whole or part time employment, unless and until demands for the employment of such persons actually exist in truth and in fact;

(d) Representing that there is a shortage of persons for employment in the lettering fields;

(e) Representing that respondents' book, as presently constituted—

1. Will enable one to start lettering signs, showcards, layouts, etc., upon the first day of the receipt thereof by a prospective student;
2. Provides a simple, direct or complete course in the art of lettering;
3. Enables one to learn the art of lettering;
4. Provides the means of making big money easily;
5. Enables one to master the art of lettering without long hours of tedious practice;
6. Is based on proven principles of the art of lettering. (Nov. 19, 1937.)

01934. Vendor-Advertiser—Formulated Compounds of Vegetable Concentrates.—California Vegetable Concentrates, Inc., a corporation, Architects Building, Los Angeles, Calif., vendor-advertiser, was engaged in selling certain preparations known as CVC Formulated Compounds of Vegetable Concentrates, 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 average American diet is deficient in minerals;
- (b) That its *CVC Formula AA 1* is indicated in the treatment of low blood pressure, chlorosis, emaciation, fatigue, underweight, or as a vascular or general tonic;
- (c) That its *CVC Formula NF 2* is indicated in the treatment of neurasthenia, nervous debility, insomnia, chorea, neuralgia, or any other pathologic condition;
- (d) That its *CVC Formula BF 3* is indicated in the treatment of muscular rheumatism, cutaneous ulcers, pus formation of a non-specific nature, or pyogenic or suppurative infection;
- (e) That its *CVC Formula AD 4* is a "specific" source of supplemental nutrition in the dietary control and correction of diabetes;
- (f) That "uniformly" favorable results have been obtained from the use of its *CVC Formula AA 5* in the treatment of gout, rheumatism or arterio sclerosis;
- (g) That "uniformly" favorable or "spectacular" benefits have resulted from the use of its *CVC Formula DN 6* in the treatment of any condition resulting from a calcium deficiency;
- (h) That its *CVC Formula GI 7* is a "specific" source of supplemental nutrition, in the dietary treatment of anorexia, enteritis, intestinal fermentation, malnutrition, or other metabolic disorders;
- (i) That the objective of its *CVC Formula AA 8* is to provide a generous supply of organic sodium, calcium, potassium, or magnesium, capable of re-establishing a depleted alkaline reserve;
- (j) That its *CVC Formula PL 9* provides a "prolific" supply of calcium, phosphorus or iron;
- (k) That its *CVC Formula CN 11* is indicated in the treatment of malnutrition of either children or adults;
- (l) That its *CVC Formula AG 12* is indicated in the treatment of goitre, or is a "specific" source of supplemental nutrition in the treatment of goitre;
- (m) That the parsley and asparagus contained in its *CVC Formula SL 13* is indicated in reducing the colonic bacilli count or inflammation of the colonic mucosa;
- (n) That its *CVC Formula IU 14* is indicated in the treatment of intestinal ulcers;
- (o) That its *CVC Formula RF 15* is a "specific" source of supplemental nutrition in the dietary treatment of obesity;
- (p) That any of its said products are prolific sources of vitamin "potencies" unless limited to vitamins A and C. (Nov. 12, 1937.)

01935. Vendor-Advertiser—Nail Protection Cream.—W. H. Braun, an individual, operating under the trade name of Imperial Brands Co., 537 South Dearborn St., Chicago, Ill., vendor-advertiser, was engaged in selling a preparation designated Steno Nail Protection Cream, 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 Steno Nail Protection Cream—

1. Is an effective treatment for white blemishes on the finger nails;
2. Is a nourishing cream;
3. Will "end" brittle, peeling, splitting, breaking nails or hang nails;
4. Will transform brittle, peeling, or splitting nails into healthy or lovely finger tips;
5. Will cause spots to disappear or hang nails to "vanish";

(b) That this preparation can be relied upon to correct bad nails unless limited to conditions where it is a corrective treatment;

(c) That this product nourishes the nails;

(d) That this product will keep the nails healthy or take care of all finger worries;

(e) That this cream will overcome even the worst cases of brittle, peeling, splitting nails. (Nov. 12, 1937.)

01936. Vendor-Advertisers—Medicinal Preparation.—R. M. Jones and A. J. Cage, copartners doing business under the trade name of Cajo Distributing Co., 40 W. Gay St., Columbus, Ohio, vendor-advertisers, were engaged in selling a medicinal preparation designated Glanoids 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 respondents' product will pep up married people past 40;

(b) That respondents' product is a rejuvenating scientific tonic-stimulant;

(c) That by using respondent's product one can be young again;

(d) That respondents' product is a remedy for one feeling old, tired, run down and draggy and for persons suffering from weak and abused glands;

(e) That respondents' product will aid nature in helping to regain one's "natural power", "youthful pep", "vigor" and "vitality;"

(f) That persons using respondents' product are regaining the vitality and strength of former years;

(g) That beneficial results are obtained by persons using Glanoid Vitality Tablets for a period of ten days;

(h) That in more stubborn cases the continued use of respondents' product will produce full realization of one's ambition to regain his vitality;

(i) That respondents' product is a grand tonic;

(j) That respondents' product will repair abused, neglected or unnatural conditions of vital organs, and will help those who are tired, nervous, draggy and run down from many causes;

(k) That 100% satisfaction or 100% action is obtained from the faithful use of respondents' product;

(l) That respondents' product produces lasting benefits;

(m) That respondents' product possesses glandular food value.

The respondents further agreed to cease and desist from using either the term "Glanoid" or "Vitality" as a part of the trade name of said product, or to designate or describe said product. (Nov. 18, 1937.)

01937. **Vendor-Advertiser—Cosmetics.**—Grace Donohue, Inc., a corporation, 640 Madison Ave., New York, N. Y., vendor-advertiser, was engaged in selling certain preparations designated Seba Gland Cleanser, Sanguatone, Dermatone, Pure Pore Balm, 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 respondent's Cleanser decomposes dirt particles, neutralizes excess acid residue, replenishes the sulphur element in the skin or normalizes elimination;

(b) That respondent's Cleanser is an aid in preventing eruptions or other facial blemishes;

(c) That respondent's Cleanser is an aid in removing eruptions or other facial blemishes, unless limited to superficial and temporary eruptions;

(d) That respondent's Cleanser contains other ingredients than sulphur which are beneficial to the skin;

(e) That respondent's Blush Cream will correct acne, pimples, blackheads, whiteheads, blemishes or blotchy skin;

(f) That respondent's Blush Cream is not merely a surface treatment, or that it works directly on the circulation, or gets down underneath the skin;

(g) That respondent's Blush Cream restores youthful beauty or color, or is a natural color restorer, or promotes normal circulation, or stimulates the cells or repairs tissue, unless limited to the increased flow of blood in the area applied to bring more food values for cell stimulation and tissue repair;

(h) That dull, pasty, tired looking complexions are caused by lazy or sluggish blood vessels or nerve centers;

(i) That respondent's products give assurance of youth or beauty;

(j) That respondent's product, Dermatone, nourishes the skin;

(k) That respondent's balm is nourishing to the skin or pores or prevents absorption of face powders or impurities or in an indispensable protection;

(l) That respondent's balm contains blended "Foreign proteins".

The respondent further agreed to cease and desist from the use of the trade names "Seba Gland Cleanser", "Sanguatone" and "Pure Pore Balm" for the products now so designated. (Nov. 19, 1937.)

01938. **Vendor-Advertiser—Cod Liver Oil.**—Silmo Chemical Co., Inc., a corporation, Vineland, N. J., vendor-advertiser, was engaged in selling a product designated SILMO XX (Cod Liver 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 through the use of respondent's product each hen will lay 24 or any other definite number of "extra" eggs; unless all comparative conditions are clearly stated in sufficiently close proximity to command notice;

(b) That the use of respondent's product insures stronger shelled eggs, increases the hatchability or increases egg production, unless all comparative conditions are clearly stated in sufficiently close proximity to command notice;

(c) That the use of respondent's product will produce "unbreakable" egg shells. (Nov. 24, 1937.)

01939. **Vendor-Advertiser—Incense.**—Oriental Importing Co., a corporation, 654 West Lake St., Chicago, Ill., vendor-advertiser, was

engaged in selling products designated Oriental Lucky Fortune Teller Incense, Oriental Lucky Fortune Incense, Oriental Dream Mist Incense, and Oriental Liquid Incense, 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 anything is given free when in truth and in fact the price thereof is included in that of another which must be purchased before qualifying to receive the article advertised as "free";

(b) That the Oriental Book of Dreams and Horoscopes is or contains the true secret to success;

(c) That one "must" follow rules promulgated by respondent in order to achieve desires;

(d) That any incense sold by respondent is "lucky" or develops "lucky numbers";

(e) That any incense sold by respondent is prepared in accordance with a "rare" or "mystic" formula, or is compounded of "rare" essences;

(f) That any of respondent's incense consists of seventy-two different flower fragrances;

(g) That any incense sold by respondent will bring prosperity, peace or happiness.

The respondent further agreed to cease and desist from the use of the trade names "Lucky Fortune Teller Incense," "Lucky Fortune Incense," or any other name including the word "lucky" or implying that its use will bring good luck, with reference to any of its products. (Nov. 24, 1937.)

01940. Vendor-Advertiser—Fruit Jar Opening Device.—Household Helps, Inc., a corporation, Muncie, Ind., vendor-advertiser, was engaged in selling device designated "Ope-N-Seal" Kit, and respondent in soliciting salespersons or dealers in aid of the sales of such merchandise, agreed:

(a) 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;

(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;

(c) Not to represent or hold out as maximum earnings by the use of such expressions as "up to," "as high as" or any equivalent expression, any amount in excess of what has actually been accomplished by one or more of respondent's salespersons or dealers under normal conditions in the due course of business; and

(d) Not to represent that any salesperson or persons referred to in advertising are still engaged in selling respondent's merchandise when such is not the fact.

It is also agreed that if the provisions of this agreement are violated by the respondent or agents, this stipulation as to the facts may be used in evidence by the Commission in the trial of the complaint which it may issue.

This agreement is tendered to the Federal Trade Commission for its consideration and approval, and upon its acceptance is to be entered of record, at which time it shall become binding upon the undersigned. (Nov. 26, 1937.)

01941. Vendor-Advertiser—Correspondence Course.—George Wagner, an individual trading under the names of American Detective Training School and American Detective System, 2640 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a Correspondence Course in Detective Training, 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 instruction is offered to qualify a student for a position with the U. S. Secret Service, or that one is taught Secret Service Methods;

(b) That there is no other profession where the opportunities are as large as in that of the detective;

(c) That the present demand for detectives exceeds the supply, or that detectives are in great demand, or that the profession is not half filled, or that detectives will always find work;

(d) That respondent's course includes training to include every problem a detective is called upon to solve;

(e) That any and every person can become a successful detective with the aid of respondent's instructions;

(f) That there is no other profession in which a beginner can get results so quickly, which offers so wide a field, and in which the rewards are so liberal;

(g) That detectives have never before been in such demand as they are now;

(h) That this course will give each student the knowledge which could otherwise be obtained only through many years of actual experience;

(i) That a certain fingerprint lesson included in the course is given only if enrollment is received by return mail.

The respondent further agreed to cease and desist from deducting a "percentage for overhead" from refunds made to students who discontinue the course of study.

The respondent further agreed to cease and desist from the use of the word "System" as a part of its trade name unless and until such phraseology is accompanied by an explanation, in direct connection therewith, that respondent is engaged only in offering detective instruction. (Nov. 26, 1937.)

01942. Vendor-Advertiser—Laxative Preparation.—Picot Laboratories, Inc., a corporation, Picot Building, Wilmington, Del., vendor-advertiser, was engaged in selling a certain laxative preparation designated Picot Salt (formerly designated Sal de Uvas Picot), and agreed in solociting the sale of and selling said product in interstate commerce to cease and desist from representing directly or otherwise:

(a) That Picot Salt is a competent treatment or an effective remedy for—

1. Rheumatism,
2. Malaria, or that it is indicated for malaria patients,
3. Constipation, unless limited to temporary constipation,

4. Defective digestion, unless due to faulty elimination,
 5. Bad breath, unless due to constipation;
 6. Headache, unless limited to simple headache due to occasional constipation,

7. Acidity, unless limited to gastric hyperacidity,

8. Seasickness, or

9. Colds;

(b) That Picot Salt will—

1. Eliminate uric acid,

2. Banish pain,

3. Accomplish "perfect" intestinal elimination,

4. Get "rid" of intestinal constipation, or of any other condition,

5. Prevent accumulation of poisons,

6. "Cure" a chill, or any other condition or disease, or

7. Eliminate all the poisons in the stomach;

(c) That Picot Salt will aid digestion unless limited to cases of impaired digestion where such impairment is due to faulty elimination;

(d) That the administration of Picot Salt will enable one to have a clear skin or an adorable skin. (Nov. 26, 1937.)

01943. Vendor-Advertiser—Cosmetics.—Dorothy Perkins Co., a corporation, Mart Building, St. Louis, Mo., vendor-advertiser, was engaged in selling Cosmetics, 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 through the use of Dorothy Perkins Cream of Roses Cleansing Cream, Acne Cream, Rose Lotion or Acne Lotion, or a combination of the above products, one may get rid of or clear up acne or pimples, or that the use of the above products constitute a competent treatment or effective remedy for acne or pimples;

(b) That respondent's New Plex is not a clay or will revitalize one's face, stimulate the circulation or make the facial muscles firmer or more youthful;

(c) That respondent's products make a poor complexion unnecessary or inexcusable;

(d) That respondent's Tissue Creams or Cream Delight provide the skin with the elements necessary to keep it healthy or beautiful;

(e) That respondent's Tissue Cream No. 2 will correct or eliminate deep lines wrinkles, acne pits or dry skin;

(f) That respondent's products will correct or clear up oily skin, enlarged pores or blackheads;

(g) That respondent's products will protect the skin from sun or wind, or correct conditions due to sun or wind burn or chafing;

(h) That respondent's products are an effective treatment for faulty complexions;

(i) That respondent's Cream of Roses Cleansing Cream will penetrate the pores;

(j) That respondent's New Plex will purge the skin of impurities or blackheads, lessen lines or wrinkles or reduce muddiness or sallowness;

(k) That respondent's so-called Skin Tonic will tone or stimulate the skin or reduce large pores;

(l) That respondent's Special Astringent tightens flabby skin, corrects oiliness or large pores;

(m) That respondent's Muscle Oil will penetrate;

- (n) That respondent's Brilliantine will give life to the hair;
- (o) That respondent's Special Circulation Treatment will remove sallowness and muddiness, lighten the complexion, clear or lubricate the skin, or purge pores.

The respondent further agreed to cease and desist from designating and describing any of its products as "Skin Tonic", "Acne Lotion" or "Acne Cream". (Nov. 26, 1937.)

01944. Vendor-Advertisers—Medicinal Preparation.—Harold T. Maloney and John C. O'Neil, copartners, operating under the trade name of Nu-Health Products Co., 178 E. Long St., P. O. Box 973, Columbus, Ohio, vendor-advertisers, were engaged in selling a medicinal preparation designated Floradex, 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 Floradex "banishes" constipation;
- (b) That Floradex will restore muscular activity and stimulate the organs to normal function;
- (c) That this product will prevent constipation or intestinal intoxication;
- (d) That 87% of all sickness is traceable to putrefaction of delayed waste products and toxins formed in the colon;
- (e) That this preparation counteracts excess acidity of the stomach;
- (f) That Floradex substantially assists the growth of *Bacillus Acidophilus*;
- (g) That Floradex prevents excessive fermentation of foods;
- (h) That Floradex constitutes a competent treatment or an effective remedy

for—

1. Aches and pains;
2. Rheumatism;
3. Arthritis;
4. Neuritis;
5. Headache;
6. Skin eruptions;
7. Nervousness;
8. Insomnia;
9. High blood pressure;
10. Stomach, intestinal and other disorders;
11. Tired, dragged-down feeling; or
12. Offensive breath and slimy tongue, or that it will "end" or "eliminate" any of the above conditions;

- (i) That Floradex is the greatest discovery in a thousand years;
- (j) That Floradex eliminates poisons from the colon;
- (k) That Floradex is "guaranteed" to produce any specific results;
- (l) That this preparation will prevent the absorption of internal poisons;
- (m) That chemists employed by respondent conducted several years of research work in producing Floradex;
- (n) That Floradex will cure constipation;
- (o) That Floradex relieves the cause of gaseous conditions of the stomach;
- (p) That Floradex is a food, or is not a medicine. (Nov. 26, 1937.)

01945. Vendor-Advertiser—Paints, Varnishes, Etc.—Norman Paint Co., Inc., a corporation, 1248 H. St. N.E., Washington, D. C., vendor-

advertiser, was engaged in selling Paints, Varnishes, Etc., 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 "We manufacture all the paint we sell" unless it is explained that during the rush or busy season a small percent of the paint sold by respondent is manufactured by other manufacturers from ingredients and formulae furnished by the respondent and under its direct supervision, and unless it is further explained that this statement does not apply to accessories such as roof coating, spar varnish, enamel, putty, brushes, etc.;

(b) That the consumer can "save up to 45%" unless it is explained that this statement applies only to the paints manufactured by the respondent. (Nov. 26, 1937.)

19146. Vendor-Advertiser—Sign Letters.—William H. Britton, an individual trading as American Monogram Co., 123 Prospect Ave., Dunellen, N. J., vendor-advertiser, was engaged in selling Sign Letters, 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 enterprise offers an opportunity that requires no capital, experience or skilled salesmanship;

(b) That respondent's sign letters are—

1. In great demand;
2. The easiest or quickest seller of anything ever put on the market;
3. "Guaranteed" to wear as long as the finish on the car;
4. The most attractive or durable decalcomanias produced, in this country;
5. More durable than paint;

(c) That the purchasers of respondent's sign letters can—

1. Make his profit as large as he pleases;
2. Sell his man every time;
3. Get started in business or on the road to success;

(d) That said sign letters retain their luster, color or beauty indefinitely; or are more durable than paint;

(e) That said sign letters protect against theft;

(f) That monogram agents are reaping a rich harvest, or that the profits are immense or tremendous;

(g) That respondent's sign letters when applied produce a better result than can be produced by a sign painter;

(h) That any sum expended for an outfit, or any outlay or investment of funds in the respondent's business will enable an agent or salesperson to make any definite amounts in profits;

(i) That extra initials are "free" so long as such articles are included in the price of the outfit that the agent or salesperson is required to pay for;

(j) That the respondent's goods are being used by the Standard Oil Company, the Underwood Typewriter Company, Borden and Company, the Edison Phonograph Co., telephone companies or other large firms.

Respondent further agreed to cease and desist from using the word "Monogram" to designate or describe said sign letters or as a part of his trade name.

Respondent further agreed:

(1) 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;

(2) 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;

(3) 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

(4) 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. (Nov. 26, 1937.)

01947. Vendor-Advertiser—Medicinal Preparations.—E. O. Reber, an individual doing business under the trade name of Seminole Drug Co., Lebanon, Pa., vendor-advertiser, was engaged in selling medicinal preparations for the treatment of stomach troubles, rheumatism, colds, tired feeling, etc., known as Seminole Indian Herb 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 Seminole Indian Herb Tablets are pure vegetable and contain no narcotics;

(b) That Seminole Indian Herb Tablets—

1. Help pep you up;
2. Assist in eliminating that run-down tired feeling;
3. Are a regulator for the stomach;
4. Make it possible for you to be almost perpetually happy;
5. Provide you with radiant health;
6. Tone up the system;
7. Keep you perked up at all times;
8. Correct appetite and digestion;
9. Cleanse the liver and kidneys;
10. Aid the liver and kidneys in their proper duties;
11. Eliminate headaches, bad nerves, rheumatism and loss of memory.
12. Relieve that tired, run-down feeling;
13. Are good for stomach troubles and/or rheumatism;
14. Pep you up and make you feel that life is worth living;
15. Give relief from colds;
16. Keep the system toned up.

The respondent further agreed, in promoting the sale of his product to cease and desist from the use of the word "Indian" as a part of the name of said product. (Nov. 27, 1937.)

01948. **Vendor-Advertiser—Cosmetic.**—Associated Distributors, Inc., a corporation, 111 West Monroe St., Chicago, Ill., vendor-advertiser, was engaged in selling a certain cosmetic designated Lip-Youth, 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 Lip-Youth will "end" dry, chapped, rough, parched lips;
- (b) That Lip-Youth contains thousands of units of Vitamin D and/or Vitamin F;
- (c) That Vitamin D and/or Vitamin F have any appreciable effect on the lips;
- (d) That Lip-Youth has a "magic" effect;
- (e) That this product will rejuvenate the lips;
- (f) That this preparation offsets daily aging, or withering;
- (g) That this is an entirely new preparation for the care of the lips. (Nov. 29, 1937.)

01949. **Vendor-Advertiser—Muscle Building Training Course.**—Institute for Physical Development, Inc., a corporation, operating under the trade name of Hercules Exercises, 49 East 21st St., New York, N. Y., vendor-advertiser, was engaged in selling a Muscle Building Training Course, 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 course sells for one-half price, or that the purchaser will "save over half";
- (b) That the sale price is a special offer, or that the offer will soon expire, unless a definite date is established and advertised, after which all acceptances are refused;
- (c) That this course will enable one to develop big muscles or a strong, husky body, unless such claim is clearly and directly limited to such persons as would be benefited thereby. (Nov. 30, 1937.)

01950. **Vendor-Advertiser—Medicinal Preparation.**—Reliable Laboratories, Inc., a corporation, 311 West Tigras Ave., Albuquerque, N. Mex., vendor-advertiser, was engaged in selling a medicinal preparation designated Burneze, 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 Burneze
 1. Stops pain, caused by burns;
 2. Becomes a part of the tissue;
 3. Prevents infection;
 4. Heals burns;
 5. Stops swelling;
 6. Takes out discolorations;
 7. Eases chapped, sore lips;
 8. Penetrates;
 9. Stops pain caused by insect bites, stings, etc;

10. Will "fix up" sore noses and chest colds overnight;
11. Is a cure for burns;
12. Eases the pain caused by burns;
13. Promotes healing;
14. Causes most burns to heal without scar;
15. Safeguards against infection; or
16. Is a specific cure for burns.

The respondent further agreed, in promoting the sale of its product, to cease and desist from using the word "laboratories" or "laboratory" as a part of its trade name until such time as it actually owns or operates a laboratory or laboratories. (Nov. 30, 1937.)

01951. Vendor-Advertiser—Medicinal Preparation.—Leto H. Smith, an individual, doing business under the trade name of Leto Remedy Co., P. O. Box 15, San Antonio, Tex., vendor-advertiser, was engaged in selling a preparation designated Leto's Pyorrhoea Remedy, 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 "pyorrhoea" either alone or in conjunction with any other words as part of the trade name for his product;

(b) Representing that his preparation is a reliable application for the gums to reduce soreness or inflammation, unless limited to indicate soreness or inflammation of a superficial nature;

(c) Representing that his preparation is a disinfectant when applied to the gums;

(d) Representing that his preparation is a competent treatment for—

1. Bleeding gums;
2. Pyorrhoea;
3. Sore gums, unless limited to superficial soreness of the gums;
4. Foul breath;
5. Loose teeth;
6. Trench mouth, or that it heals the worst cases of said disease;

(e) Representing that his preparation—

1. Is always guaranteed;
2. Will provide quick, certain and lasting relief from bleeding gums;
3. Makes sore gums curable;
4. Is highly recommended and used by leading dentists;
5. Never disappoints, or fails to benefit;
6. Will heal pyorrhoea after it has affected the stomach, kidneys and general health;

(f) Representing that reliable dentists often report the successful use of respondent's preparation on their very worst cases. (Nov. 30, 1937.)

DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION

FEDERAL TRADE COMMISSION v. REAL PRODUCTS CORPORATION ET AL.¹

No. 280

(Circuit Court of Appeals, Second Circuit. June 7, 1937)

TRADE DESIGNATIONS—APPROPRIATION OF COMPETITOR'S—WHERE SECONDARY MEANING AND USE FALSE AND MISLEADING.

The use by automotive manufacturers, without consent of Champion Spark Plug Company, of trade designation "Champion" for their automotive and metal specialties, including spark plug cable sets, constituted unfair competition under Trade Commission Act, where use of word was false, deceptive, and misleading to retail trade and purchasing public and tended unfairly to divert trade to such manufacturers. (Federal Trade Commission Act of 1914, sec. 5, as amended by Act Feb. 13, 1925, sec. 2, 15 U. S. C. A. sec. 45).

TRADE DESIGNATIONS—APPROPRIATION OF COMPETITOR'S—WHERE SECONDARY MEANING AND USE FALSE AND MISLEADING—UNFAIR COMPETITION INFERENCE.

The use by automotive manufacturers, without consent of Champion Spark Plug Company, of trade designation "Champion" for kindred products, which was necessarily deceptive to public, indicated a purpose to use such designation unfairly in competition.

[618] TRADE DESIGNATIONS—APPROPRIATION OF COMPETITOR'S—WHERE SECONDARY MEANING AND USE FALSE AND MISLEADING—PUBLIC INTEREST RE DECEPTION OR PREJUDICE OF COMPETITORS—QUALITY OR HARMLESSNESS OF MISREPRESENTED PRODUCT—MATERIALITY.

The public was entitled to be protected against unfair practice of automotive manufacturers of using for their products identical name used by competitor for kindred products, either on ground of deception suffered by public or prejudice occasioned to competitors of such manufacturers, regardless of whether misrepresented product was inferior, or harmful to public.

TRADE DESIGNATIONS—APPROPRIATION OF COMPETITOR'S—WHERE SECONDARY MEANING AND USE FALSE AND MISLEADING—COPYRIGHT AS DEFENSE.

Where automotive manufacturers had engaged in unfair competition by using trade designation "Champion" for their products without consent of Champion Spark Plug Company, fact that such manufacturers had copyrighted box label "Champion Spark Plug Set" was no defense to proceeding by Trade Commission to compel them to desist from such unfair practice, since a copyright is not a license to engage in unfair competition.

¹ Reported in 90 F. (2d) 817. The case before the Commission is reported in 21 F. T. C. 714.

(The syllabus, with substituted captions, is taken from 90 F.
(2d) 617)

On application by Commission seeking enforcement of order issued by it against Real Products Corporation and others, to cease and desist unfair practices in trade, order enforced.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Assistant Chief Counsel, and *Mr. John W. Hill-drop* and *Mr. James W. Nichol*, all of Washington, D. C., for petitioner.

Mr. Irving Beck, President, Real Products Corporation, in pro. per. Before MANTON, L. HAND, and AUGUSTUS N. HAND, Circuit Judges.

MANTON, *Circuit Judge*:

Respondents are corporations, organized under the laws of the State of New York, engaged in joint enterprises, manufacturing automotive and metal specialties, including spark plug cable sets, which are sold and distributed throughout the various States of the United States. Their products are transported in interstate commerce from their place of business in New York.

The charge against them is the use of unfair methods of competition in the sale of their products in interstate commerce in violation of § 5 of the Federal Trade Commission Act (38 Stat. 719; 15 U. S. C. A. § 45). The order entered directed that they cease and desist from (a) "Representing in any manner that the automotive and metal specialties, including spark plug cable sets, manufactured and sold by the respondents are the products of or are made by the Champion Spark Plug Company of Toledo, Ohio. (b) Using the word 'Champion' alone or in connection or conjunction with any other word or words * * * to describe or designate automotive and metal specialties, including spark plug cable sets, made by respondents, and from using any other word or words so as to import or imply that said products are made by the Champion Spark Plug Company of Toledo, Ohio. (c) Using and displaying the word 'Champion' in their advertising * * * on cartons, boxes or other containers * * *. (d) The use, by any method, manner or means of advertising * * * in newspapers and circulars, of the device or picture of a spark plug at the bottom of which a simulation of electricity is displayed and containing the word 'Champion' therein."

The Commission made complete and specific findings, which have evidence to support them, and which justify the order entered to cease and desist. The Champion Spark Plug Company has been in the field fifteen years, engaged in the manufacture of automotive and metal specialties, including spark plugs and porcelains and in their sale and distribution in interstate commerce. It applied the

word and trade designation "Champion" to its products, including spark plugs and used it on its stationery and in its corporate name and on its cartons and printed advertising matter. The name thus signifies to the trade and purchasing public that such automotive and metal specialties including spark plugs and porcelains were the products of the Champion Spark Plug Company. There was evidence to support the finding that the respondents, without the permission or consent of the Champion Spark Plug Company, used and continued to use the trade designation [619] "Champion" for their automotive and metal specialties, including spark plug cable sets and on their price list, cartons and advertising matters.

The Commission found, with evidence to support it, that the use of the word "Champion" by respondents as set forth was false, deceptive and misleading to the retail trade and the purchasing public and had a tendency to and did deceive the purchasing public by creating the impression that the products of the respondents were those of the Champion Spark Plug Company. It had a like tendency to unfairly divert trade to respondents from their competitors.

False and misleading representations of respondents' products constituted an unfair method of competition within the intent and meaning of § 5 of the Act, as amended. *Fed. Trade Comm. v. Realty Milling Co.*, 288 U. S. 212; *Fed. Trade Comm. v. Winsted Hosiery Co.*, 258 U. S. 483; *Indiana Quartered Oak Co. v. Fed. Trade Comm.*, 26 F. (2d) 340 (C. C. A. 2); cert. den. 278 U. S. 623. The use of an identical name for kindred products necessarily was deceptive to the public and indicated a purpose to use it unfairly in competition. *Standard Oil Co. of N. M. v. Standard Oil Co. of Cal.*, 56 F. (2d) 973 (980 C. C. A. 10); *DelMonte Special Food Co. v. California Packing Corp.*, 34 F. (2d) 774, 776 (C. C. A. 9). The purchasing public would be likely to buy respondent's product on the strength of the first user's reputation where the word "Champion" was connected with the sale of spark plugs, spark plug cable sets, and porcelains.

The existence of a public interest here may rest either on the deception suffered by the public (*F. T. C. v. Royal Milling Co.*, 288 U. S. 212; cf. *F. T. C. v. Klesner*, 280 U. S. 19) or the prejudice occasioned to competitors. *F. T. C. v. Raladam*, 283 U. S. 643. On either ground the public is entitled to be protected against unfair practices and its interest in such protection is specific and substantial. *F. T. C. v. Royal Milling Co. supra*. Nor is it necessary that the product misrepresented be inferior or harmful to the public. The deceptive misrepresentation suffices. See *National Silver Co. v. F. T. C.*, 88 F. (2d) 425, 427 (C. C. A. 2).

The principle of the *Raladam* case, *supra*, that potential competitors are equally to be protected with actual competitors, is an integral

part of the law of unfair competition. All persons are free to enter the trade at any time, and are therefore potential competitors. Here, however, it is clear that competition was wrongfully affected. The respondents obtained an advantage over their competitors.

Finally, it is not material that respondents have copyrighted the box label "Champion Spark Plug Set". A copyright is not a license to engage in unfair competition. *Marietta Mfg. Co. v. F. T. C.*, 50 F. (2d) 641 (C. C. A. 7); *N. Fluegelman & Co. v. F. T. C.*, 37 F. (2d) 59, 61 (C. C. A. 2).

The order of enforcement is granted.

Order granted.

FEDERAL TRADE COMMISSION v. MID WEST MILLS, INC.

No. 6115

(Circuit Court of Appeals, Seventh Circuit. June 15, 1937¹)

CEASE AND DESIST ORDERS—VALIDITY—OBJECTIONABLE METHODS IN COMPETITION AND COMMERCE AND PUBLIC INTEREST AS PREREQUISITES.

To validate Federal Trade Commission's order to cease and desist from using objectionable trade methods, unfair methods must be used in competition in interstate commerce and Commission's proceeding to prevent use thereof must appear to be in public interest (Federal Trade Commission Act, sec. 5, as amended, 15 U. S. C. A. sec. 45).

MISLEADING TRADE OR CORPORATE NAMES—QUALIFICATIONS—ADEQUACY—"JOBBER AND CONVERTERS" AS, FOR "MILLS" NAME.

A corporation, engaged in business as jobber of materials used in making furniture and "converter" of patterns produced by mills under name "Mid West Mills, Inc.," should use not merely words "jobbers and converters", but additional appropriate words, clearly conveying to public fact that it neither owns nor operates mills, on all its stationery, invoices, and other printed matter, to avoid false impression created by use of word "Mills" in such name.

A "converter" is one who changes patterns produced by mills to give them different construction of material and coloring.

(The syllabus, with substituted captions, is taken from 90 F.

(2d) 723)

On application by Commission for enforcement of order directing Mid West Mills, Inc., to cease and desist from representing itself as manufacturer or mill owner by use of such corporate name, petition denied without prejudice to entry of order by Commission in accordance with opinion.

¹ Reported in 90 F. (2d) 723. The case before the Commission is reported in 22 F. T. C. 566.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Assistant Chief Counsel, and *Mr. George Foulkes* and *Mr. James W. Nichol*, Special Attorneys, all of Washington, D. C., for petitioner.

Mr. Edwin A. Halligan and *Mr. Samuel M. Lanoff*, both of Chicago, Ill., for respondent.

Before EVANS and MAJOR, Circuit Judges, and LINDLEY, District Judge.

EVANS, *Circuit Judge*:

After investigation and hearing, the Federal Trade Commission entered an order directing respondent to cease and desist representing itself as a manufacturer or mill owner by the use of its corporate name "Mid West Mills, Inc." The part of the order of which complaint is made reads as follows:

[724] "It is ordered that the respondent, Mid West Mills, Inc., a corporation, its officers, agents, representatives, servants, and employees, in connection with the offering for sale and sale of upholstering fabrics, wooden frames, padding, felt, springs, and all other such material, relative to the construction of furniture, in interstate commerce, cease and desist from:

"Representing, directly or indirectly, through and by use of its corporate or trade name, through letterheads, circulars, advertising literature, or in any other manner, that it is a manufacturer, mill operator, or mill owner."

Petitioner is here with an application to enforce its cease and desist order which respondent has refused to obey.

Petitioner's order is largely based upon the respondent's use of the word "Mills" in its corporate name, because it is suggestive, if not indicative, of a fact which does not exist, namely, that respondent owns and operates mills where its goods are manufactured. Respondent admits it has no mills and manufactures none of the goods which it sells, yet it denies that it thereby violates any unfair trade practices such as are designated by section 5 of the Federal Trade Commission Act.

Respondent is a jobber and wholesaler of upholstering fabrics, wooden frames, padding, felt, springs, etc., and all materials used in the construction of furniture. It sells through salesmen in Illinois and other states and is in substantial competition with others engaged in like business. It urges that any possibility of deception through the use of the word "Mills" in its corporate name is overcome by the fact that all the garment labels, tickets, letterheads, invoices, and other printed matter (except envelopes) contain the words "Jobbers and Converters" directly under its corporate name.

In 1922, respondent's president purchased the good will of a defunct corporation, including its name "Mid West Mills, Inc.," and he caused to be formed another corporation by the name of "Mid West Mills Supply, Inc." which name was changed to "Mid West Mills, Inc." in 1927. It conducted a gross business of \$525,000 in 1934, and \$550,000 in 1935.

We reproduce the names as they appear on letterheads, envelopes, and ticket and garment labels.

Letterhead:

MID WEST MILLS, INC.
—*Jobbers and Converters*—

Envelope Heading:

MID WEST MILLS, INC.

Garment or Fabric Label Heading:

MID WEST MILLS, INC.
Jobbers and Converters

A converter is described as one who changes patterns produced by the mills. He is one who "changes patterns around to give them a different construction of material and coloring." "He converts the patterns and changes them."

The decision in *Federal Trade Commission v. Royal Milling Company*, 288 U. S. 212, controls the disposition of this appeal. In that case the complaint of the Commission was directed to the use of the words "Milling Company" by one who was not engaged in milling. The Court of Appeals (58 F. (2d) 581) set aside the order of the Commission on the ground that it did not appear to be in the interest of the public. On appeal the decree of the Circuit Court of Appeals was reversed with directions to enter an order directing the milling company to accompany each use of the name "Milling Company" with an "explicit representation that respondent was not a grinder of the grain from which the flour prepared and put out is made, such representation to be fixed as to form and manner by the commission."

The substance of the holding is that while it constituted unfair methods of competition to use words suggestive of activities not followed by the user, yet the Commission should go no further than is reasonably necessary to correct the evils and preserve the rights of competitors and the public; that this can be done in certain cases where value has attached to a trade name by requiring proper qualifying words to be used in immediate connection with the objectionable word in the user's name.

As we construe this decision a valid order of the Commission must be supported by three essential facts: (a) The objectionable methods must be used in competition in interstate commerce. (b) The methods

adopted by the user in interstate commerce must be unfair. (c) The proceeding by the Commission to prevent the use of such methods must appear to be in the interest of the public.

[725] We are satisfied that respondent's use of the word "Mills" was prima facie unfair, and it was practiced by the respondent in interstate commerce. If there were no ameliorating circumstances, we would also unhesitatingly say that the Commission's action was in the interest of the public. Respondent's avoidance of liability must find support, if at all, in the fact that it acquired the name through the purchase of a business, and that to a certain extent, it did inform the public that it was merely a jobber and a converter.

It should, we think, however, have gone further. To avoid the false impression which the use of the word "Mills" created, it should have conveyed information to purchasers and prospective customers that it did not own or operate a mill from which its products came.

We are convinced that respondent may avoid any false impressions and implications arising from the use of the word "Mills" if it uses on all of its stationery, garment labels, tickets, invoices, and other printed matter, these words "Jobbers and Converters, Not Mill Owners or Mill Operators." There would then be no possibility of deception. Of course these are not the only words which might be adopted. The Commission must in the first instance determine whether the words sufficiently convey the information that respondent neither owns nor operates a mill.

We are at a loss to understand why the respondent should insist on using the word "Mills" after complaint has been filed with the Commission and objections made to it by that body. It has, it is true, for some years been using the name, and it may be that it believes its business is closely identified with the name.

If it does not see fit to voluntarily strike the word "Mills" from its name, it should clearly inform its prospective customers of the true facts. This can only be done by adding appropriate words such as suggested in the previous paragraph which will leave no room for doubt.

The petition is denied, but without prejudice to an order being entered by the Commission in accordance with the views here expressed and which will direct the addition of appropriate words which will clearly convey to the public the fact that respondent neither owns or operates a mill.

CHICAGO SILK COMPANY v. FEDERAL TRADE
COMMISSION¹

No. 5948

(Circuit Court of Appeals, Seventh Circuit. June 24, 1937²)FINDINGS—SUPPORTING EVIDENCE—SUFFICIENCY WHERE PETITIONER FAILS TO
CHALLENGE.

The Circuit Court of Appeals is not required to consider the sufficiency of the evidence to justify findings of the Federal Trade Commission where the party petitioning for review of an order of the Commission does not attack its sufficiency (Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45).

LOTTERY SCHEMES IN MERCHANDISING—SALE HOSIERY THROUGH PUNCH CARDS
WITH WINNING NUMBERS PLAN, FURNISHED FREE TO VENDOR'S SOLICITOR OR
AGENT

It is an unfair method of competition to sell hosiery in interstate commerce by means of punch cards sent to prospects enabling the person selling the card and persons pushing out designated numbers to receive hosiery free and calling for payment according to the numbers punched, though the cards are furnished free and the recipients of the cards determine whether or not to use them.

(Syllabus, with substituted captions, is taken from 90 F. (2d) 689)

On petition by Chicago Silk Company for review of order of Commission. Order affirmed.

[690] *Mr. John A. Nash* and *Mr. Harry S. Harned*, both of Chicago, Ill., for petitioner.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Assistant Chief Counsel, and *Mr. Reuben J. Martin* and *Mr. James W. Nichol*, Special Attorneys, all of Washington, D. C., for respondent.

Before *EVANS* and *MAJOR*, Circuit Judges, and *LINDLEY*, District Judge.

MAJOR, Circuit Judge:

This matter comes before the Court upon the petition to review an order to cease and desist entered by the Federal Trade Commission under authority of section 5 of the Federal Trade Commission (15 U. S. C. A., Section 45).

Petitioner is a corporation located in the city of Chicago, Illinois, engaged in the sale and distribution of hosiery and lingerie throughout the United States. In the conduct of its business it distributes

¹ Reported in 90 F. (2d) 689. The case before the Commission is reported in 22 F. T. C. 547.

² Rehearing denied July 27, 1937.

to the public through the United States mails certain literature, instructions, and sales outfits including paper punch cards, order blanks, and advertisements containing illustrations of hosiery and lingerie, together with samples of fabrics and circulars explaining its plan of selling said merchandise and the allowing of premiums or prizes to the operators of the punch board. In order to obtain the address of "prospects" a letter is sent to a woman offering her a pair of ladies' silk hosiery free on condition that she send petitioner the address of ten other women. Upon compliance with this requirement the person is sent a pair of hosiery as promised, and each of the ten other "prospects" are sent the sales literature including a punch card with printed instructions for its operation. This card contains numbers from one to sixty and when pushed out of the card reveal the amount which is to be paid, ranging from one cent to fifteen cents according to the number punched. Certain numbers are free and the operators who push these numbers are required to pay nothing, but have the same chance with the others in winning. \$5.95 is the amount collected when all the numbers are sold. The person who sells the card receives two pair of ladies' silk hose free, and certain other persons who push out certain designated numbers likewise receive their hose free.

That the plan involves a game of chance or the sale of a chance to procure petitioner's merchandise is clearly shown, and that the operation of the plan is contrary to established public policy of the United States and the varied states and contrary to the criminal statutes of many of the states is conceded. Petitioner's sales were increased from \$25,000.00 in 1932, the year it started in business, to \$150,000.00 in 1934, and even more in 1935. The Commission found, among other things, that petitioner is engaged in offering for sale and selling its products in interstate commerce in competition with other persons likewise engaged; that the punch card system of obtaining the business is a species of gambling which many of its competitors do not use for the reason that the method is unethical, unfair, and in violation of law, and that said method injuriously affects the business of petitioner's competitors by diverting business from them. On the basis of these findings of fact it issued the order to cease and desist, which this Court is asked to vacate in these proceedings.

The contested issues as stated by petitioner are: First, does the method of business followed by the petitioner constitute an unfair method of competition? Second, does the evidence show that petitioner is engaged in competition with others in interstate commerce?

The Act itself provides that the findings of the Commission as to the facts, if supported by testimony, shall be conclusive. This provision of the Act is very forcibly enunciated in *Federal Trade Commission v. Algoma Lumber Company*, 291 U. S. 67, where the Court on Page 73 said:

The findings of the Commission as to facts, if supported by testimony, shall be conclusive. 15 U. S. C. A. § 45. The Court of Appeals, though professing adherence to this mandate, honored it, we think, with lip service only. In form the court determined that the finding of unfair competition had no support whatever. In fact what the court did was to make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences. Statute and decision (*Federal Trade Comm'n v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 61, 63) forbid that exercise of power.

Petitioner, as we understand its position, does not attack the sufficiency of the evidence to justify the findings of the Commission, and under the statute and court decision above cited there is no occasion for us to do so. However, we have investigated the record to the extent of satisfying ourselves that the evidence fully justifies the findings as made. We assume that the question which petitioner seeks to raise is that the facts as found by the Commission do not constitute an unfair method of competition. With this position we are unable to agree. We gather from petitioner's brief that it should not be held accountable for any consequences which result from the activity which it originates. It is claimed, for instance, that there can be no harm in the mailing of the punch cards; that whether they are used for disposing of merchandise by chance is one to be determined by the recipient of such cards and that, inasmuch as the cards are furnished free, petitioner is not engaged in a lottery or in disposing of its merchandise by chance. There is no merit in such contention. The petitioner originated and set in operation the scheme or device in question. Moreover, it sent through the mail specific instructions for the operation of the plan and reaped the benefits from its execution.

Under the authority of *Federal Trade Commission v. Keppel*, 291 U. S. 304, both questions which petitioner raises must be answered in the affirmative. Other cases might be cited sustaining the order in question, but, in view of the law as announced in the Keppel case, it would be useless reiteration so to do.

The order of the Commission is affirmed.

ELECTRO THERMAL COMPANY v. FEDERAL TRADE
COMMISSION ¹

No. 8333

(Circuit Court of Appeals, Ninth Circuit. July 19, 1937.)

EVIDENCE—ADMITTED FACTS AND CIRCUMSTANCES—WEIGHTS AND INFERENCES.

The weight of admitted facts and circumstances, as well as reasonable inferences therefrom, in proceedings by Federal Trade Commission to terminate unfair methods of competition in commerce, is for commission, not court (Act Sept. 26, 1914, sec. 5, 38 Stat. 719, 15 U. S. C. A. sec. 45).

COMPETITION—MANUFACTURE AND SALE OF DEVICES ADAPTED FOR SAME PURPOSE, AS ESTABLISHING.

Evidence of definitely identified parties' manufacture and sale in interstate commerce of devices adapted to same purposes as that of company charged with unfair methods of competition in proceedings by Federal Trade Commission was sufficient to warrant finding of competition with respondent's device.

COMPETITIVE EFFECT—MISLEADING ADVERTISING CLAIMS—ACTUAL OR POTENTIAL COMPETITION AND UNFAIR TRADE PRACTICES REASONABLY ADVANTAGING RESPONDENT COMPETITIVELY, AS SHOWING.

Direct evidence that misleading advertising claims by respondent in proceedings by Federal Trade Commission diverted business from competitors thereof is not required to justify cease and desist order; it being sufficient to show actual or potential competition and unfair trade practices reasonably tending to give respondent advantage in competition.

COMPETITION—LEGITIMACY OF AFFECTED—CROSS-EXAMINATION OF MANUFACTURER OF ASSERTED COMPETITIVE DEVICE RE POSSIBLE COMMISSION CONTROVERSY OR DIFFICULTY AS ESTABLISHING LEGITIMACY OR ILLEGITIMACY THEREOF AS ARTICLE OF COMMERCE.

The Federal Trade Commission examiner properly excluded questions on cross-[478]examination of manufacturer of device alleged to compete with that of company charged with making false advertising claims as to whether witness ever had controversy or difficulty with commission or was called before it in connection with selling of former device as not sufficiently definite nor proper way to show whether such device was legitimate article of commerce.

COMPETITION—LEGITIMACY OF AFFECTED—BURDEN.

The burden was on corporation charged by Federal Trade Commission with unfair methods of competition in commerce by making false advertising claims to promote sale of device, to show that alleged competing devices were not legitimate articles of commerce.

COMPETITION—LEGITIMACY OF AFFECTED—WHERE AFFIRMATIVE SHOWING RE RESPONDENT'S AND COMPETITIVE DEVICES.

The Federal Trade Commission's order to cease and desist from unfair methods of competition by making false advertising claims to promote sale of

¹ Reported in 91 F. (2d) 477. The case before the Commission is reported in 23 F. T. C. 139.

a device will not be set aside on ground that commission did not sufficiently inquire into questions whether alleged competitive devices were legitimate articles of commerce or that method of competition affecting only outlaws of commerce engaged in fraudulent or criminal activities is not within commission's jurisdiction, where evidence affirmatively showed that respondent's device and competitive devices were all legitimate articles of commerce and commission never complained of respondent's device.

ENFORCEMENT OF ORDER—INFORMAL PRAYER OF COMMISSION'S BRIEF IN PETITION FOR REVIEW—DISREGARD OF ORDER AS PREREQUISITE TO COURT'S COGNIZANCE.

The Federal Trade Commission's informal prayer in brief for affirmation and enforcement of its order to cease and desist from unfair methods of competition in commerce was properly before court on petition to set aside order without showing that petitioner had disregarded it; court having plenary jurisdiction regardless of which party brings cause before it.

(The syllabus, with substituted captions, is taken from 91 F. (2d) 477)

Petition by the Electro Thermal Company to set aside order of Commission requiring petitioner to cease and desist from certain unfair methods of competition in commerce, denied and order affirmed.

Mr. Daniel Dougherty, of Los Angeles, Cal., for petitioner.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Asst. Chief Counsel, *Mr. Daniel Murphy*, *Mr. Morton Nesmith*, and *Mr. James W. Nichol*, Sp. Attys., all of Washington, D. C. for respondent.

Before DENMAN, STEPHENS, and HEALY, Circuit Judges.

DENMAN, Circuit Judge:

This is a petition by Electro Thermal Company to set aside an order of the Federal Trade Commission requiring the petitioner to cease and desist from certain unfair methods of competition in commerce.

The Commission brought proceedings under the Act of September 26, 1914 (38 Stat. 719, sec. 5), 15 U. S. C. A. § 45, which gives it power to institute a hearing when it has reason to believe that any person, corporation, etc. is using an unfair method of competition in commerce and that a proceeding would be in the public interest. If the hearing develops facts in accordance with the belief, a cease and desist order may issue.

Electro Thermal Company was cited by the Commission to show cause why an order should not be entered against the use by the company of certain alleged false advertising claims to promote the sale of a device termed Thermal-Aid, the device being manufactured for use in connection with disorders of the prostate gland.

The hearing was had and the Commission made findings of fact substantially in accordance with the complaint, to this effect:

That the petitioner is a corporation of Ohio, engaged in the interstate sale and offering for sale of a device designated "Thermalaid," consisting of a hard rubber unit designed to be inserted in the rectum for the application of heat to the prostate gland and adjacent tissues. It is activated through electricity derived from ordinary electric current or from a battery supply where no electricity is available.

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

That certain advertising claims issued by the respondent (petitioner here) in connection with its product were false and misleading, e. g.: "the prostate gland slows down in men past middle age and, if unchecked, will swell until surgery is needed"; "if you have a mild case, you may surprise yourself with new joy of living, new energy and enhanced power to do. If you have a fretful, serious, nagging case, by all means waste not one minute in getting Thermalaid"; "Another point worthy of emphasis is the effect of an operation on sexual strength. When you lose your prostate gland you bid goodbye forever to a vital part of the procreative system. In a very real sense the saying is true that a man is no longer a man when his prostate is gone."

It was specifically found that the unfair practices tended to divert trade to respondent, injuring its competitors.

Fake claims were also found to have been made as to the therapeutic effect of the devices on constipation and piles.

The Commission made no complaint of the "Thermalaid" device itself, the unfair practices being confined to advertising. The evidence shows and the Commission found that the use of the device had some salutary effect.

A cease and desist order, based upon the findings, was entered.

The Electro Thermal Company then filed in this court a petition for review of the order and prayed to have it set aside. It is not urged that the Commission erred in finding that the practices enjoined were unfair methods. It is contended, however, that there is no evidence to support the finding that competition existed between the company and others.

The statute provides that "the findings of the commission as to facts, if supported by the testimony, shall be conclusive." 15 U. S. C. A. § 45. "The weight to be given the facts and circumstances admitted, as well as the inferences reasonably to be drawn from them, is for the commission." *Fed. Trade Com. v. Pacific Paper Assn.*, 273 U. S. 52, 63.

The finding of competition in the present case must be supported, if it is supported, solely upon testimony and stipulations relative to two devices used for the same general purposes as the Thermalaid. The first is before the Commission by stipulation. It is stipulated that:

The Williams Institute, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with the principal place of business at 1648 Idlewood Road, Glendale, California, and has been such for the past nine years. It is engaged in the sale of a device known as "The Simplex Prostate and Rectal Normalizer", which device is used in the treatment of prostatic troubles, by means of heat applied through the rectum. It was first placed on the market approximately six years ago, and is sold and shipped principally to doctors and practitioners, but in some cases to the laity, in states other than the State of California.

There is in evidence an advertisement for the Simplex Prostate and Rectal Normalizer claiming that the device "Relaxes tight muscles, calms frayed nerves and offers both a tonic and a sedative effect. A natural way to help prevent a hardened prostate. Indicated in rectal and prostate conditions where better circulation is essential. Of great value in obstinate, chronic constipation. Helpful in many cases of piles".

This stipulation and exhibit warrant an inference that the Simplex device is in competition with the Thermalaid.

The second alleged competitive device, shown by undisputed evidence is the "Prosager", produced by the Midwest Products Company, of Michigan, and shipped in interstate commerce. The device is applied to the tissues near the prostate by way of the rectum, and, by means of air pressure, massages those tissues. It is advertised and sold for treatment of the same ailments as those for which Thermalaid is supposed to be efficacious. Wallace D. Smith, the manufacturer of the Prosager, testified, over objection, that his company was in competition with Thermalaid.

The question on this branch of the case is whether there is sufficient evidence to warrant the Commission's finding of com[480]petition. Petitioner relies on *Federal Trade Commission v. Raladam Co.*, 283 U. S., 643, where the commission cited the Raladam Co. for unfair competitive practices in vending and advertising an alleged obesity cure, representing it to be harmless and effective when in fact it was harmful. The Supreme Court held that the commission was without jurisdiction because it was not shown that the unfair methods were methods of competition:

It is obvious that the word "competition" imports the existence of present or potential competitors, and the unfair methods must be such as injuriously affect or tend thus to affect the business of these competitors—that is to say, the trader whose methods are as-

sailed as unfair must have present or potential rivals in trade whose business will be, or is likely to be, lessened or otherwise injured. 283 U. S. 643, 649.

Findings of the Commission justify the conclusion that the advertisements naturally would tend to increase the business of respondent; but there is neither finding nor evidence from which the conclusion legitimately can be drawn that these advertisements substantially injured or tended thus to injure the business of any competitor or competitors generally, whether legitimate or not. None of the supposed competitors appeared or was called upon to show what, if any, effect the misleading advertisements had, or were likely to have, upon his business. 283 U. S. 643, 652.

In this case there are definitely identified parties manufacturing and selling in interstate commerce a device adapted to the same purposes as is the petitioner's. The manner of their competition—how one may divert trade from another—is obvious. There is sufficient evidence to warrant a finding that competition exists.

What the record lacks is any direct evidence to the effect that petitioner's misleading advertising claims diverted any business from its competitors. This, however, is not required by the decision in the *Raladam* case, and would in many cases be impossible to prove. It would seem to be sufficient to show actual or potential competition and unfair trade practices which reasonably tend to give the perpetrator an advantage in such competition. That much certainly was shown here.

The petitioner asserts error in that the Commission's examiner refused to allow reasonable latitude in the cross-examination of Wallace D. Smith to show that the "Prosager" alleged competitive device, was not a legitimate article of commerce. The questions excluded were whether Mr. Smith had "ever had any controversy or difficulty with the Federal Trade Commission?" and whether he had "ever been called before the Federal Trade Commission in connection with the selling" of the Prosager. The examiner sustained objections because the questions were not definite enough as to time and because that was not a proper way to show whether the article was a legitimate article of commerce.

The examiner's action seems correct. The question should have been more definite. A difficulty with or a "calling before" the Commission in themselves mean nothing.

The petitioner complains that the Commission did not sufficiently inquire into the question of whether the alleged competitive devices were legitimate articles of commerce, and in failing to find that they were not legitimate.

There is no merit in this objection. In the first place, it was for the petitioner to show, if it desired it shown, that the competing devices were not legitimate. In the second place, the evidence affirmatively shows that both the petitioner's "Thermalaid" and the two devices found to be in competition with it are all legitimate articles of commerce, used by doctors and laymen for salutary purposes. Petitioner seems to lose sight of the fact that the Commission has never complained of its instrument but only of certain false and misleading advertising issued in connection with it.

This sufficiently answers the last claim of error, that: "* * * a method of competition affecting only outlaws of commerce, engaged in fraudulent or criminal activities, is not within the jurisdiction of the Commission."

Therefore, the petition to set aside should be denied.

In its brief (and not otherwise) the Commission asks for a decree of affirmance and enforcement of its cease and desist order. Petitioner moves to strike the "cross petition" because it is not properly before us. Petitioner alleges that before a decree of enforcement can be granted, [481] it must appear that the recipient of the cease and desist order has disregarded it.

* * * If such person, partnership, or corporation fails or neglects to obey such order * * * the commission may apply to the circuit court of appeals of the United States * * * for the enforcement of its order, * * *. Upon such filing of the application and transcript the court * * * shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter * * * a decree affirming, modifying, or setting aside the order of the commission * * *.

Any party required by such order of the commission to cease and desist * * * may obtain a review of such order in said circuit court of appeals * * *. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, * * *. 15 U. S. C. A., § 45.

It would seem, in view of the statute, that the Commission's informal prayer for affirmation of the Commission's order is properly here. It appears that the court is vested with plenary jurisdiction no matter which party brings the cause before it. The same language as to the court's jurisdiction is used in one case as in the other.

The order of the Commission is affirmed.

FEDERAL TRADE COMMISSION v. LEADER NOVELTY
CANDY COMPANY, INC.¹

No. 29

(Circuit Court of Appeals, Second Circuit. October 7, 1937)

Application by Commission for enforcement of its order in Docket 2789, 24 F. T. C. 217, directing respondent, its officers, etc., in connection with manufacture, sale and distribution of candy and candy products and toy novelties, to cease and desist from the use of lottery schemes as therein set forth, affirmed per curiam.

On petition for enforcement of an order of Commission, petition granted.

Mr. Martin A. Morrison, of Washington, D. C., for petitioner.

Mr. Victor W. Milch, of New York City, for respondent.

Before MANTON, L. HAND, and SWAN, Circuit Judges.

PER CURIAM.

Petition granted in open court.

FEDERAL TRADE COMMISSION v. BRECHT CANDY
COMPANY¹

No. 1612

(Circuit Court of Appeals, Tenth Circuit. October 21, 1937)

Decree affirming Commission's order in Docket 2662, 23 F. T. C. 269, directing respondent, its officers, etc., in connection with the offer, sale and distribution of candy and candy products, to cease and desist from the use of lottery schemes as therein set forth, and adopting, as below set forth, provisions thereof in court's order directing respondent, its officers, etc., to cease and desist.

On application for enforcement of Commission's order, affirming decree per curiam.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Asst. Chief Counsel, *Mr. Henry C. Lank* and *Mr. James W. Nichol*, Sp. Atty., all of Washington, D. C., for petitioner.

Before LEWIS and PHILLIPS, Circuit Judges.

The court's per curiam affirming decision is reported in 92 F. (2d) 1002.

DECREE

The Federal Trade Commission, petitioner herein, having filed with this court on, to wit, September 28, 1937, its application for the enforcement of an order to cease and desist issued by it against the respondent, under date of November 13, 1936, 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 said 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—

Now, therefore, it is hereby ordered, adjudged and decreed by the court that said order to cease and desist, issued by the Federal Trade Commission, petitioner herein, under date of November 13, 1936, be and the same hereby is affirmed.

And it is hereby further ordered, adjudged and decreed by the court that the respondent, Brecht Candy Company, its officers, agents, representatives, and employees, in the offering for sale, sale, and distribution by it in interstate commerce of candy and candy products, cease and desist from:

(1) Selling and distributing to retail dealers, and to jobbers and wholesale dealers for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise;

(2) Supplying to, or placing in the hands of, wholesale dealers and jobbers or retail dealers, packages or assortments of candy which are used, or may be used, without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public;

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with larger

pieces or bars of candy, or small packages of candy, which said larger pieces or bars of candy or small packages of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color;

(4) Supplying to, or placing in the hands of, retail and wholesale dealers and jobbers assortments of candy, together with a device called a "push card" or a device commonly called a "punch board", for use, or which may be used, in distributing said candy to the public at retail.

And it is hereby further ordered, adjudged and decreed by the court that the respondent, Brecht Candy Company, within thirty (30) days after the service upon it by the clerk of this court 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.

FEDERAL TRADE COMMISSION *v.* COSNER CANDY
COMPANY¹

No. 1611

(Circuit Court of Appeals, Tenth Circuit. October 23, 1937)

Decree affirming Commission's order in Docket 2619, 23 F. T. C. 861, directing respondent, its officers, etc., in the offer, sale and distribution of candy and candy products, to cease and desist from the use of lottery schemes as therein set forth, and adopting, as below set forth, provisions thereof in court's order directing respondent, its officers, etc., to cease and desist.

On application for enforcement of Commission's order, affirming decree per curiam.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, of Washington, D. C., for petitioner.

Before LEWIS and PHILLIPS, Circuit Judges.

DECREE

The Federal Trade Commission, petitioner herein, having filed with this court on, to wit, September 28, 1937, its application for the enforcement of an order to cease and desist issued by it against the respondent, under date of November 13, 1936, 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

¹ Decision, per curiam, affirming Commission's order, reported in 92 F. (2d) 1002.

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—

Now, therefore, it is hereby ordered, adjudged and decreed by the court that said order to cease and desist, issued by the Federal Trade Commission, petitioner herein, under date of November 13, 1936, be and the same hereby is affirmed.

And it is hereby further ordered, adjudged and decreed by the court that the respondent, Cosner Candy Company, its officers, agents, representatives, and employees, in the offering for sale, sale, and distribution by it in interstate commerce of candy and candy products, cease and desist from:

(1) Selling and distributing to retail dealers, and to jobbers and wholesale dealers for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise;

(2) Supplying to, or placing in the hands of, retail dealers and wholesale dealers and jobbers, packages or assortments of candy which are used, or may be used, without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of candy or candy products contained in said assortments to the public;

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy or small boxes of candy, which said larger pieces of candy or small boxes of candy, are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color;

(4) Furnishing to wholesale dealers and jobbers display cards, either with assortments of candy, or separately, bearing a legend or

legends or statements informing the purchaser that the candy is being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise;

(5) Furnishing to retail dealers or to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of candy, which said advertising literature informs the purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy of a particular colored center, a larger piece of candy, or small box of candy, will be given free to said purchaser;

(6) Supplying to, or placing in the hands of retail and wholesale dealers and jobbers, assortments of candy, together with a device commonly called a "push card" for use, or which may be used, in distribution of said candy to the public at retail.

And it is hereby further ordered, adjudged and decreed by the court that the respondent, Cosner Candy Company, within thirty (30) days after the service upon it by the clerk of this court 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.

FEDERAL TRADE COMMISSION v. SAVAGE CANDY
COMPANY¹

No. 1613

(Circuit Court of Appeals, Tenth Circuit. October 23, 1937)

Decree affirming Commission's order in Docket 2606, 23 F. T. C. 732, directing respondent, its officers, etc., in the offer, sale and distribution of candy and candy products, to cease and desist from the use of lottery schemes as therein set forth, and adopting, as below set forth, provisions thereof in court's order directing respondent, its officers, etc., to cease and desist.

On application for enforcement of Commission's order, affirming decree per curiam.

Mr. W. T. Kelley, Chief Counsel, Federal Trade Commission, of Washington, D. C., for petitioner.

Before LEWIS and PHILLIPS, Circuit Judges.

DECREE

The Federal Trade Commission, petitioner herein, having filed with this court on, to wit, September 28, 1937, its application for the en-

¹ Decision per curiam, affirming Commission's order, reported in 92 F. (2d) 1003.

forcement of an order to cease and desist issued by it against the respondent, under date of November 3, 1936, 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—

Now, therefore, it is hereby ordered, adjudged and decreed by the court that said order to cease and desist, issued by the Federal Trade Commission, petitioner herein, under date of November 3, 1936, be and the same hereby is affirmed.

And it is hereby further ordered, adjudged and decreed by the court that the respondent, Savage Candy Company, its officers, agents, representatives, and employees, in the offering for sale, sale and distribution by it in interstate commerce of candy and candy products, cease and desist from:

(1) Selling and distributing to jobbers and wholesale dealers for resale to retailers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

(2) Supplying to, or placing in the hands of, wholesale dealers and jobbers or retail dealers, packages or assortments of candy which are used or which may be used, without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said assortment to the public.

(3) Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size and shape having centers of a different color, together with larger pieces of candy and a small box of candy, which said larger pieces of candy and small box of candy are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

(4) Supplying to, or placing in the hands of, retail and wholesale dealers and jobbers, assortments of candy, together with a device commonly called a push card, for use, or which may be used, in distributing said candy to the public at retail.

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

And it is hereby further ordered, adjudged and decreed by the court that the respondent, Savage Candy Company, within thirty (30) days after the service upon it by the clerk of this court 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.

GOODYEAR TIRE & RUBBER COMPANY v. FEDERAL
TRADE COMMISSION¹

No. 7369

(Circuit Court of Appeals, Sixth Circuit. November 5, 1937)

MOOT PROPOSITIONS—PARTIES' AGREEMENT ON ACTUAL CONTROVERSY—EFFECT.

The Circuit Court of Appeals is not authorized to decide moot propositions merely because the parties are in agreement upon the presence of an actual controversy, since no stipulation of parties or counsel can enlarge the power constitutionally conferred upon the courts.

APPELLATE POWER—JURISDICTION—IN GENERAL.

A Circuit Court of Appeals must determine the limit of its own jurisdiction when such question is raised, whether by counsel or by itself.

MOOT PROPOSITIONS—IN GENERAL.

A Circuit Court of Appeals is not authorized to decide moot or abstract propositions nor to declare, for the government of future cases, principles or rules of law which cannot affect the result as to things in issue before the court.

DISCONTINUANCE OF PRACTICE—WHERE DUE TO INTERVENING EVENT FROM COMPLAINANT'S ACT OR POWER BEYOND CONTROL OF EITHER.

Mere discontinuance of an unlawful practice by parties charged with violating the law will not relieve the court of duty to pass upon a pending charge of illegality since, by mere volition of the parties, the illegal practice may be resumed, but, if discontinuance is the result of an intervening event which

¹ The case is reported in 92 F. (2d) 677. The case before the Commission is reported in 22 F. T. C. 232.

is owing to complainant's own act or to a power beyond the control of either party, the court will stay its hand.

MOOT PROPOSITIONS—PRICE DISCRIMINATION—VOLUNTARY ABRIGATION CHALLENGED CONTRACT ON BASIS SUBSEQUENT PROHIBITING LEGISLATION—ACT'S POSSIBLE REPEAL AND ACTIVITY'S RESUMPTION.

Controversy respecting tire manufacturer's alleged violation of the Clayton Act prohibiting discrimination in prices between purchasers, wherein manufacturer voluntarily abrogated the contract which resulted in discrimination, was not rendered less moot by a remote possibility of resumption of allegedly illegal activity or by fact that act under which activity was voluntarily discontinued as illegal might be repealed and the activity resumed, since rendition of decision would invoke exercise of judicial power not to decide existing controversy, but to establish a rule for controlling predicted future conduct which the Circuit Court of Appeals is unauthorized to render (Clayton Act, sec. 2, and sec. 2 as amended in 1936, 15 U. S. C. A., sec. 13).

ROBINSON-PATMAN ACT—PENDING PROCEEDINGS BEFORE COMMISSION PRECEDING ENACTMENT THEREOF—SAVINGS CLAUSE AND APPELLATE POWER WHERE PROPOSITIONS MOOT.

Robinson-Patman Act, purpose of which was to protect proceedings respecting tire manufacturer's alleged violation of Clayton Act prohibiting discrimination in prices between purchasers in which much testimony had been recorded and many months had been consumed in its hearing, could not enlarge the constitutional grant of judicial power of the Circuit Court of Appeals which extends only to cases of actual controversy (Robinson-Patman Act, sec. 2, 15 U. S. C. A., sec. 21a; Clayton Act, sec. 2, 15 U. S. C. A., sec. 13).

ROBINSON-PATMAN ACT—PENDING PROCEEDINGS BEFORE COMMISSION PRECEDING ENACTMENT THEREOF—DUTY TO DETERMINE VIOLATION UNDER OLD ACT WHERE VOLUNTARY ABRIGATION CHALLENGED CONTRACT.

Section of Robinson-Patman Act, purpose of which was to protect proceedings already taken against a tire manufacturer for alleged violation of Clayton Act prohibiting discrimination in prices between purchasers, in which much testimony had been recorded and many months consumed in its hearing, did not require Circuit Court of Appeals to determine the controversy respecting the violation, where the controversy had become moot because the actuality of the violation had ceased, due to the fact that the contract resulting in the violation had been voluntarily abrogated.

MOOT PROPOSITIONS—CEASE AND DESIST ORDER'S DISPOSITION WHEN INVOLVING—CRITERION.

Disposition of cease and desist order entered by Federal Trade Commission in controversy which had become moot was to be based upon determination of what would [678] be most consonant to justice in view of the conditions and circumstances of the particular case.

MOOT PROPOSITIONS—CEASE AND DESIST ORDER'S DISPOSITION WHEN INVOLVING—WHERE RESPONDENT MANUFACTURER LIABLE IN DAMAGES IF ORDER UNAFFECTED, BUT RESUMPTION CHALLENGED DISCRIMINATION STILL POSSIBLE AFTER OFFENDING CONTRACT'S VOLUNTARY ABRIGATION.

Where controversy over alleged violation of Clayton Act prohibiting discrimination in prices between purchasers had become moot, but to leave existing cease and desist order of Federal Trade Commission unaffected,

would subject manufacturer to actions for damages for the alleged violation by persons injured, while resumption of price discrimination was allegedly possible without contract which had been canceled (appeal was dismissed without prejudice), cease and desist order was set aside, and case was remanded, but without direction to Commission to dismiss complaint and without prejudice to file supplemental complaint under amendment (Clayton Act, sec. 2, and sec. 2 as amended in 1936, and sec. 4, 15 U. S. C. A., secs. 13, 15; Robinson-Patman Act, sec. 2, 15 U. S. C. A., sec. 21a).

(The syllabus, with substituted captions, is taken from 92 F. (2d) 677)

On petition by Goodyear Tire & Rubber Co., to review order of Commission directing petitioner to cease and desist from alleged discrimination in price of tires between purchasers, with effect of lessening competition and tending to create monopoly both in manufacture and distribution, order set aside and case remanded, but without direction that complaint be dismissed and without prejudice to filing supplemental complaint in original proceeding by Commission.

Mr. Grover Higgins, of Cleveland, Ohio (*Mr. Newton D. Baker* and *Mr. H. Chapman Rose*, of Cleveland, Ohio, on the brief), for petitioner.

Mr. Everett F. Haycraft and *Mr. W. T. Kelley*, both of Washington, D. C. (*Messrs. Martin A. Morrison, PGad B. Morehouse*, and *James W. Nichol*, all of Washington, D. C., on the brief), for respondent.

Before HICKS and SIMONS, Circuit Judges, and HAMILTON, District Judge.

SIMONS, *Circuit Judge*:

The petitioner is a manufacturer of automobile tires, and by respondent's complaint of September 13, 1933, was charged with violation of § 2 of the Clayton Act (U. S. C. A., Title 15, § 13), by discriminating in the price of tires between those sold in interstate commerce to Sears, Roebuck & Co., and those sold to independent Goodyear dealers, with the effect of lessening competition and tending to create a monopoly both in manufacture and distribution. After extended hearings, in which a great volume of testimony was taken, the respondent issued its order directing the petitioner to cease and desist from the condemned practice, whereupon on April 5, 1936, the petitioner, led in this court the present petition for review.

The controversy involves principally a challenged interpretation given by the Commission to § 2 of the Clayton Act. That section declares it to be unlawful to discriminate in price between purchasers of commodities where the effect of such discrimination may be

to substantially lessen competition or tend to create a monopoly in any line of commerce, and contains the following proviso:

That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation or discrimination in price in the same or different communities made in good faith to meet competition; * * *.

The essential dispute in respect to the foregoing proviso is this: The petitioner contends that a discrimination in price is permitted if based upon the quantity of the commodity sold, and that a discrimination in price is also permitted that makes due allowance for difference in the cost of selling or transportation; that since its discrimination in favor of Sears Roebuck was approximately only 7% over and above a due allowance for difference in cost, it was not an unreasonable discrimination attributable to the great quantity of tires purchased by Sears Roebuck, that its effect did not substantially lessen competition, had no tendency to create monopoly, and so the petitioner did not offend against the statute. The Commission, however, contends that while the proviso permits discrimination on account of differences in quantity of the commodity sold, such discrimination is limited to the saving in cost of selling or transportation, and that all differences in price beyond such saving threatens competition, tends to monopoly, and so violates the statute.

[679] The cease and desist order was entered on March 5, 1936. On June 19 of the same year the Congress enacted the so-called Robinson-Patman Act (49 Statutes 1526), whereby § 2 of the Clayton Act was amended *inter alia* to provide "That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery, resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered." It is agreed that the Robinson-Patman Act limits differentials to differences in cost on account of quantity, but the petitioner insists that this marks a change in the law, while the respondent contends it is mere clarification. The petitioner stands upon the language of the Act and the history of the amendment, pointing among other facts to the Commission's final report on chain store investigation filed December 14, 1934, wherein, in discussion of § 2 of the Clayton Act, it said "Unless the price discrimination permitted on account of quantity shall make only due allowance therefor § 2 of the Clayton Act may be readily evaded by making a small difference in quantity the occasion for a large difference in price. If the section is to have any vitality it must either be interpreted and enforced to that effect or it should be amended to that effect," and to reports of Congressional

committees to the effect that § 2 of the Clayton Act places no limit upon quantity differentials of any kind. The Commission's present view of the meaning of § 2 is that in the respect here indicated it requires neither amendment nor interpretation, for it asserts the proviso to be clear and unambiguous. For reasons presently to be discussed, we find it unnecessary to decide the question thus briefly indicated.

When the case reached the court for argument, we were informed that, when the Robinson-Patman Act became effective the petitioner at once ceased to manufacture tires for Sears Roebuck under the terms of its existing contract, and shortly thereafter received notice of its cancellation. Since, however, a large stock of tires made under the agreement was on hand and could not at once be liquidated, the parties made a new price arrangement designed to conform to the new law, and advised the Commission of the price basis it was proposed to use. Within the year all transactions between the petitioner and Sears Roebuck ceased and obligations were terminated by mutual releases. These circumstances appearing, the court inquired whether an actual controversy between the parties remained to be decided. The original briefs, except for a note on that of the petitioner, were silent upon the possibly moot character of the controversy. Permission to file supplemental briefs on the point raised was immediately sought and granted, and these have now been carefully considered.

Petitioner and respondent alike urge decision upon the validity of the Commission's order. That they are in agreement upon the presence of an actual controversy is, however, of no importance, since no stipulation of parties or counsel can enlarge the power constitutionally conferred upon the courts. *Richardson v. McChesney*, 218 U. S. 487; *Stearns v. Wood*, 236 U. S. 75; *Security Life Insurance Co. v. Prewitt*, 200 U. S. 446. It is the duty of the court to determine the limit of its own jurisdiction when any question concerning it presents itself, whether raised by counsel or *sua sponte*, for we are not empowered to decide moot or abstract propositions, or to declare for the government of future cases principles or rules of law which cannot affect the result as to the things in issue before us. *California v. San Pablo & Tulare Railroad*, 149 U. S. 308, 314; *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288.

However debatable may have been the validity of the Commission's order based upon its asserted interpretations of the § 2 proviso of the Clayton Act, and upon this we express no opinion, there is no controversy between the parties as to the illegal character of the petitioner's practices under the terms of the Robinson-Patman Act. To the mandate of the latter, the petitioner has bowed.

So far as his case is concerned it accepts without question both its validity and its application. It has consented to the abrogation of a very profitable contract involving millions of units and many millions of dollars, with all the dislocation and reorganization of manufacturing schedules that such substantial reduction in volume in all probability entails. However contumacious it may have been in respect to the original complaint it now yields to what it conceives to be the certain expression of sovereign authority [680] without awaiting further complaint. The circumstance which compels its present practice is not of its own creation, but one beyond its power to control. In this situation we think the question as to the actuality of any present controversy between petitioner and respondent is ruled by *United States v. Hamburg-American Co.*, 239 U. S. 466.

In that case there was a combination of steamship lines alleged to be illegal under the Anti-Trust Act of July 2, 1890. The Court held that since the business in which the parties to the combination were engaged had by the force of events beyond their control ceased, and since any continued relation between the members of the combination had become unlawful and impossible owing to the World War, all question respecting its validity had become moot and beyond the power of the court to determine. Mere discontinuance of an unlawful practice by parties charged with violating the law will, of course, not relieve the court of the duty to pass upon a pending charge of illegality because by the mere volition of the parties the illegal practice may be resumed. *United States v. Trans-Missouri Freight Assn.*, 166 U. S. 290; *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U. S. 498. But these cases are by the court distinguished in the ruling case, where it is said, in reliance upon *Mills v. Green*, 159 U. S. 651, "But if the intervening event is owing to the plaintiff's own act or to a power beyond the control of either party, the court will stay its hand." Moreover, it is idle, we think, to urge that one who has voluntarily surrendered an activity so great as that required by the petitioner's contract with Sears Roebuck, will of its own volition resume a practice now beyond peradventure condemned by law. Of course the amendatory statute may be repealed, or invalidated. More likely was peace to end the World War and trans-Atlantic communication to be resumed. Of such expectation the court said, "It is urged, in view of the character of the question and the possibility or probability that on the cessation of war the parties will resume or re-create their asserted illegal combination, that we should now decide the controversies in order that by operation of the rule to be established any attempt at renewal of or creation of the combination in the future will be rendered impossible. But this merely upon a prophecy as to future conditions

invokes the exercise of judicial power not to decide an existing controversy, but to establish a rule for controlling predicted future conduct."

As against the view that the controversy has become moot, both parties urge upon us § 2 of the Robinson-Patman Act (15 U. S. C. A., § 21a), which provides that rights of action, pending litigation, or orders in effect or pending on review based upon § 2 of the Clayton Act, shall not thereby be affected, and which permits the Commission while its order is pending on review or is in effect as issued or modified by the court, to reopen its original proceeding and to modify or amend its original order to include additional violations of law, such modified or amended order to be subject to review and enforcement in the manner provided by the Clayton Act. This section further provides that if the court sets aside the Commission's modified or amended order, the original order shall not be affected thereby, but shall remain in force and effect as fully and to the same extent as if the supplementary proceedings had not been taken. The history of the section indicates that it was added to the bill specifically to protect proceedings already taken in the instant case, in which many thousands of pages of testimony had been recorded and many months consumed in its hearing.

It is elementary, however, that statutory provisions, even if applicable, may not enlarge the constitutional grant of judicial power which extends only to cases of actual controversy. But § 2 of the Robinson-Patman Act does not by its terms command, nor by necessary implication require, our determination of a dispute whose actuality has ceased. It but provides for the reopening of proceedings begun originally under the Clayton Act for the purpose of examining acts, practices or methods in violation of the amendatory act that have been committed or carried on since its effective date, and this notwithstanding the pendency of a review of its original order or its affirmance or modification by the court. Although sixteen months had elapsed between the effective date of the Robinson-Patman Act and the present hearing here, no supplementary proceedings have been taken, nor are we advised that any are in contemplation. The provi[681]sion contained in the amendment that if upon review of a modified or amended order it is set aside, that the original order shall not be affected thereby but shall remain in force and effect, was certainly not intended to nor could it have the effect of preventing the court from reviewing it or from an appropriate disposition of it in the event that the controversy should have become moot. The real purpose of the amendment was represented upon the floor of the House to be to preserve the extensive record already made in the event that the present petitioner should refuse to comply with orders of the Commission made under the authority of the amendatory act, in

which case supplementary proceedings could be had upon the original record and an amended order issue. § 2 of the Robinson-Patman Act has no bearing upon the actuality of the issue presently urged, and our conclusion is that the controversy, notwithstanding its provisions, is moot.

In this situation it remains to be determined what should be done with reference to the cease and desist order made by the Commission. Following the reasoning of the *Hamburg-American Company* case, *supra*, and in response to authority controlling upon us, our decision must be based solely "upon determining what will be most consonant to justice in view of the conditions and circumstances of the particular case."

Upon behalf of the petitioner it is urged that since the cease and desist order is not the sole penalty for a violation of § 2 of the Clayton Act, but that under § 4 of that act persons injured by such violations may recover threefold damages and attorneys fees, disposition of the present case which would leave the existing order of the Commission unaffected, would have for it serious practical results in the encouragement of litigation, though necessarily conceding the order not to control such litigation under the doctrine of *res judicata*. More persuasive, however, is its contention in reliance upon the language of the *Hamburg-American* case, *supra*, wherein it was said: "We are of the opinion that the ends of justice exact that the judgment below should not be permitted to stand when without any fault of the government [here the petitioner] there is no power to review it upon the merits but that it should be reversed and the case remanded to the court below with directions to dismiss the bill without prejudice * * *." Certainly there must be recognition of the fundamental injustice of permitting a decision to stand in circumstances in which the defeated party cannot secure its review upon the merits. *Commercial Cable Co. v. Burleson*, 250 U. S. 360; *Brownlow v. Schwartz*, 261 U. S. 216.

On the other hand the respondent urges that since at the oral argument the petitioner for the first time definitely stated that its contract with Sears Roebuck had been cancelled and price discrimination stopped, that since there may be price discrimination without contract, and since the Commission's order was not directed to the cancellation of the contract but to unlawful discriminations, and there has been no examination into the practices of the petitioner since the effective date of the Robinson-Patman Act, and not sufficient opportunity for such investigation, appropriate disposition of the present case, based upon a conclusion that the controversy therein has become moot, is to dismiss the appeal without prejudice. We give consideration to both contentions when we set aside, as we do, the order of the Commission and remand the case, but without direc-

tion to the Commission to dismiss the complaint and without prejudice to its filing a supplemental complaint in the original proceeding if under § 2 of the amendatory act this may now be done, concerning which we express no opinion.

It is so ordered.

FEDERAL TRADE COMMISSION v. STANDARD EDUCATION SOCIETY ET AL.¹

No. 14

(Supreme Court of the United States. November 8, 1937)

FINDINGS OF COMMISSION—STATUTE'S MANDATE AS BINDING COURT.

The courts do not have right to ignore the plain mandate of statute which makes findings of Federal Trade Commission conclusive as to the facts if supported by testimony (Federal Trade Commission Act of 1914, sec. 5, 15 U. S. C. A. sec. 45).

PRODUCT AS GIVEN AWAY WITH THAT SOLD, WHERE REQUIRED PRICE REGULAR STANDARD FOR BOTH, AS UNFAIR PRACTICE.

Practice of publisher of encyclopedia in representing that set of books were given away and that only loose leaf extension service was to be paid for by purchaser could be forbidden by Federal Trade Commission as unfair trade practice where price required to be paid was regular standard price for both encyclopedia and loose leaf extension service.

CONTRIBUTOR TO ORIGINAL WORK AS CONTRIBUTOR TO REVISED, IN WHICH NO PART OF CONTRIBUTION INCLUDED, AS UNFAIR.

Order of Federal Trade Commission permitting publisher of encyclopedic work to represent any person as contributor to revised encyclopedia if part of his material appearing in original edition had been carried forward into revised encyclopedia, but prohibiting the representation of a contributor to the original encyclopedia as a contributor to the revised encyclopedia where no part of his contribution had been brought forward into the revised encyclopedia, was proper.

TESTIMONIAL'S USE WHERE NOT BY PERSON NAMED THEREIN.

Evidence sustained Federal Trade Commission's finding that publisher of encyclopedia used testimonials which had not been given by person whose name was used, justifying cease and desist order.

PARTIES RESPONDENT—JOINER OF NEW CORPORATION AND MANAGERS OF BOTH, WHERE INSTRUMENT OF EVASION.

Evidence sustained finding of Federal Trade Commission that managers of first corporation organized another corporation for purpose of evading any cease and desist order which might be issued against the first corporation, as regards propriety of including the other corporation and the managers in the cease and desist order.

¹ The case is reported in 302 U. S. 112, 58 S. Ct. 113. The case before the Commission is reported in 16 F. T. C. 1.

PARTIES RESPONDENT—CORPORATE RESPONDENTS' INDIVIDUAL CONTROLLERS AS BOUND BY ORDER AGAINST FORMER.

Individuals who were in charge and control of affairs of respondent corporations would be bound by cease and desist order of Federal Trade Commission against the corporations.

PARTIES RESPONDENT—MOVING PARTIES IN CORPORATE CONDUCT—WHERE ORDER COMPLIANCE DOUBTFUL.

Where circumstances, disclosed by findings of Federal Trade Commission and testimony, were such that further efforts of individuals, who were in charge and control of affairs of corporations, to evade cease and desist order of Federal Trade Commission might be anticipated, it was proper for Commission to include the individuals in its order.

PARTIES RESPONDENT—MOVING PARTIES IN CORPORATE CONDUCT—WHERE INDIVIDUAL ACTIONS OF SUCH, AS THOUGH NO CORPORATION.

Where record in proceeding for enforcement of cease and desist order of Federal Trade Commission showed that respondent corporations were owned and managed by three individual respondents, and that the individuals acted with practically the same freedom as though no corporation had existed, the Federal Trade Commission was justified in reaching conclusion that it was necessary to include the individuals in each part of its order.

(The syllabus, with substituted captions, is taken from 58 S. Ct. 113)

In proceeding by Commission against Standard Education Society and others for order to enforce its order to cease and desist from certain unfair methods of competition, and on certiorari by Commission to review that part of decree of Circuit Court of Appeals, 86 F. (2d) 692, which modified in part and reversed in part its said order, decree reversed in part, and cause remanded, with instructions.

[113] *Messrs. Homer S. Cummings*, Atty. Gen., and *Robert H. Jackson*, Asst. Atty. Gen., for petitioner.

Mr. Henry Ward Beer, of Washington, D. C., for respondents.

Mr. Justice Black delivered the opinion of the Court.

Upon application by the Federal Trade Commission this Court granted certiorari to review that part of a decree of the Circuit Court of Appeals for the Second Circuit, which modified in part and reversed in part a "cease and desist" order of the Commission (86 F. (2d) 692). The Commission, after service of a complaint, and extensive hearings, made a finding of facts from the testimony and ordered two corporation respondents and three individuals controlling these corporations, to desist from certain practices used by respondents in furthering the sale of encyclopedias and other books in interstate commerce. The Commission not only found the practices to be "unfair" but also "false, deceptive and misleading." The Court below modified and weakened the Commission's order in material aspects, and, the questions here are whether the testimony supported

all the findings of the Commission, and whether these findings justified the entire order as against all the respondents.

All "unfair" practices found by the Commission related wholly to methods of sale. The Commission's order against respondents was based, in part, upon the following findings:

[114] That fictitious testimonials and recommendations had been used by respondents; that authorized testimonials and recommendations had been exaggerated and garbled; that authorized testimonials for a "previous work" were later used to further the sale of another "work, quite different in form, in material and in purpose." "For the purpose of selling their publications, Standard Reference Work and New Standard Encyclopedia" respondents advertised "a list headed 'Contributors and Reviewers' and in such list they include many who have not been either contributors or reviewers to either the Standard Reference Work or the New Standard Encyclopedia." Respondents sold "their publications at retail to the public by salesmen on the subscription plan" and in carrying out said plan they represented to prospects that they were selecting a small list of "well connected representative people" in various localities, in order to present them with an "artcraft de luxe edition" of the encyclopedia. Further carrying out respondents' scheme, their agents represented that "they are giving away a set of books; that they are not selling anything; that the books are free; that the books are being given free as an advertising plan * * * that the prospect has been specially selected, and that the only return desired for the gift is permission to use the name of the prospect for advertising purposes and as a reference"; that the "said prospects are paying only for the loose leaf extension service; * * * that the price of \$69.50 is a reduced price and that the regular price of the books and the extension service is \$150.00 sometimes even as high as \$200.00." The statements that the encyclopedia is being given away; that payment is only being made "for the loose leaf extension service"; and that "\$69.50 is a reduced price * * * and false, deceptive and misleading, as \$69.50 is the regular, standard price" for both the encyclopedia and the loose leaf extension and research privileges.

[115] The Court of Appeals reversed clauses one and three of the Commission's order. These clauses ordered respondents not to represent falsely to purchasers of their publications that the publishing company was giving encyclopedias to them as a gift, and that purchasers were paying only for looseleaf supplements.

The Court of Appeals affirmed clauses two and six of the Commission's order. These clauses ordered respondents not to represent falsely to purchasers that sets of books had "been reserved to be

given away free of cost to selected persons" and that the usual price at which respondents' publications are sold is higher than the price "at which they are offered to such purchasers."

It is clear, both from the findings of the Commission, and the testimony upon which they rest, that the practices forbidden in clauses one, two, three, and six are all tied together as parts of the same sales plan. As a first step under this plan, salesmen obtained an audience with prospective purchasers by representations made to them that by reason of their prestige and influence they had been selected by the company to receive a set of books free of cost for advertising purposes. After respondents' agents thus gained an audience by the promise of a free set of books, they then moved forward under the same general sales plan, by falsely representing that the regular price of the loose leaf supplement alone was \$69.50, and that the usual price of both books and loose leaf supplements was much in excess of \$69.50. The Commission ordered respondents not to engage in carrying out any part of this entire sales plan. However, as the Court of Appeals reversed clauses one and three of the Commission's order, a part of the sales scheme which the Commission condemned as unfair, can yet be carried out by respondents. That is to say—respondents by that reversal, are left free to continue to obtain audiences with prospects and to sell encyclopedias and loose leaf supple[116]ments to them, by false representations that the company gives them a set of encyclopedias free, and that \$69.50 paid by them to the company, is for the loose leaf supplement alone.

In reaching the conclusion that respondents should be left free to engage in that part of the sales scheme prohibited by clauses one and three of the Commission's order, the Court below reasoned as follows:

"We cannot take too seriously the 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 * * *. Such trivial niceties are too impalpable for practical affairs, they are will-o-wisps which divert attention from substantial evils."

The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced. There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious. The best element of business has long since decided that honesty should govern competitive enterprises, and that the rule of *caveat emptor* should not be relied upon to reward fraud and deception.

The practice of promising free books where no free books were intended to be given, and the practice of deceiving unwary purchasers into the false belief that loose leaf supplements alone sell for \$69.50, when in reality both books and supplement regularly sell for \$69.50, are practices contrary to decent business standards. To fail to prohibit such evil practices would be to elevate deception in business and to give to it the standing and dignity of truth. It was clearly the practice of respondents through their agents, in accordance with a well-matured plan, to mislead customers into the belief that they [117] were given an encyclopedia, and that they paid only for the loose leaf supplement. That representations were made justifying this belief; that the plan was outlined in letters going directly from the companies; that men and women were deceived by them—there can be little doubt. Certainly the Commission was justified from the evidence in finding that customers were misled. Testimony in the record from citizens of ten States—teachers, doctors, college professors, club women, business men—proves beyond doubt that the practice was not only the commonly accepted sales method for respondents' encyclopedias, but that it successfully deceived and deluded its victims.

The courts do not have a right to ignore the plain mandate of the statute which makes the findings of the Commission conclusive as to the facts if supported by testimony.¹ The courts cannot pick and choose bits of evidence to make findings of fact contrary to the findings of the Commission. The record in this case is filled with evidence of witnesses under oath which support the Commission's findings. Clauses one and three of the Commission's order should be sustained and enforced.

The seventh clause of the Commission's order forbade the use of names of persons as contributors or editors who had not consented to such use and who had neither actually contributed to the publications nor helped to edit them.

The Court of Appeals upheld this clause except as it might apply to the original contributors to Aiton's encyclopedia saying that "it seems to us not 'unfair' to announce as contributors to the derived works those who have been contributors to the original." Aiton's encyclopedia was published about 1909, and respondents' works represent the result of periodic revisions and expansions of the prior work. The Government concedes in [118] its brief that this clause of the Commission's order does not prevent respondents from representing a person who contributed to the original, as a contributor to their revised publication, if "some of the material originally in Aiton's encyclopedia remained in the new edition of the revised

¹ Federal Trade Commission Act, Sept. 26, 1914, 38 Stat. 717, U. S. C. title 15, sec. 45.

work." Respondents agree with this interpretation. As between these parties, therefore, this clause permits respondents to represent any person as a contributor to their present revised encyclopedia, if a part of his original material has been carried forward to it. If no part of his contribution to Aiton's encyclopedia has been brought forward, he is not a contributor and should not be represented as such. This clause as originally declared by the Commission would, under this interpretation, properly forbid respondents from falsely representing as contributors or editors those who had actually neither contributed to, nor edited, the publications. The decree of the Court below modifying this clause is not in accordance with our conclusion, and clause seven of the Commission's order should be enforced.

The Court of Appeals reversed the eighth clause of the order of the Commission. The reason given by the Court below for this action was as follows:

"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; * * *

We are convinced that the Commission's findings of fact justified this clause of the order and that the testimony supports these findings.²

[119] The Court of Appeals entirely excluded respondent Greener from the operation of the Commission's order, and partially excluded respondents Stanford and Ward. The Commission had found from the testimony that "Respondents H. M. Stanford, W. H. Ward, and A. J. Greener are the managers and sole stockholders of respondent Standard Education Society, and the managers and sole incorporators of respondent Standard Encyclopedia Corporation * * *. The Commission concludes and infers from the record in this case and so finds that this corporation was organized by the individual respondents for the purpose of evading any order that might be issued by the Federal Trade Commission against the respondent, the Standard Education Society."

There was ample support in the testimony for this finding of the Commission.

The Federal Trade Commission Act (*supra*) gives the Commission power to "prevent" persons, partnerships or corporations * * * from using unfair methods of competition in commerce."

This court has held that "a command to the corporation is in effect a command to those who are officially responsible for the conduct of

² From paragraphs fourteen and fifteen of the Commission's findings it appears that respondents used the names of various individuals in testimonials and that

"None of these men or this woman ever wrote any testimonial or recommendation of or concerning the New Standard Encyclopedia. The representations that these men and this woman wrote the recommendations for the so-called 'New Standard Encyclopedia,' are false, deceptive, and misleading."

its affairs. If they, apprised of the writ directed to the corporation, prevent compliance * * * they, no less than the corporation itself, are guilty of disobedience and may be punished for contempt." *Wilson v. United States*, 221 U. S. 361, 376.

Respondents Stanford, Ward, and Greener, who are in charge and control of the affairs of respondent corporations, would be bound by a cease and desist order rendered against the corporations. Since circumstances, disclosed by the Commission's findings and the testimony, are such that further efforts of these individual respondents to evade orders of the Commission might be anticipated, it was proper for the Commission to include them in its cease and desist order.

[120] The record in this case discloses closely held corporations owned, dominated, and managed by these three individual respondents. In this management these three respondents acted with practically the same freedom as though no corporation had existed. So far as corporate action was concerned, these three were the actors. Under the circumstances of this proceeding, the Commission was justified in reaching the conclusion that it was necessary to include respondents Stanford, Ward, and Greener in each part of its order if it was to be fully effective in preventing the unfair competitive practices which the Commission had found to exist. The Court below was in error in excluding these respondents from the operation of the Commission's order.

The decree below will be reversed except as to modification of clause ten of the Commission's order, and the cause is remanded with instructions to proceed in conformity with this opinion.

Reversed.

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Special advantages.....	1516 (2000)
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F. o. b. being delivered.....	1625
Manufacturer savings in, to consumer.....	1679 (01945)
Original.....	1530 (2021)
Of product as repossessed and sacrificed.....	1558 (2073)
“Over half” savings.....	1682 (01949)
Price or amount actually charged or payable, by depiction higher priced product, or nondisclosure of taxes, etc., involved..	1520–1527
Regular as special reduced.....	1528 (2015), 1576 (01784), 1589 (01803), 1605 (01830), 1610 (01841), 1664, 1665 (01926), 1635 (01877), 1648 (01901), 1682 (01949)
Retailer's being wholesale.....	1595 (01813)

Misrepresenting product:

As to—	
Old or second-hand being new.....	1529, 1530 (2021), 1546 (2050), 1562 (2081), 1563 (2084)
Product being old or second-hand.....	1515 (1999)
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Through—

Representing or offering, falsely or misleadingly—

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Free—

Product or service—

In general..... 1513

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1597, 1606 (01833), 1610 (01841), 1635 (01877), 1637,
1633 (01881), 1639 (01884), 1652 (01907), 1648
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demanded..... 1514(1996), 1536 (2031), 1538 (2034), 1550 (2056), 1552
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(01803), 1591 (01807), 1595 (01813), 1633, 1643
(01892), 1645, 1651, 1656, 1663 (01923), 1665
(01926), 1675 (01939), 1680

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(01797), 1591 (01806), 1593 (01809, 01810), 1594 (01811), 1596
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Special, limited, advertising, bargain or introductory offers. 1528

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(01891), 1643 (01892), 1645, 1652 (01907), 1658, 1660 (01918),
1676, 1680

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Securing agents or representatives falsely or misleadingly—Continued.

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Unfair methods of competition condemned. *See—*

- Advertising falsely or misleadingly.
- Aiding, assisting, or abetting deceptive practice.
- Assuming or using misleading trade or corporate name.
- Claiming or using indorsements or testimonials falsely or misleadingly.
- Disparaging or misrepresenting competitors or their products.

Misbranding or mislabeling.

Misrepresenting business status, advantages, or connections.

Misrepresenting prices.

Misrepresenting product.

Offering deceptive inducements to purchase.

Securing agents or representatives falsely or misleadingly.

Simulating.

Using contest schemes unfairly in merchandising.

Using lottery scheme in merchandising.

Using misleading trade name, mark, or brand.

Using contest schemes unfairly in merchandising:

Through—

Representing falsely or misleadingly—

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As to—

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1541 (2040), 1544 (2046), 1546 (2051), 1560 (2072), 1571, 1622

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